

SECONDLY.

Although we might stop—we yet do not choose to stop—at the point last suggested. We will now go further, and attempt to show, specifically from its provisions, that the constitution of the United States, not only does not recognize or sanction slavery, as a legal institution, but that, on the contrary, it presumes all men to be free; that it positively denies the right of property in man; and that it, *of itself*, makes it impossible for slavery to have a legal existence in any of the United States.

In the first place—although the assertion is constantly made, and rarely denied, yet it is palpably a mere begging of the whole question in favor of slavery, to say that the constitution *intended* to sanction it; for if it *intended* to sanction it, it *did* thereby necessarily sanction it, (that is, if slavery then had any constitutional existence to be sanctioned.) The *intentions* of the constitution are the only means whereby it sanctions any thing. And its intentions necessarily sanction everything to which they apply, and which, in the nature of things, they are competent to sanction. To say, therefore, that the constitution *intended* to sanction slavery, is the same as to say that it *did* sanction it; which is begging the whole question, and substituting mere assertion for proof.

Why, then, do not men say distinctly, that the constitution *did* sanction slavery, instead of saying that it *intended* to sanction it? We are not accustomed to use the word "*intention*," when speaking of the other grants and sanctions of the constitution. We do not say, for example, that the constitution *intended* to authorize congress "to coin money," but that it *did* authorize them to coin it. Nor do we say that it intended to authorize them "to declare war;" but that it did authorize them to declare it. It would be silly and childish to say merely that it *intended* to authorize them "to coin money," and "to declare war," when the language authorizing them to do so, is full, explicit and positive. Why, then, in the case of slavery, do men say merely that the constitution *intended* to sanction it, instead of saying distinctly, as we do in the other cases, that it *did* sanction it? The reason is obvious. If they were to say unequivocally that it *did* sanction it, they would lay themselves under the necessity of pointing to the *words* that sanction it; and they are aware that the *words alone* of the constitution do not come up to that point. They, therefore, assert simply that the constitution *intended* to sanction it; and they then attempt to support the assertion by quoting certain words and phrases, which they say are *capable* of covering, or rather of concealing such an intention; and then by the aid of exterior, circumstantial and historical evidence, they attempt to enforce upon the mind the conclusion that, as matter of fact, such was the intention of those who *drafted* the constitution; and thence they finally infer that such was the intention of the constitution itself.

The error and fraud of this whole procedure—and it is one purely of error and fraud—consists in this—that it artfully substitutes the supposed intentions of those who drafted the constitution, for the intentions of the constitution itself; and, secondly, it personifies the constitution as a crafty individual; capable of both open and secret intentions; capable of legally participating in, and giving effect to all the subtleties and double dealing of knavish men; and as actually intending to secure slavery, while openly professing to "secure and establish liberty and justice." It personifies the constitution as an individual capable of having private and criminal intentions, which it dare not distinctly avow, but only darkly hint at, by the use of words of an indefinite, uncertain and double meaning, whose application is to be gathered from external circumstances.

The falsehood of all these imaginings is apparent, the moment it is considered that the constitution is not a *person*, of whom an "intention," not legally expressed, can be asserted; that it has none of the various and selfish passions and motives of action, which sometimes prompt *men* to the practice of duplicity and disguise; that it is merely a written legal instrument; that, as such, it must have a fixed, and not a double meaning; that it is made up entirely of intelligible words; and that it has, and *can* have, no soul, no "*intentions*," no motives, no being, no personality, except what those words alone express or imply. Its "intentions" are nothing more nor less than the legal meaning of its words. Its intentions are no guide to its legal meaning—as the advocates of slavery all assume; but its legal meaning is the sole guide to its intentions. This distinction is all important to be observed; for if we can gratuitously assume the intentions of a legal instrument to be what we may wish them to be, and can then strain or pervert the ordinary meaning of its words, in order to make them utter those intentions, we can make any thing we choose of any legal instrument whatever. The legal meaning of the words of an instrument is, therefore, necessarily our only guide to its intentions.

In ascertaining the legal meaning of the words of the constitution, these rules of law, (the reasons of which will be more fully explained hereafter,) are vital to be borne constantly in mind, viz: 1st, that no intention in violation of natural justice and natural right, (like that to sanction slavery,) can be ascribed to the constitution, unless that intention be expressed in terms that are *legally competent* to express such an intention; and, 2d, that no terms, except those that are plenary, express, explicit, distinct, unequivocal, *and to which no other meaning can be given, are legally competent* to authorize or sanction any thing contrary to natural right. The rule of law is materially different as to the terms necessary to legalize and sanction any thing contrary to natural right, and those necessary to legalize things that are consistent with natural right. The latter may be sanctioned by implication and inference; the former only by inevitable implication, or by language that is full, definite, express, explicit, unequivocal, and whose *unavoidable* import is to sanction the *specific wrong* intended.

To assert, therefore, that the constitution *intended* to sanction slavery, is, in reality, equivalent to asserting that the *necessary* meaning, the *unavoidable* import of the *words alone* of the constitution, come fully up to the point of a clear, definite, distinct, express, explicit, unequivocal, necessary and peremptory sanction of the specific thing, *human slavery, property in man*. If the *necessary* import of its *words alone* do but fall an iota short of this point, the instrument gives, and, legally speaking, intended to give no legal sanction to slavery. Now, who can, in good faith, say that the *words alone* of the constitution come up to this point? No one, who knows any thing of law, and the meaning of words. Not even the name of the thing, alleged to be sanctioned, is given. The constitution itself contains no designation, description, or necessary admission of the existence of such a thing as slavery, servitude, or the right of property in man. We are obliged to go out of the instrument, and grope among the records of oppression, lawlessness and crime—records unmentioned, and of course unsanctioned by the constitution—to *find* the thing, to which it is said that the words of the constitution apply. And when we have found this thing, which the constitution dare not name, we find that the constitution has sanctioned it, (if at all,) only by enigmatical words, by unnecessary implication and inference, by inuendo and double entendre, and under a name that entirely fails of describing the thing. Every body must admit that the constitution itself contains no language, from which *alone* any court, that were either strangers to the prior existence of slavery, or that did not assume its prior existence to be legal, could legally decide that the constitution sanctioned it. And this is the true

test for determining whether the constitution does, or does not, sanction slavery, viz: whether a court of law, strangers to the prior existence of slavery, or not assuming its prior existence to be legal—looking only at the naked language of the instrument—could, consistently with legal rules, judicially determine that it sanctioned slavery. Every lawyer, who at all deserves that name, knows that the claim for slavery could stand no such test. The fact is palpable, that the constitution contains no such legal sanction; that it is only by unnecessary implication and inference, by inuendo and double-entendre, by the aid of exterior evidence, the assumption of the prior legality of slavery, and the gratuitous imputation of criminal intentions that are not avowed in legal terms, that any sanction of slavery, (as a legal institution,) can be extorted from it.

But legal rules of interpretation entirely forbid and disallow all such implications, inferences, inuendos and double-entendre, all aid of exterior evidence, all assumptions of the prior legality of slavery, and all gratuitous imputations of criminal unexpressed intentions; and consequently compel us to come back to the *letter* of the instrument, and find *there* a distinct, clear, necessary, peremptory sanction for slavery, or to surrender the point.

To the unprofessional reader these rules of interpretation will appear stringent, and perhaps unreasonable and unsound. For his benefit, therefore, the reasons on which they are founded, will be given. And he is requested to fix both the reasons and the rules fully in his mind, inasmuch as the whole legal meaning of the constitution, in regard to slavery, may perhaps be found to turn upon the construction which these rules fix upon its language.

But before giving the reasons of this rule, let us offer a few remarks in regard to *legal* rules of interpretation in general. Many persons appear to have the idea that these rules have no foundation in reason, justice or necessity; that they are little else than whimsical and absurd conceits, arbitrarily adopted by the courts. No idea can be more erroneous than this. The rules are absolutely indispensable to the administration of the justice arising out of any class of legal instruments whatever—whether the instruments be simple contracts between man and man, or statutes enacted by legislatures, or fundamental compacts or constitutions of government agreed upon by the people at large. In regard to all these instruments, the *law* fixes, and necessarily must fix their meaning; and for the obvious reason, that otherwise their meaning could not be fixed at all. The parties to the simplest contract may disagree, or pretend to disagree, as to its meaning, and of course as to their respective rights under it. The different members of a legislative body, who vote for a particular statute, may have different intentions in voting for it, and may therefore differ, or pretend to differ, as to its meaning. The people of a nation may establish a compact of government. The motives of one portion may be to establish liberty, equality and justice; and they may think, or pretend to think that the words used in the instrument convey that idea. The motives of another portion may be to establish the slavery or subordination of one part of the people, and the superiority or arbitrary power of the other part; and they may think, or pretend to think, that the language agreed upon by the whole authorizes such a government. In all these cases, unless there were some rules of law, applicable alike to all instruments, and competent to settle their meaning, their meaning could not be settled; and individuals would of necessity lose their rights under them. *The law, therefore, fixes their meaning*; and the rules by which it does so, are founded in the same justice, reason, necessity and truth, as are other legal principles, and are for that reason as inflexible as any other legal principles whatever. They are also simple, intelligible, natural, obvious. Every body are presumed to know them, as they are presumed to know any other legal principles. No one is allowed to plead ignorance of them, any more than of any other principle of law. All persons and people are presumed to have framed their contracts,

statutes and constitutions with reference to them. And if they have not done so—if they have said black when they meant white, and one thing when they meant another, they must abide the consequences. The law will presume that they meant what they said. No one, in a court of justice, can claim any rights founded on a construction different from that which these rules would give to the contract, statute, or constitution, under which he claims. The judiciary cannot depart from these rules, for two reasons. First, because the rules embody in themselves principles of justice, reason and truth; and are therefore as necessarily law as any other principles of justice, reason and truth; and, secondly, because if they could lawfully depart from them in one case, they might in another, at their own caprice. Courts could thus at pleasure become despotic; all certainty as to the legal meaning of instruments would be destroyed; and the administration of justice, according to the true meaning of contracts, statutes and constitutions, would be rendered impossible.

What, then, are some of these rules of interpretation?

One of them, (as has been before stated,) is, that where words are susceptible of two meanings, one consistent, and the other inconsistent, with justice and natural right, that meaning, and *only that* meaning, which is consistent with right, shall be attributed to them—unless other parts of the instrument overrule that interpretation.

Another rule, (if indeed it be not the same,) is, that no language, except that which is peremptory, and no implication, except one that is inevitable, shall be held to authorize or sanction any thing contrary to natural right.

Another rule is, that no *extraneous or historical evidence* shall be admitted to fix upon a statute an unjust or immoral meaning, when the words themselves of the act are susceptible of an innocent one.

One of the reasons of these stringent and inflexible rules, doubtless is, that judges have always known that, in point of fact, natural justice was itself law, and that nothing inconsistent with it could be made law, even by the most explicit and peremptory language that legislatures could employ.—But judges have always, in this country and in England, been dependent upon the executive and the legislature for their appointments and salaries, and been amenable to the legislature by impeachment. And as the executive and legislature have always enacted more or less statutes, and had more or less purposes to accomplish, that were inconsistent with natural right, judges have seen that it would be impossible for them to retain their offices, and at the same time maintain the integrity of the law against the will of those in whose power they were. It is natural also that the executive should appoint, and that the legislature should approve the appointment of no one for the office of judge, whose integrity they should suppose would stand in the way of their purposes.—The consequence has been that all judges, (probably without exception,) though they have not dared deny, have yet in practice yielded the vital principle of law; and have succumbed to the arbitrary mandates of the other departments of the government, so far as to carry out their enactments, though inconsistent with natural right. But, as if sensible of the degradation and criminality of so doing, they have made a stand at the first point at which they could make it, without bringing themselves in a direct collision with those on whom they were dependent. And that point is, that they will administer, as law, no statute, that is contrary to natural right, unless its language be so explicit and peremptory, that there is no way of evading its authority, but by flatly denying the authority of those who enacted it. They (the court) will

themselves add nothing to the language of the statute, to help out its supposed meaning. They will imply nothing, infer nothing, and assume nothing, except what is inevitable; they will not go out of the letter of the statute in search of any *historical* evidence as to the meaning of the legislature, to enable them to effectuate any *unjust* intentions not fully expressed by the statute itself. Wherever a statute is supposed to have in view the accomplishment of any unjust end, they will apply the most stringent principles of construction to prevent that object's being effected. They will not go a hair's breadth beyond the literal or inevitable import of *the words* of the statute, even though they should be conscious, all the while, that the real intentions of the makers of it would be entirely defeated by their refusal. The rule, (as has been already stated,) is laid down by the supreme court of the United States in these words:

"Where rights are infringed, where fundamental principles are overthrown, where the general system of the law is departed from, the legislative intention must be expressed with *irresistible clearness*, to induce a court of justice to suppose a design to effect such objects."—(*United States vs. Fisher et al.*, 2 *Cranch*, 390.) [*1]

Such has become the settled doctrine of courts. And although it does not come up to the true standard of law, yet it is good in itself, so far as it goes, and ought to be unflinchingly adhered to, not merely for its own sake, but also as a scaffolding, from which to erect that higher standard of law, to wit, that no language or authority whatever can legalize any thing inconsistent with natural justice. [*2]

Another reason for the rules before given, against all constructions, implications and inferences—except inevitable ones—in favor of injustice, is, that but for them we should have no guaranty that our honest contracts, or honest laws would be honestly administered by the judiciary. It would be nearly or quite impossible for men, in framing their contracts or laws, to use language so as to exclude every possible implication in favor of wrong, if courts were allowed to resort to such implications. *The law therefore excludes them*; that is, the ends of justice—the security of men's rights under their honest contracts, and under honest legislative enactments—make it imperative upon courts of justice to ascribe an innocent and honest meaning to all language that will possibly bear an innocent and honest meaning. If courts of justice could depart from this rule for the purpose of upholding what was contrary to natural right, and could employ their ingenuity in spying out some implied or inferred authority, for sanctioning what was in itself dishonest or unjust, when such was not the *necessary* meaning of the language used, there could be no security whatever for the honest administration of honest laws, or the honest fulfilment of men's honest contracts. Nearly all language, on the meaning of which courts adjudicate, would be liable, at the caprice of the court, to be perverted from the furtherance of honest, to the support of dishonest purposes. Judges could construe statutes and contracts in favor of justice or injustice, as their own pleasure might dictate.

Another reason of the rules, is, that as governments have, and can have no legitimate objects or powers opposed to justice and natural right, it would be treason to all the legitimate purposes of government, for the judiciary to give any other than an honest and innocent meaning to any language, that would bear such a construction.

The same reasons that forbid the allowance of any unnecessary implication or inference in favor of a wrong, in the construction of a statute, forbids also the introduction of any *extraneous or*

historical evidence to prove that the intentions of the legislature were to sanction or authorize a wrong.

The same rules of construction, that apply to statutes, apply also to all those private contracts between man and man, *which courts actually enforce*. But as it is both the right and the duty of courts to invalidate altogether such private contracts as are inconsistent with justice, they will admit evidence exterior to their words, *if offered by a defendant for the purpose of invalidating them*. At the same time, a plaintiff, or party that wishes to set up a contract, or that claims its fulfilment, will not be allowed to offer any evidence exterior to its words, to prove that the contract is contrary to justice—because, if his evidence were admitted, it would not make his unjust claim a legal one; but only invalidate it altogether. But as courts do not claim the right of invalidating statutes and constitutions, they will not admit evidence, exterior to their language, to give them such a meaning, that they ought to be invalidated.

I think no one—no lawyer, certainly—will now deny that it is a legal rule of interpretation—that must be applied to all statutes, and also to all private contracts *that are to be enforced*—that an innocent meaning, *and nothing beyond an innocent meaning*, must be given to all language that will possibly bear such a meaning. All will probably admit that the rule, as laid down by the supreme court of the United States, is correct, to wit, that "where rights are infringed, where fundamental principles are overthrown, where the general system of the law is departed from, the legislative intention must be expressed with *irresistible clearness*, to induce a court of justice to suppose a design to effect such objects."

But perhaps it will be said that these rules, which apply to all statutes, and to all private contracts that are to be enforced, do not apply to the constitution. And why do they not? No reason whatever can be given. A constitution is nothing but a contract, entered into by the mass of the people, instead of a few individuals. This contract of the people at large becomes a law unto the judiciary that administer it, just as private contracts, (so far as they are consistent with natural right,) are laws unto the tribunals that adjudicate upon them. All the essential principles that enter into the question of obligation, in the case of a private contract, or a legislative enactment, enter equally into the question of the obligation of a contract agreed to by the whole mass of the people. This is too self-evident to need illustration.

Besides, is it not as important to the safety and rights of all interested, that a constitution or compact of government, established by a whole people, should be so construed as to promote the ends of justice, as it is that a private contract or a legislative enactment should be thus construed? Is it not as necessary that some check should be imposed upon the judiciary to prevent them from perverting, at pleasure, the whole purpose and character of the government, as it is that they should be restrained from perverting the meaning of a private contract, or a legislative enactment? Obviously written compacts of government could not be upheld for a day, if it were understood by the mass of the people that the judiciary were at liberty to interpret them according to their own pleasure, instead of their being restrained by such rules as have now been laid down.

Let us now look at some of the provisions of the constitution, and see what crimes might be held to be authorized by them, if their meaning were not to be ascertained and restricted by such rules of interpretation as apply to all other legal instruments.

The second amendment to the constitution declares that "the right of the people to keep and bear arms shall not be infringed."

This right "to keep and bear arms," implies the right to use them—as much as a provision securing to the people the right to buy and keep food, would imply their right also to eat it. But this implied right to use arms, is only a right to use them in a manner consistent with natural rights—as, for example, in defence of life, liberty, chastity, &c. Here is an innocent and just meaning, of which the words are susceptible; and such is therefore the *extent* of their legal meaning. If courts could go beyond the innocent and necessary meaning of the words, and imply or infer from them an authority for anything contrary to natural right, they could imply a constitutional authority in the people to use arms, not merely for the just and innocent purposes of defence, but also for the criminal purposes of aggression—for purposes of murder, robbery, or any other acts of wrong to which arms are capable of being applied. The mere *verbal* implication would as much authorize the people to use arms for unjust, as for just, purposes. But the *legal* implication gives only an authority for their innocent use. And why? Simply because justice is the end of all law—the legitimate end of all compacts of government. It is itself law; and there is no right or power among men to destroy its obligation.

Take another case. The constitution declares that "Congress shall have power to *regulate commerce* with foreign nations, and among the several states, and with the Indian tribes."

This power has been held by the supreme court to be an exclusive one in the general government—and one that cannot be controlled by the states. Yet it gives congress no constitutional authority to legalize any commerce inconsistent with natural justice between man and man; although the *mere* verbal import of the words, if stretched to their utmost tension in favor of the wrong, would authorize congress to legalize a commerce in poisons and deadly weapons, for the express purpose of having them used in a manner inconsistent with natural right—as for the purposes of murder.

At natural law, and on principles of natural right, a person, who should *sell* to another a weapon or a poison, knowing that it would, or intending that it should be used for the purpose of murder, would be legally an accessory to the murder that should be committed with it. And if the grant to congress of a "power to regulate commerce," can be stretched beyond the *innocent* meaning of the words—beyond the power of regulating and authorizing a commerce that is consistent with natural justice—and be made to cover every thing, intrinsically criminal, that can be perpetrated under the name of commerce—then congress have the authority of the constitution for granting to individuals the liberty of bringing weapons and poisons from "foreign nations" into this, and from one state into another, and selling them openly for the express purposes of murder, without any liability to legal restraint or punishment.

Can any stronger cases than these be required to prove the necessity, the soundness, and the inflexibility of that rule of law, which requires the judiciary to ascribe an innocent meaning to all language that will possibly bear an innocent meaning? and to ascribe *only* an innocent meaning to language whose mere verbal import might be susceptible of both an innocent *and* criminal meaning? If this rule of interpretation could be departed from, there is hardly a power granted to congress, that might not *lawfully* be perverted into an authority for legalizing crimes of the highest grade.

In the light of these principles, then, let us examine those clauses of the constitution, that are relied on as recognizing and sanctioning slavery. They are but three in number.

The one most frequently quoted is the third clause of Art. 4, Sec. 2, in these words:

"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 service or labor; but shall be delivered up on claim of the party to whom such service or labor may be due."

There are several reasons why this clause renders no sanction to slavery.

1. It must be construed, if possible, as sanctioning nothing contrary to natural right.

If there be any "service or labor" whatever, to which any "persons" whatever may be "held," *consistently with natural right*, and which any person may, consistently with natural right, "claim" as his "due" of another, such "service or labor," and *only* such, is recognized and sanctioned by this provision.

It needs no argument to determine whether the "service or labor," that is exacted of a slave, is such as can be "claimed," *consistently with natural right*, as being "due" from him to his master. And if it cannot be, some other "service or labor" must, if possible, be found for this clause to apply to.

The proper definition of the word "service," in this case, obviously is, the labor of a *servant*. And we find, that at and before the adoption of the constitution, the persons recognized by the state laws as "servants," constituted a numerous class. The statute books of the states abounded with statutes in regard to "servants." Many seem to have been indented as servants by the public authorities, on account of their being supposed incompetent, by reason of youth and poverty, to provide for themselves. Many were doubtless indented as apprentices by their parents and guardians, as now. The English laws recognized a class of servants—and many persons were brought here from England, in that character, and retained that character afterward. Many indented or contracted themselves as servants for the payment of their passage money to this country. In these various ways, the class of persons, recognized by the statute books of the states as "servants," was very numerous; and formed a prominent subject of legislation. Indeed, no other evidence of their number is necessary than the single fact, that "persons bound to service for a term of years," were specially noticed by the constitution of the United States, (Art. 1, Sec. 2,) which requires that they be counted as units in making up the basis of representation. There is therefore not the slightest apology for pretending that there was not a sufficient class for the words "service or labor" to refer to, without supposing the existence of slaves. [*3]

2. "*Held to service or labor*," is no legal description of slavery. Slavery is property in man. It is not necessarily attended with either "service or labor." A very considerable portion of the slaves are either too young, too old, too sick, or too refractory to render "service or labor." As a matter of fact, slaves, who are able to labor, may, in general, be compelled by their masters to do so. Yet labor is not an essential or necessary condition of slavery. The essence of slavery consists in a person's being owned as property—without any reference to the circumstances of his being compelled to labor, or of his being permitted to live in idleness, or of his being too young, or too old, or too sick to labor.

If "service or labor" were either a test, or a necessary attendant of slavery, that test would of itself abolish slavery; because all slaves, before they can render "service or labor," must have passed through the period of infancy, when they could render neither service nor labor, and when, therefore, according to this test, they were free. And if they were free in infancy, they could not be subsequently enslaved.

3. "Held to service or labor in one state, *under the laws thereof.*"

The "*laws*" take no note of the fact whether a slave "labors," or not. They recognize no obligation, on his part, to labor. They will enforce no "*claim*" of a master, upon his slave, for "service or labor." If the slave refuse to labor, the law will not interfere to compel him. The law simply recognizes the master's *right of property* in the slave—just as it recognizes his right of property in a horse. Having done that, it leaves the master to compel the slave, if he please, and if he can—as he would compel a horse—to labor. If the master do not please, or be not able, to compel the slave to labor, the law takes no more cognizance of the case than it does of the conduct of a refractory horse. In short, it recognizes no obligation, on the part of the slave, to labor, if he can avoid doing so. It recognizes no "*claim*," on the part of the master, upon his slave, for "services or labor," as "*due*" from the latter to the former.

4. Neither "service" nor "labor" is necessarily slavery; and not being necessarily slavery, the words cannot, in this case, be strained beyond their necessary meaning, to make them sanction a wrong. The law will not allow words to be strained a hair's breadth beyond their *necessary* meaning, to make them authorize a wrong. *The stretching, if there be any, must always be towards the right.* The words "service or labor" do not necessarily, nor in their common acceptation, so much as suggest the idea of slavery—that is, they do not suggest the idea of the laborer or servant being the property of the person for whom he labors. An indentured apprentice serves and labors for another. He is "*held*" to do so, under a contract, and for a consideration, that are recognized, by the laws, as legitimate, and consistent with natural right. Yet he is not owned as property. A condemned criminal is "held to labor"—yet he is not owned as property. The law allows no such straining of the meaning of words towards the wrong, as that which would convert the words "service or labor" (of men) into *property in man*—and thus make a man, who serves or labors for another, the property of that other.

5. "No person held to service or labor, in one state, under the *laws* thereof."

The "*laws*," here mentioned, and impliedly sanctioned, are, of course, only *constitutional* laws—laws, that are consistent, both with the constitution of the state, and the constitution of the United States. None others are "*laws*," correctly speaking, however they may attempt to "hold persons to service or labor," or however they may have the forms of laws on the statute books.

This word "*laws*," therefore, being a material word, leaves the whole question just where it found it—for it certainly does not, *of itself*—nor indeed does any other part of the clause—say that acts of a legislature, declaring one man to be the property of another, is a "*law*" within the meaning of the constitution. As far as the word "*laws*" says any thing on the subject, it says that such acts are *not* laws—for such acts are clearly inconsistent with natural law—and it yet remains to be shown that they are consistent with any constitution whatever, state or national.

The burden of proof, then, still rests upon the advocates of slavery, to show that an act of a state legislature, declaring one man to be the property of another, is a "*law*," within the meaning of

this clause. To assert simply that it is, without proving it to be so, is a mere begging of the question—for that is the very point in dispute.

The question, therefore, of the *constitutionality* of the slave acts must first be determined, before it can be decided that they are "laws" within the meaning of the constitution. That is, they must be shown to be consistent with the constitution, before they can be said to be sanctioned as "laws" by the constitution. Can any proposition be plainer than this? And yet the reverse must be assumed, in this case, by the advocates of slavery.

The simple fact, that an act purports to "hold persons to service or labor," clearly cannot, *of itself*, make the act constitutional. If it could, any act, purporting to hold "persons to service or labor," would necessarily be constitutional, without any regard to the "persons" so held, or the conditions on which they were held. It would be constitutional, *solely because it purported to hold persons to service or labor*. If this were the true doctrine, any of us, without respect of persons, might be held to service or labor, at the pleasure of the legislature. And then, if "service or labor" mean slavery, it would follow that any of us, without discrimination, might be made slaves. And thus the result would be, that the acts of a legislature would be constitutional, *solely because they made slaves of the people*. Certainly this would be a new test of the constitutionality of laws.

All the arguments in favor of slavery, that have heretofore been drawn from this clause of the constitution, have been founded on the assumption, that if an act of a legislature did but purport to "hold persons to service or labor"—no matter how, on what conditions, or for what cause—that fact alone was sufficient to make the act constitutional. The entire sum of the argument, in favor of slavery, is but this, viz. the constitution recognizes the constitutionality of "laws" that "hold persons to service or labor,"—slave acts "hold persons to service or labor,"—therefore slave acts must be constitutional. This profound syllogism is the great pillar of slavery in this country. It has, (if we are to judge by results,) withstood the scrutiny of all the legal acumen of this nation for fifty years and more. If it should continue to withstand it for as many years as it has already done, it will then be time to propound the following, to wit: The state constitutions recognize the right of men to acquire property; theft, robbery, and murder are among the modes in which property may be acquired; therefore theft, robbery, and murder are recognized by these constitutions as lawful.

No doubt the clause contemplates that there may be constitutional "laws," under which persons may be "held to service or labor." But it does not follow, therefore, that every act, that purports to hold "persons to service or labor," is constitutional.

We are obliged, then, to determine whether a statute be constitutional, before we can determine whether the "service or labor" required by it, is sanctioned by the constitution as being lawfully required. The simple fact, that the statute would "hold persons to service or labor," is, *of itself*, no evidence, either for or against its constitutionality. Whether it be or be not constitutional, may depend upon a variety of contingencies—such as the kind of service or labor required, and the conditions on which it requires it. Any service or labor, that is inconsistent with the duties which the constitution requires of the people, is of course not sanctioned by this clause of the constitution as being lawfully required. Neither, of course, is the requirement of service or labor, *on any conditions, that are inconsistent with any rights that are secured to the people by the constitution*, sanctioned by the constitution as lawful. Slave laws, then, can obviously be held

to be sanctioned by this clause of the constitution, only by gratuitously assuming, 1st, that the constitution neither confers any rights, nor imposes any duties, upon the people of the United States, inconsistent with their being made slaves; and, 2d, that it sanctions the general principle of holding "persons to service or labor" arbitrarily, without contract, without compensation, and without the charge of crime. If this be really the kind of constitution that has been in force since 1789, it is somewhat wonderful that there are so few slaves in the country. On the other hand, if the constitution be not of this kind, it is equally wonderful that we have any slaves at all—for the instrument offers no ground for saying that a colored man may be made a slave, and a white man not.

Again. Slave acts were not "laws" according to any state constitution that was in existence at the time the constitution of the United States was adopted. And if they were not "laws" at that time, they have not been made so since.

6. The constitution itself, (Art. 1. Sec. 2,) in fixing the basis of representation, has plainly *denied* that those described in Art. 4, as "persons held to service or labor," are slaves,—for it declares that "persons bound to service for a term of years" shall be "included" in the "number of *free* persons." There is no *legal* difference between being "bound to service," and being "held to service or labor." The addition, in the one instance, of the words, "for a term of years," does not alter the case, for it does not appear that, in the other, they are "held to service or labor" beyond a fixed term—and, in the absence of evidence from the constitution itself, the presumption must be that they are not—because such a presumption makes it unnecessary to go out of the constitution to find the persons intended, and it is also more consistent with the prevalent municipal, and with natural law.

And it makes no difference to this result, whether the word "free," in the first article, be used in the political sense common at that day, or as the correlative of slavery. In either case, the persons described as "free," could not be made slaves.

7. The words "service or labor" cannot be made to include slavery, unless by reversing the legal principle, that the greater includes the less, and holding that the less includes the greater; that the innocent includes the criminal; that a sanction of what is right, includes a sanction of what is wrong.

Another clause relied on as a recognition of the constitutionality of slavery, is the following, (Art. 1. Sec. 2.):

"Representatives and direct taxes shall be apportioned among the several states, which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of *free* persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons."

The argument claimed from this clause, in support of slavery, rests entirely upon the word "free," and the words "all other persons." Or rather it rests entirely upon the meaning of the word "free," for the application of the words "all other persons" depends upon the meaning given to the word "free." The slave argument *assumes, gratuitously*, that the word "free" is used as the correlative of slavery and thence it infers that the words, "all other persons," mean slaves.

It is obvious that the word "free" affords no argument for slavery, unless a meaning correlative with slavery be *arbitrarily* given to it, for the very purpose of *making* the constitution sanction or recognize slavery. Now it is very clear that no such meaning can be given to the word, *for such a purpose*. The ordinary meaning of a word cannot be thus arbitrarily changed, *for the sake of sanctioning a wrong*. A choice of meaning would be perfectly allowable, and even obligatory, if made for the purpose of *avoiding* any such sanction; but it is entirely inadmissible [sic] for the purpose of giving it. The legal rules of interpretation, heretofore laid down, imperatively require this preference of the right, over the wrong, in all cases where a word is susceptible of different meanings.

The English law had for centuries used the word "free" as describing persons possessing citizenship, or some other franchise or peculiar privilege—as distinguished from aliens, and persons not possessed of such franchise or privilege. This law, and this use of the word "free," as has already been shown, had been adopted in this country from its first settlement. The colonial charters all, (probably without an exception,) recognized it. The colonial legislation generally, if not universally, recognized it. The state constitutions, in existence at the time the constitution of the United States was formed and adopted, used the word in this sense, and no other. The Articles of Confederation—the then existing national compact of union—used the word in this sense, and no other. The sense is an appropriate one in itself; the most appropriate to, and consistent with the whole character of the constitution, of any of which the word is susceptible. In fact, it is the only one that is either appropriate to, or consistent with, the other parts of the instrument. Why, then, is it not the legal meaning? Manifestly it *is* the legal meaning. No reason whatever can be given against it, except that, if such be its meaning, *the constitution will not sanction slavery!* A very good reason—a perfectly unanswerable reason, in fact—in favor of this meaning; but a very futile one against it.

It is evident that the word "free" is not used as the correlative of slavery, because "Indians not taxed" are "excluded" from its application—yet they are not therefore slaves.

Again. The word "free" cannot be presumed to be used as the correlative of slavery—because slavery then had no *legal* existence. The word must obviously be presumed to be used as the correlative of something that did *legally* exist, rather than of something that did not legally exist. If it were used as the correlative of something that did not legally exist, the words "all other persons" would have no legal application. Until, then, it be shown that slavery had a legal existence, authorized either by the United States constitution, or by the then existing state constitutions—a thing that cannot be shown—the word "free" certainly cannot be claimed to have been used as its correlative.

But even if slavery had been authorized by the *state* constitutions, the word "free," in the United States constitution, could not have been claimed to have been used as its correlative, unless it had appeared that the United States constitution had itself provided or suggested no correlative of the word "free;" for it would obviously be absurd and inadmissible to go out of an instrument to find the intended correlative of one of its own words, when it had itself suggested one. This the constitution of the United States has done, in the persons of aliens. The power of naturalization is, by the constitution, taken from the states, and given exclusively to the United States. The constitution of the United States, therefore, necessarily supposes the existence of aliens—and thus furnishes the correlative sought for. It furnishes a class both for the word "free," and the words "all other persons" to apply to. And yet the slave argument contends that we must

overlook these distinctions, necessarily growing out of the laws of the United States, and go out of the constitution of the United States to *find* persons whom it describes as the "free," and "all other persons." And what makes the argument the more absurd is, that by going out of the instrument to the *then existing state constitutions*—the only instruments to which we can go—we can find there *no other* persons for the words to apply to—no other classes answering to the description of the "free persons" and "all other persons,"—than the very classes suggested by the United States constitution itself, to wit, citizens and aliens; (for it has previously been shown that the then existing state constitutions recognized no such persons as slaves.)

If we are obliged, (as the slave argument claims we are,) to go out of the constitution of the United States to find the class whom it describes as "all other persons" than "the free," we shall, for aught I see, be equally obliged to go out of it to find those whom it describes as the "free"—for "the free," and "all other persons" than "the free," must be presumed to be found described somewhere in the same instrument. If, then, we are obliged to go out of the constitution to find the persons described in it as "the free" and "all other persons," we are obliged to go out of it to ascertain who are the persons on whom it declares that the representation of the government shall be based, and on whom, of course, the government is founded. And thus we should have the absurdity of a constitution that purports to authorize a government, yet leaves us to go in search of the people who are to be represented in it. Besides, if we are obliged to go out of the constitution, to find the persons on whom the government rests, and those persons are arbitrarily prescribed by some other instrument, independent of the constitution, this contradiction would follow, viz., that the United States government would be a subordinate government—a mere appendage to something else—a tail to some other kite—or rather a tail to a large number of kites at once—instead of being, as it declares itself to be, the supreme government—its constitution and laws being the supreme law of the land.

Again. It certainly cannot be admitted that we must go out of the United States constitution to find the classes whom it describes as "the free," and "all other persons" than "the free," until it be shown that the constitution has told us where to go to find them. *In all other cases*, (without an exception, I think,) where the constitution makes any of its provisions dependent upon the state constitutions, or state legislatures, it has particularly described them as depending upon them. But it gives no intimation that it has left it with the state constitutions, or the state legislatures, to prescribe whom it means by the terms "free persons" and "all other persons," on whom it requires its own representation to be based. We have, therefore, no more authority from the constitution of the United States, for going to the state constitutions, to find the classes described in the former as the "free persons" and "all other persons," than we have for going to Turkey or Japan. We are compelled, therefore, to find them in the constitution of the United States itself, if any answering to the description can possibly be found there.

Again. If we were permitted to go to the state constitutions, or to the state statute books, to find who were the persons intended by the constitution of the United States; and if, as the slave argument assumes, it was left to the states respectively to prescribe who should, and who should not, be "free" within the meaning of the constitution of the United States, it would follow that the terms "free" and "all other persons," might be applied in as many different ways, and to as many different classes of persons, as there were different states in the union. Not only so, but the application might also be varied at pleasure in the same state. One inevitable consequence of this state of things would be, that there could be neither a permanent, nor a uniform basis of representation throughout the country. Another possible, and even probable consequence would

be, such inextricable confusion, as to the persons described by the same terms in the different states, that Congress could not apportion the national representation at all, in the manner required by the constitution. The questions of law, arising out of the different uses of the word "free," by the different states, might be made so endless and inexplicable, that the state governments might entirely defeat all the power of the general government to make an apportionment.

If the slave construction be put upon this clause, still another difficulty, in the way of making an apportionment, would follow, viz., that congress could have no *legal* knowledge of the persons composing each of the two different classes, on which its representation must be based; for there is no legal record—known to the laws of the United States, or even to the laws of the states—of those who are slaves, or those who are not. The information obtained by the census takers, (who have no legal records to go to,) must, in the nature of things, be of the most loose and uncertain character, on such points as these. Any accurate or *legal* knowledge on the subject is, therefore, obviously impossible. But if the other construction be adopted, this difficulty is avoided—for congress then have the control of the whole matter, and may adopt such means as may be necessary for ascertaining accurately the persons who belong to each of these different classes. And by their naturalization laws they actually do provide for a *legal* record of all who are made "free" by naturalization.

And this consideration of certainty, as to the individuals and numbers belonging to each of these two classes, "free" and "all other persons," acquires an increased and irresistible force, when it is considered that these different classes of persons constitute also different bases for taxation, as well as representation. The requirement of the constitution is, that "representatives and *direct taxes* shall be apportioned," &c., according to the number of "free persons" and "all other persons." In reference to so important a subject as taxation, *accurate* and *legal* knowledge of the persons and numbers belonging to the different classes, becomes indispensable. Yet under the slave construction this legal knowledge becomes impossible. Under the other construction it is as perfectly and entirely within the power of congress, as, in the nature of things, such a subject can be—for naturalization is a legal process; and legal records, prescribed by congress, may be, and actually are, preserved of all the persons naturalized or made "free" by their laws.

If we adopt that meaning of the word "free," which is consistent with freedom—that meaning which is consistent with natural right—the meaning given to it by the Articles of Confederation, by the then existing state constitutions, by the colonial charters, and by the English law ever since our ancestors enjoyed the name of freemen, all these difficulties, inconsistencies, contradictions and absurdities, that must otherwise arise, vanish. The word "free" then describes the native and naturalized citizens of the United States, and the words "all other persons" describe resident aliens, "Indians not taxed," and possibly some others. The representation is then placed upon the best, most just, and most rational basis that the words used can be made to describe. The representation also becomes equal and uniform throughout the country. The principle of distinction between the two bases, becomes also a stable, rational and intelligible one—one too necessarily growing out of the exercise of one of the powers granted to congress;—one, too, whose operation could have been foreseen and judged of by the people who adopted the constitution—instead of one fluctuating with the ever changing and arbitrary legislation of the various states, whose mode and motives of action could not have been anticipated. Adopt this definition of the word "free," and the same legislature, (that is, the national one,) that is required by the constitution to apportion the representation according to certain principles, becomes invested—as it evidently ought to be, and as it necessarily must be,

to be efficient—with the power of determining, by their own (naturalization) laws, who are the persons composing the different bases on which its apportionment is to be made; instead of being, as they otherwise would be, obliged to seek for these persons through all the statute books of all the different states of the union, and through all the evidences of private property, under which one of these classes might be held. Adopt this definition of the word "free," and the United States government becomes, so far at least as its popular representation—which is its most important feature—is concerned, an independent government, subsisting by its own vigor, and pervaded throughout by one uniform principle. Reject this definition, and the popular national representation, loses at once its nationality, and becomes a mere dependency on the will of local corporations—a mere shuttlecock to be driven hither and thither by the arbitrary and conflicting legislation of an indefinite number of separate states. Adopt this meaning of the word "free," and the national government becomes capable of knowing its own bases of representation and power, and its own subjects of taxation. Reject this definition, and the government knows not whom it represents, or on whom to levy taxes for its support. Adopt this meaning of the word "free," and some three millions of native born, but now crushed human beings, become, with their posterity, men and citizens. Adopt this meaning—this *legal* meaning—this *only* meaning that can, in this clause, be *legally* given to the word "free," and our constitution becomes, instead of a nefarious compact of conspirators against the rights of man, a consistent and impartial contract of government between *all* "the people of the United States," for securing "to themselves and their posterity the blessings of liberty" and "justice."

Again. We cannot unnecessarily place upon the constitution a meaning directly destructive of the government it was designed to establish. By giving to the word "free" the meaning universally given to it by our political papers of a similar character up to the time the constitution was adopted, we give to the government three millions of citizens, ready to fight and be taxed for its support. By giving to the word "free" a meaning correlative with slavery, we locate in our midst three millions of enemies; thus making a difference of six millions, (one third of our whole number,) in the physical strength of the nation. Certainly a meaning so suicidal towards the government, cannot be given to any part of the constitution, except the language be irresistibly explicit; much less can it be done, (as in this case it would be,) wantonly, unnecessarily, gratuitously, wickedly, and in violation of all previous usage.

Again. If we look into the constitution itself for the meaning of the word "free," we find it to result from the distinction there recognized between citizens and aliens. If we look into the contemporary state constitutions, we still find the word "free" to express the political relation of the individual to the state, and not any property relation of one individual to another. If we look into the law of nature for the meaning of the word "free," we find that by that law all mankind are free. Whether, therefore, we look to the constitution itself, to the contemporary state constitutions, or to the law of nature, for the meaning of this word "free," the only meaning we shall find is one consistent with the personal liberty of all. On the other hand, if we are resolved to give the word a meaning correlative with slavery, we must go to the lawless code of the kidnapper to find such a meaning. Does it need any argument to prove to which of these different codes our judicial tribunals are bound to go, to find the meaning of the words used in a constitution, that is established professedly to secure liberty and justice?

Once more. It is altogether a false, absurd, violent, unnatural and preposterous proceeding, in construing a political paper, which purports to establish men's relations to the state, and especially in construing the clause in it which fixes the basis of representation and taxation, to

give to the words, which describe the persons to be represented and taxed, and which appropriately indicate those relations of men to the state which make them proper subjects of taxation and representation—to give to such words a meaning, which, instead of describing men's relations to the state, would describe merely a personal or property relation of one individual to another, which the state has nowhere else recognized, and which, if admitted to exist, would absolve the persons described from all allegiance to the state, would deny them all right to be represented, and discharge them from all liability to be taxed.

But it is unnecessary to follow out this slave argument into all its ramifications. It sets out with nothing but assumptions, that are gratuitous, absurd, improbable, irrelevant, contrary to all previous usage, contrary to natural right, and therefore inadmissible. It conducts to nothing but contradictions, absurdities, impossibilities, indiscriminate slavery, anarchy, and the destruction of the very government which the constitution was designed to establish.

The other clause relied on as a recognition and sanction, both of slavery and the slave trade, is the following:

"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 one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person."—(Art. 1, Sec. 9.)

The slave argument, drawn from this clause, is, that the word "importation" applies only to property, and that it therefore implies, in this clause, that the persons to be imported are necessarily to be imported as property—that is, as slaves.

But the idea that the word "importation" applies only to property, is erroneous. It applies correctly both to persons and things. The definition of the verb "import" is simply "to bring from a foreign country, or jurisdiction, or from another state, into one's own country, jurisdiction or state."—When we speak of "importing" things, it is true that we mentally associate with them the idea of property. But that is simply because *things* are property, and not because the word "import" has any control, in that particular, over the character of the things imported. When we speak of importing "persons," we do not associate with them the idea of property, simply because "persons" are not property.

We speak daily of the "importation of foreigners into the country;" but no one infers therefrom that they are brought in as slaves, but as passengers. A vessel imports, or brings in, five hundred passengers. Every vessel, or master of a vessel, that "brings in" passengers, "imports" them. But such passengers are not therefore slaves. A man imports his wife and children—but they are not therefore his slaves, or capable of being owned or sold as his property. A man imports a gang of laborers, to clear lands, cut canals, or construct railroads; but not therefore to be held as slaves. An innocent meaning must be given to the word, if it will bear one. Such is the legal rule.

Even the popular understanding of the word "import," when applied to "persons," does not convey the idea of property. It is only when it is applied distinctly to "slaves," that any such idea is conveyed; and then it is the word "slaves," and not the word "import," that suggests the idea of property. Even slave traders and slave holders attach no such meaning to the word "import," when it is connected with the word "persons;" but only when it is connected with the word "slaves."

In the case of *Ogden vs. Saunders*, (12 Wheaton, 332,) Chief Justice Marshall said, that in construing the constitution, "the intention of the instrument must prevail; that this intention must be collected from its words; that its words are to be understood in that sense in which they are *generally used* by those for whom the instrument was intended." On this principle of construction, there is not the least authority for saying that this provision for "the importation of persons," authorized the importation of them as slaves. To give it this meaning, requires the same stretching of words *towards the wrong*, that is applied, by the advocates of slavery, to the words "service or labor," and the words "free" and "all other persons."

Another reason, which makes it necessary that this construction should be placed upon the word "*importation*," is, that the clause contains no other word that describes the immigration of foreigners. Yet that the clause related to the immigration of foreigners *generally*, and that it restrained congress, (up to the year 1808,) from prohibiting the immigration of foreigners generally, there can be no doubt.

The object, and the only *legal* object, of the clause was to restrain congress from so exercising their "power of regulating commerce with foreign nations, and among the several states, and with the Indian tribes"—(which power has been decided by the supreme court of the United States, to include a power over navigation and the transportation of passengers in boats and vessels [*4])—as to obstruct the introduction of new population into such of the states as were desirous of increasing their population in that manner. The clause does not imply at all, that the population, which the states were thus to "admit," was to be a slave population.

The word "importation," (I repeat,) is the only word in the clause, that applies to persons that were to *come into* the country from foreign nations. The word "*migration*" applies only to those who were to *go out from* one of our own states or territories into another. "*Migration*" is the act of *going out* from a state or country; and differs from immigration in this, that immigration is the act of *coming into* a state or country. It is obvious, therefore, that the "*migration*," which congress are here forbidden to prohibit, is simply the *going out* of persons from one of our own states or territories into another—for that is the only "*migration*" that could come within the jurisdiction of congress—and that it has no reference to persons *coming in* from foreign countries to our own.

If, then, "migration," as here used, has reference only to persons *going out* from one state into another, the word "*importation*" is the only one in the clause that is applicable to foreigners coming into our country. This word "importation," then, being the only word that can apply to persons coming into the country, it must be considered as substantially synonymous with immigration, and must apply equally to *all* "persons," that are "imported," or brought into the country as passengers. And if it applies equally to all persons, that are brought in as passengers, it does not *imply* that any of those persons are slaves; for no one will pretend that this clause ever authorized the state governments to treat as slaves *all* persons that were brought into the country as passengers. And if it did not authorize them to treat all such passengers as slaves, it did not authorize them to treat any of them as such; for it makes no discrimination between the different "persons" that should be thus imported.

Again. The argument, that the allowance of the "importation" of "persons," implies the allowance of property in such persons, would imply a recognition of the validity of the slave laws of other countries; for unless slaves were obtained by valid purchase abroad—which

purchase implies the existence and validity of foreign slave laws—the importer certainly could not claim to import his slaves as property; but he would appear, at the custom-house, as a mere pirate, claiming to have his captures legalized. So that, *according to the slave argument*, the simple use of the word "importation," in the constitution, as applied to "persons," bound our government, not only to the sanction and toleration of slavery in our own country, but to the recognition of the validity of the slave laws of other countries.

But farther. The allowance of the "importation" of slaves, as such, under this clause of the constitution, would imply that congress must take actual, and even the most critical cognizance of the slave laws of other countries; and that they should allow neither the mere word of the person calling himself the owner, nor any thing short of the fullest and clearest legal proof, according to the laws of those countries, to be sufficient to enable him to enter his slaves, as property, at the custom-house; otherwise any masters of vessels, from England or France, as well as from Africa, might, on their arrival here, claim their passengers as slaves. Did the constitution, in this clause, by simply using the word "importation," instead of immigration, intend to throw upon the national government—at the hazard of making it a party to the illegal enslavement of human beings—the responsibility of investigating and deciding upon the legality and credibility of all the evidence that might be offered by the piratical masters of slave ships, to prove their valid purchase of, and their right of property in their human cargoes, according to the slave laws of the countries from which they should bring them? Such must have been the intention of the constitution, if it intended, (as it must, if it intended any thing of this kind,) that the fact of "importation" under the commercial regulations of congress, should be thereafter a sufficient authority for holding in slavery the persons imported.

But perhaps it will be said that it was not the intention of the constitution, that congress should take any responsibility at all in the matter; that it was merely intended that whoever came into the country with a cargo of men, whom he called his slaves, should be permitted to bring them in on his own responsibility, and sell them as slaves for life to our people; and that congress were prohibited only from interfering, or asking any questions as to how he obtained them, or how they became his slaves. Suppose such were the intention of the constitution—what follows? Why, that the national government, the only government that was to be known to foreign nations, the only government that was to be permitted to regulate our commerce, or make treaties with foreign nations, the government on whom alone was to rest the responsibility of war with foreign nations, was bound to permit, (until 1808,) all masters, both of our own ships and of the ships of other nations, to turn pirates, and make slaves of their passengers, whether Englishmen, Frenchmen, or any other civilized people, (for the constitution makes no distinction of "persons" on this point,) bring them into this country, sell them as slaves for life to our people, and thus make our country a rendezvous and harbor for pirates, involve us inevitably in war with every civilized nation in the world, cause ourselves to be outlawed as a people, and bring certain and swift destruction upon the whole nation; and yet this government, that had the sole responsibility of all our foreign relations, was constitutionally prohibited from interfering in the matter, or from doing any thing but lifting its hands in prayer to God and these pirates, that the former would so far depart, and the latter so far desist from their usual courses, as might be necessary to save us, until 1808, (after which time we would take the matter into our own hands, and, by prohibiting the causes of the danger, save ourselves,) from the just vengeance, which the rest of mankind were taking upon us.

This is the kind of constitution, under which, (according to the slave argument,) we lived until 1808.

But is such the real character of the constitution? By it, did we thus really avow to the world that we were a nation of pirates? that our territory should be a harbor for pirates? that our people were constitutionally licensed to enslave the people of all other nations, without discrimination, (for the instrument makes no discrimination,) whom they could either kidnap in their own countries, or capture on the high seas? and that we had even prohibited our only government that could make treaties with foreign nations, from making any treaty, until 1808, with any particular nation, to exempt the people of that nation from their liability to be enslaved by the people of our own? The slave argument says that we did avow all this. If we really did, perhaps all that can be said of it now is, that it is very fortunate for us that other nations did not take us at our word. For if they had taken us at our word, we should, before 1808, have been among the nations that were.

Suppose that, on the organization of our government, we had been charged by foreign nations, with having established a piratical government—how could we have rebutted the charge otherwise than by denying that the words "importation of persons" legally implied that the persons imported were slaves? Suppose that European ambassadors had represented to president Washington that their governments considered our constitution as licensing our people to kidnap the people of other nations, without discrimination, and bring them to the United States as slaves. Would he not have denied that the legal meaning of the clause did any thing more than secure the free introduction of foreigners as passengers and freemen? Or would he—*he*, the world-renowned champion of human rights—have indeed stooped to the acknowledgment that in truth he was the head of a nation of pirates, whose constitution did guarantee the freedom of kidnapping men abroad, and importing them as slaves? And would he, in the event of this acknowledgment, have sought to avert the destruction, which such an avowal would be likely to bring upon the nation, by pleading that, although such was the legal meaning of the words of our constitution, we yet had an understanding, (an honorable understanding!) among ourselves, that we would not take advantage of the license to kidnap or make slaves of any of the citizens of those civilized and powerful nations of Europe, that kept ships of war, and knew the use of gunpowder and cannon; but only the people of poor, weak, barbarous and ignorant nations, who were incapable of resistance and retaliation?

Again. Even the allowance of the simple "*importation*" of slaves—(and that is the most that is *literally* provided for—and the word "importation" must be construed to the letter,) would not, of itself, give any authority for the continuance of the slavery *after* "importation." If a man bring either property or persons into this country, he brings them in to abide the constitutional laws of the country; and not to be held according to the customs of the country from which they were brought. Were it not so, the Turk might import a harem of Georgian slaves, and, at his option, either hold them as his own property, or sell them as slaves to our own people, in defiance of any principles of freedom that should prevail amongst us. To allow this kind of "importation," would be to allow not merely the importation of foreign "persons," but also of foreign laws to take precedence of our own.

Finally. The conclusion, that congress were restrained, by this clause, only from prohibiting the immigration of a foreign population, and not from prohibiting the importation of slaves, to be held as slaves after their importation—is the more inevitable, from the fact that the power given to congress of naturalizing foreigners, is entirely unlimited—except that their laws must be

uniform throughout the United States. They have perfect power to pass laws that shall naturalize every foreigner without distinction, the moment he sets foot on our soil. And they had this power as perfectly prior to 1808, as since. And it is a power entirely inconsistent with the idea that they were bound to admit, and forever after to acknowledge as slaves, all or any who might be attempted to be brought into the country as such.

One other provision of the constitution, viz: the one that "the United States shall protect each of the States against domestic violence"—has sometimes been claimed as a special pledge of impunity and succor to that kind of "violence," which consists in one portion of the people's standing constantly upon the necks of another portion, and robbing them of all civil privileges, and trampling upon all their personal rights. The argument seems to take it for granted, that the only proper way of protecting a "*republican*" state (for the states are all to be "*republican*,") against "domestic violence," is to plant men firmly upon one another's necks, (about in the proportion of two upon one,) arm the two with whip and spur, and then keep an armed force standing by to cut down those that are ridden, if they dare attempt to throw the riders. When the ridden portion shall, by this process, have been so far subdued as to bear the burdens, lashings and spurrings of the other portion without resistance, then the state will have been secured against "domestic violence," and the "*republican* form of government" will be completely successful.

This version of this provision of the constitution presents a fair illustration of those new ideas of law and language, that have been invented for the special purpose of bringing slavery within the pale of the constitution.

We have thus examined all those clauses of the constitution, that have been relied on to prove that the instrument recognizes and sanctions slavery. No one would have ever dreamed that either of these clauses alone, or that all of them together, contained so much as an allusion to slavery, had it not been for circumstances extraneous to the constitution itself. And what are these extraneous circumstances? They are the existence and toleration, in one portion of the country, of a crime that embodies within itself nearly all the other crimes, which it is the principal object of all our governments to punish and suppress; a crime which we have therefore no more right to presume that the constitution of the United States intended to sanction, than we have to presume that it intended to sanction all the separate crimes which slavery embodies, and our governments prohibit. Yet we have *gratuitously* presumed that the constitution intended to sanction all these separate crimes, as they are comprehended in the general crime of slavery. And acting upon this gratuitous presumption, we have sought, in the words of the constitution, for some hidden meaning, which we could imagine to have been understood, by the initiated, as referring to slavery; or rather we have presumed its words to have been used as a kind of cypher, which, among confederates in crime, (as we presume its authors to have been,) was meant to stand for slavery. In this way, and in this way only, we pretend to have discovered, in the clauses that have been examined, a hidden, yet legal sanction of slavery. In the name of all that is legal, who of us are safe, if our government, instead of searching our constitution to find authorities for maintaining justice, are to continue to busy themselves in such prying and microscopic investigations, after such disguised and enigmatical authorities for such wrongs as that of slavery, and their pretended discoveries are to be adopted as law, which they are sworn to carry into execution?

The clauses mentioned, taken either separately or collectively, neither assert, imply, sanction, recognize nor acknowledge any such thing as slavery. They do not even speak of it. They make no allusion to it whatever. They do not suggest, and, of themselves, never would have suggested the idea of slavery. There is, in the whole instrument, no such word as slave or slavery; nor any language that can legally be made to assert or imply the existence of slavery. There is in it nothing about color; nothing from which a liability to slavery can be predicated of one person more than another; or from which such a liability can be predicated of any person whatever. The clauses, that have been claimed for slavery, are all, in themselves, honest in their language, honest in their legal meaning; and they can be made otherwise only by such gratuitous assumptions against natural right, and such straining of words in favor of the wrong, as, if applied to other clauses, would utterly destroy every principle of liberty and justice, and allow the whole instrument to be perverted to every conceivable purpose of tyranny and crime.

Let us now look at the *positive* provisions of the constitution, *in favor of liberty*, and see whether they are not only inconsistent with any legal sanction of slavery, but also whether they must not, of themselves, have necessarily extinguished slavery, if it had had any constitutional existence to be extinguished.

And, first, the constitution made all "the people of the United States" *citizens* under the government to be established by it; for all of those, by whose authority the constitution declares itself to be established, must of course be presumed to have been made citizens under it. And whether they were entitled or not to the right of suffrage, they were at least entitled to all the personal liberty and protection, which the constitution professes to secure to "the people" generally.

Who, then, established the constitution?

The preamble to the constitution has told us in the plainest possible terms, to wit, that "We, *the people* of the United States" "do ordain and establish this constitution," &c.

By "the people of the United States," here mentioned, the constitution intends *all* "the people" then permanently inhabiting the United States. If it does not intend all, who were intended by "the people of the United States?"—The constitution itself gives no answer to such a question.—It does not declare that "we, the *white* people," or "we, the *free* people," or "we, a *part* of the people"—but that "we, *the* people"—that is, we the *whole* people—of the United States, "do ordain and establish this constitution."

If the *whole* people of the United States were not recognized as citizens by the constitution, then the constitution gives no information as to what portion of the people were to be citizens under it. And the consequence would then follow that the constitution established a government that could not know its own citizens.

We cannot go out of the constitution for evidence to prove who were to be citizens under it. We cannot go out of a written instrument for evidence to prove the parties to it, nor to explain its meaning, except the language of the instrument on that point be ambiguous. In this case there is no ambiguity. The language of the instrument is perfectly explicit and intelligible.

Because the whole people of the country were not allowed to vote on the ratification of the constitution, it does not follow that they were not made citizens under it; for women and children

did not vote on its adoption; yet they are made citizens by it, and are entitled as citizens to its protection; and the state governments cannot enslave them. The national constitution does not limit the right of citizenship and protection by the right of suffrage, any more than do the state constitutions. Under the most, probably under all the state constitutions, there are persons who are denied the right of suffrage—but they are not therefore liable to be enslaved.

Those who did take part in the actual ratification of the constitution, acted in behalf of, and, *in theory*, represented the authority of the whole people. Such is the theory in this country wherever suffrage is confined to a few; and such is the virtual declaration of the constitution itself. The declaration that "*we the people* of the United States do ordain and establish this constitution," is equivalent to a declaration that those who actually participated in its adoption, acted in behalf of all others, as well as for themselves.

Any private intentions or understandings, on the part of one portion of the people, as to who should be citizens, cannot be admitted to prove that such portion only were intended by the constitution, to be citizens; for the intentions of the other portion would be equally admissible to exclude the exclusives. The mass of the people can claim citizenship under the constitution, on no other ground than as being a part of "the people of the United States;" and such claim necessarily admits that all other "people of the United States" are equally citizens.

That the designation, "We the people of the United States," included the whole people that properly belonged to the United States, is also proved by the fact that no exception is made in any other part of the instrument.

If the constitution had intended that any portion of "the people of the United States" should be excepted from its benefits, disfranchised, outlawed, enslaved, it would of course have designated these exceptions with such particularity as to make it sure that none but the true persons intended would be liable to be subjected to such wrongs. Yet, instead of such particular designation of the exceptions, we find no designation whatever of the kind. But on the contrary, we *do* find, in the preamble itself, a sweeping declaration to the effect that there are no such exceptions; that the whole people of the United States are citizens, and entitled to liberty, protection, and the dispensation of justice under the constitution.

If it be admitted that the constitution designated its own citizens, then there is no escape from the conclusion that it designated the whole people of the United States as such. On the other hand, if it be denied that the constitution designated its own citizens, one of these two conclusions must follow, viz., 1st, that it has no citizens; or, 2d, that it has left an unrestrained power in the *state* governments to determine who may, and who may not, be citizens of the *United States* government. If the first of these conclusions be adopted, viz., that the constitution has no citizens, then it follows that there is really no United States government, except on paper—for there would be as much reason in talking of an army without men, as of a government without citizens. If the second conclusion be adopted, viz., that the state governments have the right of determining who may, and who may not be citizens of the United States government, then it follows that the state governments may at pleasure destroy the government of the United States, by enacting that none of their respective inhabitants shall be citizens of the United States.

This latter is really the doctrine of some of the slave states—the "state-rights" doctrine, so called. That doctrine holds that the general government is merely a confederacy or league of the several states, *as states*; not a government established by the people, *as people*. This "state-rights"

doctrine has been declared unconstitutional by reiterated opinions of the supreme court of the United States; [*5] and, what is of more consequence, it is denied also by the preamble to the constitution itself, which declares that it is "the people," (and not the state governments,) that ordain and establish it. It is true also that the constitution was ratified by conventions of the people, and not by the legislatures of the states. Yet because the constitution was ratified by conventions of the states *separately*, (as it naturally would be for convenience, and as it necessarily must have been for the reason that none but the people of the respective states could recall any portion of the authority they had, delegated to their state governments, so as to grant it to the United States government,)—yet because it was thus ratified, I say, some of the slave states have claimed that the general government was a league of states, instead of a government formed by "the people." The true reason why the slave states have held this theory, probably is, because it would give, or appear to give, to the states the right of determining who should, and who should not, be citizens of the United States. They probably saw that if it were admitted that the constitution of the United States had designated its own citizens, it had undeniably designated the whole people of the then United States as such; and that, as a state could not enslave a citizen of the United States, (on account of the supremacy of the constitution of the United States,) it would follow that there could be no constitutional slavery in the United States.

Again. If the constitution was established by authority of all "the people of the United States," they were all legally parties to it, and citizens under it. And if they were parties to it, and citizens under it, it follows that neither they, *nor their posterity*, nor any nor either of them, can ever be legally enslaved within the territory of the United States; for the constitution declares its object to be, among other things, "to secure the blessings of liberty to *ourselves, and our posterity*." This purpose of the national constitution is a law paramount to all state constitutions; for it is declared that "this constitution, and the laws of the United States that shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges *in every state* shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding."

No one, I suppose, doubts that if the state governments were to abolish slavery, the slaves would then, without further legislation, become citizens of the United States. Yet, in reality, if they would become citizens then, they are equally citizens now—else it would follow that the state governments had an arbitrary power of making citizens of the United States; or—what is equally absurd—it would follow that disabilities, arbitrarily imposed by the state governments, upon native inhabitants of the country, were, of themselves, sufficient to deprive such inhabitants of their citizenship, which would otherwise have been conferred upon them by the constitution of the United States. To suppose that the state governments are thus able, arbitrarily, to keep in abeyance, or arbitrarily to withhold from any of the inhabitants of the country, any of the benefits or rights which the national constitution intended to confer upon them, would be to suppose that the state constitutions were paramount to the national one. The conclusion, therefore, is inevitable, that the state governments have no power to withhold the rights of citizenship from any who are otherwise competent to become citizens. And as all the native born inhabitants of the country are at least competent to become citizens of the United States, (if they are not already such,) the state governments have no power, by slave laws or any other, to withhold the rights of citizenship from them.

But however clear it may be, that the constitution, in reality, made citizens of all "the people of the United States," yet it is not necessary to maintain that point, in order to prove that the

constitution gave no guaranty or sanction to slavery—for if it had not already given citizenship to all, it nevertheless gave to the government of the United States unlimited power of offering citizenship to all. The power given to the government of passing naturalization laws, is entirely unrestricted, except that the laws must be uniform throughout the country. And the government have undoubted power to offer naturalization and citizenship to every person in the country, whether foreigner or native, who is not already a citizen. To suppose that we have in the country three millions of native born inhabitants, not citizens, and whom the national government has no power to make citizens, when its power of naturalization is entirely unrestricted, is a palpable contradiction.

But further. The constitution of the United States must be made consistent with itself throughout; and if any of its parts are irreconcilable with each other, those parts that are inconsistent with liberty, justice and right, must be thrown out for inconsistency. Besides the provisions already mentioned, there are numerous others, in the constitution of the United States, that are entirely and irreconcilably inconsistent with the idea that there either was, or could be, any constitutional slavery in this country.

Among these provisions are the following:

First. Congress have power to lay a capitation or poll tax upon the people of the country. Upon whom shall this tax be levied? and who must be held responsible for its payment? Suppose a poll tax were laid upon a man, whom the state laws should pretend to call a slave. Are the United States under the necessity of investigating, or taking any notice of the fact of slavery, either for the purpose of excusing the man himself from the tax, or of throwing it upon the person claiming to be his owner? Must the government of the United States find a man's pretended owner, or only the man himself, before they can tax him? Clearly the United States are not bound to tax any one but the individual himself, or to hold any other person responsible for the tax. Any other principle would enable the state governments to defeat any tax of this kind levied by the United States. Yet a man's liability to be held personally responsible for the payment of a tax, levied upon himself by the government of the United States, is inconsistent with the idea that the government is bound to recognize him as not having the ownership of his own person.

Second. "The congress shall have power to regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

This power is held, by the supreme court of the United States, to be an exclusive one in the general government; and it obviously must be so, to be effectual—for if the states could also interfere to regulate it, the states could at pleasure defeat the regulations of congress.

Congress, then, having the exclusive power of regulating this commerce, they only (if any body) can say who may, and who may not, carry it on; and probably even they have no power to discriminate arbitrarily between individuals.—But, in no event, have the *state* governments any right to say who may, or who may not, carry on "commerce with foreign nations," or "among the several states," or "with the Indian tribes." Every individual—naturally competent to make contracts—whom the state laws declare to be a slave, probably has, and certainly may have, under the regulations of congress, as perfect a right to carry on "commerce with foreign nations, and among the several states, and with the Indian tribes," as any other citizen of the United States can have—"any thing in the constitution or laws of any state to the contrary notwithstanding."

Yet this right of carrying on commerce is a right entirely inconsistent with the idea of a man's being a slave.

Again. It is a principle of law that the right of traffic is a natural right, and that all commerce (that is intrinsically innocent) is therefore lawful, except what is prohibited by positive legislation. Traffic with the slaves, either by people of foreign nations, or by people belonging to other states than the slaves, has never (so far as I know) been prohibited by congress, which is the only government, (if any,) that has power to prohibit it. Traffic with the slaves is therefore as lawful at this moment, under the constitution of the United States, as is traffic with their masters; and this fact is entirely inconsistent with the idea that their bondage is constitutional.

Third. "The congress shall have power to establish post offices and post roads."

Who, but congress, have any right to say who may send, or receive letters by the United States posts? Certainly no one. They have undoubted authority to permit any one to send and receive letters by their posts—"any thing in the constitutions or laws of the states to the contrary notwithstanding." Yet the right to send and receive letters by post, is a right inconsistent with the idea of a man's being a slave.

Fourth. "The congress shall have power to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

Suppose a man, whom a state may pretend to call a slave, should make an invention or discovery—congress have undoubted power to secure to such individual himself, by patent, the "*exclusive*"—(mark the word)—the "exclusive right" to his invention or discovery. But does not this "*exclusive right*" in the inventor himself, exclude the right of any man, who, under a state law, may claim to be the owner of the inventor? Certainly it does. Yet the slave code says that whatever is a slave's is his owner's. This power, then, on the part of congress, to secure to an individual the exclusive right to his inventions and discoveries, is a power inconsistent with the idea that that individual himself, and all he may possess, are the property of another.

Fifth. "The congress shall have power to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;" also "to raise and support armies;" and "to provide and maintain a navy."

Have not congress authority, under these powers, to enlist soldiers and sailors, *by contract with themselves*, and to pay them their wages, grant them pensions, and secure their wages and pensions to their own use, without asking the permission either of the state governments, or of any individuals whom the state governments may see fit to recognize as the owners of such soldiers and sailors? Certainly they have, in defiance of all state laws and constitutions whatsoever; and they have already asserted that principle by enacting that pensions, paid by the United States to their soldiers, shall not be liable to be taken for debt, under the laws of the states. Have they not authority also to grant letters of marque and reprisal, and to secure the prizes, to a ship's crew of blacks, as well as of whites? To those whom the State governments call slaves, as well as to those whom the state governments call free?—Have not congress authority to make contracts, for the defence of the nation, with any and all the inhabitants of the nation, who may be willing to perform the service? Or are they obliged first to ask and obtain the consent of those private individuals who may pretend to own the inhabitants of this nation?

Undoubtedly congress have the power to contract with whom they please, and to secure wages and pensions to such individuals, in contempt of all state authority. Yet this power is inconsistent with the idea that the constitution recognizes or sanctions the legality of slavery.

Sixth. "The congress shall have power to provide for the organizing, *arming* and disciplining the *militia*, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia, according to the discipline prescribed by congress." Also "to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions."

Have not congress, under these powers, as undoubted authority to enroll in the militia, and "*arm*" those whom the states call slaves, and authorize them always to keep their arms by them, even when not on duty, (that they may at all times be *ready* to be "called forth" "to execute the laws of the Union, suppress insurrections, and repel invasions,") as they have thus to enroll and arm those whom the states call free? Can the state governments determine who may, and who may not compose the militia of the "United States?"

Look, too, at this power, in connection with the second amendment to the constitution; which is in these words:

"A well regulated militia being necessary to the security of a free state, the right of *the people* to keep and bear arms shall not be infringed."

These provisions obviously recognize the natural right of all men "to keep and bear arms" for their personal defence; and prohibit both congress and the state governments from infringing the right of "the people"—that is, of *any* of the people—to do so; and more especially of any whom congress have power to include in their militia. This right of a man "to keep and bear arms," is a right palpably inconsistent with the idea of his being a slave. Yet the right is secured as effectually to those whom the states presume to call slaves, as to any whom the states condescend to acknowledge free.

Under this provision any man has a right either to give or sell arms to those persons whom the states call slaves; and there is no *constitutional* power, in either the national or state governments, that can punish him for so doing; or that can take those arms from the slaves; or that can make it criminal for the slaves to use them, if, from the inefficiency of the laws, it should become necessary for them to do so, in defence of their own lives or liberties; for this constitutional right to keep arms implies the constitutional right to use them, if need be, for the defence of one's liberty or life.

Seventh. The constitution of the United States declares that "no state shall pass *any* law impairing the obligation of contracts."

"The obligation of contracts," here spoken of, is, of necessity, the *natural obligation*; for that is the only real or true obligation that any contracts can have. It is also the only obligation, which courts recognize in any case, except where legislatures arbitrarily interfere to impair it. But the prohibition of the constitution is upon the states' passing any law whatever that shall impair the natural obligation of men's contracts. Yet, if slave laws were constitutional, they would

effectually impair the obligation of all contracts entered into by those who are made slaves; for the slave laws must necessarily hold that all a slave's contracts are void.

This prohibition upon the states to pass *any* law impairing the natural obligation of men's contracts, implies that all men have a constitutional right to enter into all contracts that have a natural obligation. It therefore *secures* the constitutional right of all men to enter into such contracts, and to have them respected by the state governments. Yet this constitutional right of all men to enter into all contracts that have a natural obligation, and to have those contracts recognized by law as valid, is a right plainly inconsistent with the idea that men can constitutionally be made slaves.

This provision therefore absolutely prohibits the passage of slave laws, because laws that make men slaves must necessarily impair the obligation of all their contracts.

Eighth. Persons, whom some of the state governments recognize as slaves, are made eligible, by the constitution of the United States, to the office of president of the United States. The constitutional provision on this subject is this:

"No person, except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution, shall be eligible to the office of president; neither shall any person be eligible to that office, who shall not have attained the age of thirty-five years, and been fourteen years a resident of the United States."

According to this provision, *all* "persons", [*6] who have resided within the United States fourteen years, have attained the age of thirty-five years, and are either *natural born citizens, or were citizens of the United States at the time of the adoption of the constitution*, are eligible to the office of president. No other qualifications than these being required by the constitution, no others can be legally demanded. The only question, then, that can arise, is as to the word "citizen." Who are the persons that come within this definition, as here used? The clause itself divides them into two classes, to wit, the "natural born," and those who were "citizens of the United States at the time of the adoption of the constitution." In regard to this latter class, it has before been shown, from the preamble to the constitution, that all who were "people of the United States," (that is, permanent inhabitants,) at the time the constitution was adopted, were made citizens by it. And this clause, describing those eligible to the office of president, implies the same thing. This is evident; for it speaks of those who were "citizens of the *United States* at the time of the adoption of the constitution." Now there clearly could have been no "citizens of the United States, at the time of the adoption of the constitution," unless they were made so by the constitution itself; for there were *no* "citizens of the *United States*" *before* the adoption of the constitution. The Confederation had no citizens. It was a mere league between the state governments. The separate states belonging to the confederacy had each their own citizens respectively. But the confederation itself, as such, had no citizens. There were, therefore, no "citizens of the United States," (but only citizens of the respective states,) before the adoption of the constitution.—Yet this clause asserts that immediately on the adoption, or "at the time of the adoption of this constitution," there *were* "citizens of the United States." Those, then, who were "citizens of the United States at the time of the adoption of the constitution," were necessarily those, and only those, who had been made so by the adoption of the constitution; because they could have become citizens at that precise "time" in no other way. If, then, any persons were made citizens by the adoption of the constitution, who were the *individuals* that were thus made

citizens? They were "the people of the United States," of course—as the preamble to the constitution virtually asserts. And if "the people of the United States" were made citizens by the adoption of the constitution, then *all* "the people of the United States" were necessarily made citizens by it—for no discrimination is made by the constitution between different individuals, "people of the United States"—and there is therefore no means of determining who were made citizens by the adoption of the constitution, unless *all* "the people of the United States" were so made. Any "person," then, who was one of "the people of the United States" "at the time of the adoption of this constitution," and who is thirty-five years old, and has resided fourteen years within the United States, is eligible to the office of president of the United States. And if every such person be eligible, under the constitution, to the office of president of the United States, the constitution certainly does not recognize them as slaves.

The other class of citizens, mentioned as being eligible to the office of president, consists of the "natural born citizens." Here is an implied assertion that *natural birth* in the country gives the right of citizenship. And if it gives it to one, it necessarily gives it to all—for no discrimination is made; and if all persons, born in the country, are not entitled to citizenship, the constitution has given us no test by which to determine who of them are entitled to it.

Every person, then, born in the country, and that shall have attained the age of thirty-five years, and been fourteen years a resident within the United States, is eligible to the office of president. And if eligible to that office, the constitution certainly does not recognize him as a slave.

Persons, who are "citizens" of the United States, according to the foregoing definitions, are also eligible to the offices of representative and senator of the United States; and therefore cannot be slaves.

Ninth. The constitution declares that "the trial of all crimes, except in cases of impeachment, shall be *by jury*."—Also that "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort."

It is obvious that slaves, if we had any, might "levy war against the United States," and might also "adhere to their enemies, giving them aid and comfort." It may, however, be doubted whether they could commit the crime of treason—for treason implies a breach of fidelity, trust or allegiance, where fidelity, trust or allegiance is due. And it is very clear that slaves could owe allegiance, trust or fidelity, neither to the United States, nor to the state governments; for allegiance is due to a government only from those who are protected by it. Slaves could owe to our governments nothing but resistance and destruction. If therefore they were to levy war against the United States, they might not perhaps be liable to the technical charge of treason; although there would, in reality, be as much treason in their act, as there would of any other crime—for there would, in truth, be neither legal nor moral crime of any kind in it. Still, the government would be compelled, in order to protect itself against them, to charge them with some crime or other—treason, murder, or something else. And this charge, whatever it might be, would have to be tried by a jury. And what (in criminal cases,) is the "trial by jury?" It is a trial, both of the law and the fact, by the "peers," or equals, of the person tried. Who are the "peers" of a slave? None, evidently, but slaves. If, then, the constitution recognizes any such class of persons, in this country, as slaves, it would follow that for any crime committed by them against the United States, they must be tried, both on the law and the facts, by a jury of slaves. The result of such trials we can readily imagine.

Does this look as if the constitution guaranteed, or even recognized the legality of slavery?

Tenth. The constitution declares that "The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it."

The privilege of this writ, wherever it is allowed, is of itself sufficient to make slavery impossible and illegal. The object and prerogative of this writ are to secure to all persons their natural right to personal liberty, against all restraint except from the government; and even against restraints by the government itself, unless they are imposed in conformity with established general laws, and upon the charge of some legal offence or liability. It accordingly liberates all who are held in custody against their will, (whether by individuals or the government,) unless they are held *on some formal writ or process, authorized by law, issued by the government, according to established principles, and charging the person held by it with some legal offence or liability.* The principle of the writ seems to be, that no one shall be restrained of his natural liberty, unless these three things conspire; 1st, that the restraint be imposed by *special command of the government*; 2d, that there be a general law authorizing restraints for specific causes; and, 3d, that the government, previously to issuing process for restraining any particular individual, shall itself, by its proper authorities, take express cognizance of, and inquire cautiously into the facts of each case, and ascertain, by reasonable evidence, that the individual has brought himself within the liabilities of the general law. All these things the writ of *habeas corpus* secures to be done, before it will suffer a man to be restrained of his liberty; for the writ is a mandate to the person holding another in custody, commanding him to bring his prisoner before the court, and show the authority by which it holds him. Unless he then exhibit a legal precept, warrant or writ, issued by, and bearing the seal of the government, specifying a legal ground for restraining the prisoner, and authorizing or requiring him to hold him in custody, he will be ordered to let him go free. Hence all the keepers of prisons, in order to hold their prisoners against the authority of this writ, are required, in the case of each prisoner, to have a written precept or order, bearing the seal of the government, and issued by the proper authority, particularly describing the prisoner by name or otherwise, and setting forth the legal grounds of his imprisonment, and requiring the keeper of the prison to hold him in his custody.

Now the master does not hold his slave in custody by virtue of any formal or legal writ or process, either authorized by law, or issued by the government, or that charges the slave with any legal offence or liability. A slave is incapable of incurring any legal liability, or obligation to his master. And the government could, with no more consistency, grant a writ or process to the master, to enable him to hold his slave, than it could to enable him to hold his horse. It simply recognizes his right of property in his slave, and then leaves him at liberty to hold him by brute force, if he can, as he holds his ox, or his horse—and not otherwise. If the slave escape, or refuse to labor, the slave code no more authorizes the government to issue legal process against the slave, to authorize the master to catch him, or compel him to labor, than it does against a horse for the same purpose.—The slave is held simply as property, by individual force, without legal process. But the writ of *habeas corpus* acknowledges no such principle as the right of property in man. If it did, it would be perfectly impotent in all cases whatsoever; because it is a principle of law, in regard to property, that simple possession is *prima facie* evidence of ownership; and therefore any man, who was holding another in custody, could defeat the writ by pleading that he owned his prisoner, and by giving, as proof of ownership, the simple fact that he was in possession of him. If, therefore, the writ of *habeas corpus* did not, of itself, involve a denial of

the right of property in man, the fact stated in it, that one man was holding another in custody, would be *prima facie* evidence that he owned him, and had a right to hold him; and the writ would therefore carry an absurdity in its face.

The writ of *habeas corpus*, then, *necessarily* denies the right of property in man. And the constitution, by declaring, without any discrimination of persons, that "the privilege of this writ shall not be suspended,"—that is, shall not be denied to any human being—has declared that, under the constitution, there can be no right of property in man.

This writ was unquestionably intended as a great constitutional guaranty of personal liberty. But unless it denies the right of property in man, it in reality affords no protection to any of us against being made slaves. If it does deny the right of property in man, the slave is entitled to the privilege of the writ; for he is held in custody by his master, simply on the ground of property.

Mr. Christian, one of Blackstone's editors, says that it is this writ that makes slavery impossible in England. It was on this writ, that Somerset was liberated. The writ, in fact, asserts, as a great constitutional principle, the natural right of personal liberty. And the privilege of the writ is not confined to citizens, but extends to all human beings. [*7] And it is probably the only absolute guaranty, that our national constitution gives to foreigners and aliens, that they shall not, on their arrival here, be enslaved by those of our state governments that exhibit such propensities for enslaving their fellow-men. For this purpose, it is a perfect guaranty to people who come here from any part of the world. And if it be such a guaranty to foreigners and aliens, is it no guaranty to those born under the constitution? Especially when the constitution makes no discrimination of persons?

Eleventh. "The United States shall guaranty to every state in this union a republican form of government, and shall protect each of them against invasion; and, on application of the legislature, or of the executive, (when the legislature cannot be convened,) against domestic violence."

Mark the strength and explicitness of the first clause of this section, to wit, "The United States *shall guaranty* to every state in this union a republican form of government." Mark also especially that this guaranty is one of liberty, and not of slavery.

We have all of us heretofore been compelled to hear, from individuals of slaveholding principles, many arrogant and bombastic assertions, touching the constitutional "*guaranties*" given to *slavery*; and persons, who are in the habit of taking their constitutional law from other men's mouths, instead of looking at the constitution for themselves, have probably been led to imagine that the constitution had really given such guaranties in some explicit and tangible form. We have, nevertheless, seen that all those pretended guaranties are at most nothing but certain vague hints, insinuations, ciphers and innuendoes, that are imagined to be covered up under language which legally means nothing of the kind. But, in the clause now cited, we do have an explicit and peremptory "*guaranty*," depending upon no implications, inferences or conjectures, and couched in no uncertain or ambiguous terms. And what is this guaranty? Is it a guaranty of slavery? No. It is a guaranty of something flatly incompatible with slavery: a guaranty of "a republican form of government to every state in this union."

And what is "a republican form of government?" It is where the government is a commonwealth—the property of the public, of the mass of the people, or of the entire people. It

is where the government is made up of, and controlled by the combined will and power of the public, or the mass of the people—and where, of natural consequence, it will have, for its object, the protection of the rights of all. It is indispensable to a republican form of government, that the public, the mass of the people, if not the entire people, participate in the grant of powers to the government, and in the protection afforded by the government. It is impossible, therefore, that a government, under which any considerable number of the people, (if indeed any number of the people,) are disfranchised and enslaved, can be a republic. A slave government is an oligarchy; and one too of the most arbitrary and criminal character.

Strange that men, who have eyes capable of discovering in the constitution so many covert, implied and insinuated guaranties of crime and slavery, should be blind to the legal import of so open, explicit and peremptory a guaranty of freedom, equality and right.

Even if there had really been, in the constitution, two such contradictory guaranties, as one of liberty or republicanism in every state of the Union, and another of slavery in every state where one portion of the people might succeed in enslaving the rest, one of these guaranties must have given way to the other—for, being plainly inconsistent with each other, they could not have stood together. And it might safely have been left either to legal or to moral rules to determine which of the two should prevail—whether a provision to perpetuate slavery should triumph over a guaranty of freedom.

But it is constantly asserted, in substance, that there is "*no propriety*" in the general government's interfering in the local governments of the states. Those who make this assertion appear to regard a state as a single individual, capable of managing his own affairs, and of course unwilling to tolerate the intermeddling of others. But a state is not an individual. It is made up of large numbers of individuals, each and all of whom, amid the intestine mutations and strifes to which states are subject, are liable, at some time or other, to be trampled upon by the strongest party, and may therefore reasonably choose to secure, in advance, some external protection against such emergencies, by making reciprocal contracts with other people similarly exposed in the neighboring states. Such contracts for mutual succor and protection, are perfectly fit and proper for any people who are so situated as to be able to contribute to each other's security. They are as fit and proper as any other political contracts whatever; and are founded on precisely the same principle of combination for mutual defence—for what are any of our political contracts and forms of government, but contracts between man and man for mutual protection against those who may conspire to injure either or all of them? But these contracts, fit and proper between all men, are peculiarly appropriate to those, who, while they are members of various local and subordinate associations, are, at the same time, united for specific purposes, under one general government. Such a mutual contract, between the people of all the states, is contained in this clause of the constitution. And it gives to them all an additional guaranty for their liberties.

Those who object to this guaranty, however, choose to overlook all these considerations, and then appear to imagine that their notions of "*propriety*" on this point, can effectually expunge the guaranty itself from the constitution. In indulging this fancy, however, they undoubtedly overrate the legal, and perhaps also the moral effect of such superlative fastidiousness; for even if there were "*no propriety*" in the interference of the general government to maintain a republican form of government in the states, still, the unequivocal pledge to that effect, given in the constitution, would nevertheless remain an irresistible rebutter to the allegation that the constitution intended to guaranty its opposite, slavery, an oligarchy, or a despotism. It would, therefore, entirely forbid

all those inferences and implications, drawn by slaveholders, from those other phrases, which they quote as guaranties of slavery. [*8]

But the "propriety," and not only the propriety, but the necessity of this guaranty, may be maintained on still other grounds.

One of these grounds is, that it would be impossible, consistently with the other provisions of the constitution, that the general government itself could be republican, unless the state governments were republican also. For example. The constitution provides, in regard to the choice of congressional representatives, that "the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature." It was indispensable to the internal quiet of each state, that the same body of electors, who should participate in the suffrage of the state governments, should participate also in the suffrage of the national one—and *vice versa*, that those who should participate in the national suffrage, should also participate in that of the state. If the general and state constitutions had each a different body of electors within each state, it would obviously give rise at once to implacable and irreconcilable feuds, that would result in the overthrow of one or the other of the governments within the state. Harmony or inveterate conflict was the only alternative. As conflict would necessarily result in the destruction of one of the governments, harmony was the only mode by which both could be preserved. And this harmony could be secured only by giving to the same body of electors, suffrage in both the governments.

If, then, it was indispensable to the existence and authority of both governments, within the territory of each state, that the same body, and only the same body of electors, that were represented in one of the governments, should be represented in the other, it was clearly indispensable, in order that the national one should be republican, that the state governments should be republican also. Hence the interest which the nation at large have in the republicanism of each of the state governments.

It being necessary that the suffrage under the national government, within each state, should be the same as for the state government, it is apparent that unless the several state governments were all formed on one general plan, or unless the electors of all the states were united in the acknowledgement of some general controlling principle, applicable to both governments, it would be impossible that they could unite in the maintenance of a general government that should act in harmony with the state governments; because the same body of electors, that should support a despotic government in the state, could not consistently or cordially unite, or even unite at all, in the support of a republican government for the nation. If one portion of the state governments should be republican, like Vermont, where suffrage is open to all—and another portion should be oligarchies, like South Carolina, and the other slave states—another portion limited monarchies, like England—another portion ecclesiastical, like that of the Pope of Rome, or that of the ancient Jews—and another portion absolute despotisms, like that of Nicholas, in Russia, or that of Francia, in Paraguay,—and the same body, and only the same body, of electors, that sustained each of these governments at home, should be represented in the national government, each state would send into the national legislature the representatives of its own peculiar system of government; and the national legislature, instead of being composed of the representatives of any one theory, or principle of government, would be made up of the representatives of all the various theories of government that prevailed in the different states—from the extreme of democracy to the extreme of despotism. And each of these various

representatives would be obliged to carry his local principles into the national legislature, else he could not retain the confidence of his peculiar constituents. The consequence would be, that the national legislature would present the spectacle of a perfect Babel of discordant tongues, elements, passions, interests and purposes, instead of an assembly united for the accomplishment of any agreed or distinct object.

Without some distinct and agreed object as a bond of union, it would obviously be impracticable for any general union of the whole people to subsist; and that bond of union, whatever it be, must also harmonize with the principles of each of the state governments, else there would be a collision between the general and state governments.

Now the great bond of union, agreed upon in the general government, was "the rights of man"—expressed in the national constitution by the terms "liberty and justice." What other bond could have been agreed upon? On what other principle of government could they all have united? Could they have united to sustain the divine right of kings? The feudal privileges of nobles? Or the supremacy of the Christian, Mahometan, or any other church? No. They all denied the divine right of kings, and the feudal rights of nobles; and they were of all creeds in religion. But they were agreed that all men had certain natural, inherent, essential and inalienable rights, among which were life, liberty and the pursuit of happiness; and that the preservation of these rights was the legitimate purpose of governments among men. They had avowed this principle before the world, had fought for it, and successfully defended it, against the mightiest power in the world. They had filled the world with its glory; and it, in turn, had filled the world with theirs. It had also gathered, and was then gathering, choice spirits, and large numbers of the oppressed from other nations unto them. And this principle—in which were involved the safety, interests and rights of each and every one of "the people," who were to unite for the formation of the government—now furnished a bond of union, that was at once sufficient, legitimate, consistent, honorable, of universal application, and having more general power over the hearts and heads of all of them, than any other that could be found to hold them together. It comported with their theory of the true objects of government. This principle, therefore, they adopted as the cornerstone of their national government; and, as a matter of necessity, all other things, on which this new government was in any degree to depend, or which was to depend in any degree upon this government, were then made to conform to this principle. Hence the propriety of the power given to the general government, of "guaranteeing to every state in the Union a republican form of government." Had not this power been given to the general government, the majorities in each state might have converted the state governments into oligarchies, aristocracies, monarchies or despotisms, that should not only have trampled upon the minorities, and defeated their enjoyment of the national constitution, but also introduced such factions and feuds into the national governments, as would have distracted its councils, and prostrated its power.

But there were also motives of a pecuniary and social, as well as political nature, that made it proper that the nation should guarantee to the states a republican form of government.

Commerce was to be established between the people of the different states. The commerce of a free people is many times more valuable than that of slaves. Freemen produce and consume vastly more than slaves. They have therefore more to buy and more to sell. Hence the free states have a direct pecuniary interest in the civil freedom of all the other states. Commerce between free and slave states is not reciprocal or equal. Who can measure the increase that would have been made to the industry and prosperity of the free states, if all the slaves in the country had

been freemen, with all the wants and energies of freemen? And their masters had had all the thrift, industry, frugality and enterprise of men who depend upon their own labor, instead of the labor of slaves, for their prosperity? Great Britain thought it policy to carry on a seven years' war against us principally to secure to herself the control and benefits of the commerce of three millions of people and their posterity. But we now have nearly or quite the same number of slaves within our borders, and yet we think that commerce with them and their posterity is a matter with which we have no concern; that there is "*no propriety*" in that provision of the national constitution, which requires that the general government—which we have invested with the exclusive control of all commerce among the several states—should secure to these three millions the right of traffic with their fellow men, and to their fellow men the right of traffic with them, against the impertinent usurpations and tyranny of subordinate governments, that have no constitutional right to interfere in the matter.

Again. The slave states, in proportion to their population, contribute nothing like an equal or equitable share to the aggregate of national wealth. It would probably be within the truth to say that, in proportion to numbers, the people of the free states have contributed ten times as much to the national wealth as the people of the slave states. Even for such wealth as the culture of their great staple, cotton, has added to the nation, the south are indebted principally, if not entirely, to the inventive genius of a single northern man. [*9] The agriculture of the slave states is carried on with rude and clumsy implements; by listless, spiritless and thriftless laborers; and in a manner speedily to wear out the natural fertility of the soil, which fertility slave cultivation seldom or never replaces. The mechanic arts are comparatively dead among them. Invention is utterly dormant. It is doubtful whether either a slave or a slave holder has ever invented a single important article of labor-saving machinery since the foundation of the government. And they have hardly had the skill or enterprise to apply any of those invented by others. Who can estimate the loss of wealth to the nation from these causes alone? Yet we of the free states give to the south a share in the incalculable wealth produced by our inventions and labor-saving machinery, our steam engines, and cotton gins, and manufacturing machinery of all sorts, and yet say at the same time that we have no interest, and that there is "*no propriety*" in the constitutional guaranty of that personal freedom to the people of the south, which would enable them to return us some equivalent in kind.

For the want, too, of an enforcement of this guaranty of a republican form of government to each of the states, the population of the country, by the immigration of foreigners, has no doubt been greatly hindered. Multitudes almost innumerable, who would have come here, either from a love of liberty, or to better their conditions, and given the country the benefit of their talents, industry and wealth, have no doubt been dissuaded or deterred by the hideous tyranny that rides triumphant in one half of the nation, and extends its pestiferous and detested influence over the other half.

Socially, also, we have an interest in the freedom of all the states. We have an interest in free personal intercourse with all the people living under a common government with ourselves. We wish to be free to discuss, with any and all of them, all the principles of liberty and all the interests of humanity. We wish, when we meet a fellow man, to be at liberty to speak freely with him of his and our condition; to be at liberty to do him a service; to advise with him as to the means of improving his condition; and, if need be, to ask a kindness at his hands. But all these things are incompatible with slavery. Is this such an union as we bargained for? Was it "*nominated in the bond*," that we should be cut off from these the common rights of human

nature? If so, point to the line and letter, where it is so written. Neither of them are to be found. But the contrary is expressly guarantied against the power of both the governments, state and national; for the national government is prohibited from passing any law abridging the freedom of speech and the press, and the state governments are prohibited from maintaining any other than a republican form of government, which of course implies the same freedom.

The nation at large have still another interest in the republicanism of each of the states; an interest, too, that is indicated in the same section in which this republicanism is guarantied. This interest results from the fact that the nation are pledged to "protect" each of the states "against domestic violence." Was there no account taken—in reference either to the cost or the principle of this undertaking—as to what might be the character of the state governments, which we are thus pledged to defend against the risings of the people? Did we covenant, in this clause, to wage war against the rights of man? Did we pledge ourselves that those, however few, who might ever succeed in getting the government of a state into their hands, should thenceforth be recognized as the legitimate power of the state, and be entitled to the whole force of the general government to aid them in subjecting the remainder of the people to the degradation and injustice of slavery? Or did the nation undertake only to guarantee the preservation of "a republican form of government" against the violence of those who might prove its enemies? The reason of the thing, and the connexion, in which the two provisions stand in the constitution, give the answer.

We have yet another interest still, and that no trivial one, in the republicanism of the state governments; an interest indicated, too, like the one last mentioned, in the very section in which this republicanism is assured. It relates to the defence against invasion. The general government is pledged to defend each of the states against invasion. Is it a thing of no moment, whether we have given such a pledge to free or to slave states? Is there no difference in the cost and hazard of defending one or the other? Is it of no consequence to the expense of life and money, involved in this undertaking, whether the people of the state invaded shall be united, as freemen naturally will be, as one man against the enemy? Or whether, as in slave states, half of them shall be burning to join the enemy, with the purpose of satisfying with blood the long account of wrong that shall have accrued against their oppressors? Did Massachusetts—who during the war of the revolution furnished more men for the common defence, than all the six southern states together—did she, immediately on the close of that war, pledge herself, as the slave holders would have it, that she would lavish her life in like manner again, for the defence of those whose wickedness and tyranny in peace should necessarily multiply their enemies and make them defenceless in war? If so, on what principle, or for what equivalent, did she do it? Did she not rather take care that the guaranty for a republican government should be inserted in the same paragraph with that for protection against invasion, in order that both the principle and the extent of the liability she incurred, might distinctly appear?

The nation at large, then, as a political community under the constitution, have both interests and rights, and both of the most vital character, in the republicanism of each of the state governments. The guaranty given by the national constitution, securing such a government to each of the states, is therefore neither officious nor impertinent. On the contrary, this guaranty was a *sine qua non* to any national contract of union; and the enforcement of it is equally indispensable, if not to the continuance of the union at all, certainly to its continuance on any terms that are either safe, honorable or equitable for the north.

This guaranty, then, is not idle verbiage. It is full of meaning. And that meaning is not only fatal to slavery itself, but it is fatal also to all those pretences, constructions, surmises and implications, by which it is claimed that the national constitution sanctions, legalizes, or even tolerates slavery.

[*1] This language of the Supreme Court contains an admission of the truth of the charge just made against judges, viz: that rather than lose their offices, they will violate what they know to be law, in subserviency to the legislatures on whom they depend; for it admits, 1st, that the preservation of men's *rights* is the vital principle of law, and, 2d, that courts, (and the Supreme Court of the United States in particular,) will trample upon that principle at the bidding of the legislature, when the mandate comes in the shape of a statute of such "*irresistible clearness*," that its meaning cannot be evaded.

[*2] "Laws are construed strictly to save a right."—*Whitney et al. vs. Emmett et al.*, 1 Baldwin, C.C.R.316.

"No law will make a construction do wrong; and there are some things which the law favors, and some it dislikes; it favoereth those things that come from the order of nature."—*Jacob's Law Dictionary*, title *Law*.

[*3] In the convention that framed the constitution, when this clause was under discussion, "servants" were spoken of as a distinct class from "slaves." For instance, "Mr. Butler and Mr. Pickney moved to require 'fugitive slaves and servants to be delivered up like criminals.'" Mr. Sherman objected to delivering up either slaves or servants. He said he "saw no more propriety in the public seizing and surrendering a slave or servant, than a horse."—*Madison Papers*, p. 1447-8.

The language finally adopted shows that they at last agreed to deliver up "*servants*," but *not* "*slaves*"—for as the word "servant" does not mean "slave," the word "service" does not mean slavery.

These remarks in the convention are quoted, not because the intentions of the convention are of the least legal consequence whatever; but to rebut the silly arguments of those who pretend that the convention, and not the people, adopted the constitution—and that the convention did not understand the legal difference between the word "servant" and "slave," and therefore used the word "service," in this clause, as meaning slavery.

[*4] *Gibbons vs. Ogden*.—(9 Wheaton, 1.)

[*5] "The government (of the U.S.) proceeds directly from the people; is 'ordained and established' in the name of the people."—*M'Culloch vs. Maryland*, 4 Wheaton, 403.

"The government of the Union is emphatically and truly, a government of the people; and in form and in substance it emanates from them. Its powers are granted by them, and are to be exercised directly on them, and for their benefit."—*Same*, pages 404, 405.

"The constitution of the United States was ordained and established, not by the United States in their sovereign capacities, but emphatically, as the preamble of the constitution declares, by 'the people of the United States.'"—*Martin vs. Hunter's lessee*, 1 Wheaton, 324.

[*6] That is, male persons. The constitution, whenever it uses the pronoun, in speaking of the president, uniformly uses the masculine gender—from which it may be inferred that male persons only were intended to be made eligible to the office.

[*7] *Somerset* was not a citizen of England, or entitled, as such, to the protection of the English law. The privilege of the writ of *habeas corpus* was granted to him on the ground simply of his being a man.

[*8] From whom come these objections to the "propriety" of the general government's interfering to maintain republicanism in the states? Do they not come from those who have ever hitherto claimed that the general government was bound to interfere to *put down republicanism*? And that those who were *republicans* at the north, might with perfect "propriety" and consistency, pledge their assistance to the despots of the south, to sustain the worst, the meanest and most atrocious of tyrannies? Yes, from the very same. To interfere to assist one half of the

people of a state in the cowardly, cruel and fiendish work of crushing the other half into the earth, corresponds precisely with their chivalrous notions of "propriety;" but it is insufferable officiousness for them to form any political compacts that will require them to interfere to protect the weak against the tyranny of the strong, or to maintain justice, liberty, peace and freedom.

[*9] Eli Whitney.