tion, is the clause relating to the recovery of slaves escaping from the State where they are held to service, under the laws thereof, and found in another State. This is the third subdivision of the second section of the fourth article, in the following words:

"No person held to service or labor in one State, under the laws therefore, 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."

This clause is immediately preceded by another respecting criminals, in the words following:

"A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime."

There is a remarkable similarity in the most material parts of these two clauses. They are, indeed, identical in terms as to the *injunction of delivery* of the party sought after. Neither clause expresses in what manner, or by what person, court or officer the *delivery* shall be made.

The persons making demand for such delivery are different. The criminal is properly demanded by the executive of the State whose laws have been violated. The demand is not made on the ground that the party is actually *guilty*, for the Constitution is explicit that a person *charged* with treason, felony or other crime, shall be delivered up. "*Charged*," however, does not mean anything less than a *legal accusation* before some competent court or officer. A charge of crime by mere unofficial assertion, a charge in the newspaper, or any charge in any form, except by due judicial proceeding, is not the charge which the Constitution requires.

The person so charged with crime shall be delivered up on demand of the executive authority of the State from which he fled.

This is an imperative injunction; but who ever has contended, or will contend, that the Executive of a sister State can enter the State of New-York, and, of his own authority, seize and carry out of our jurisdiction a person thus charged, and that, too, without any legal process from any of our own State authorities, either Executive or Judicial? Such a thing is so preposterous, and so flagrant a violation of *State Rights*, that the undersigned has never yet heard that it has been attempted. The person charged with a crime must be delivered up by the assent and the positive action of the State where he may be found. No State would tolerate for a moment an invasion of its sovereign rights, in the seizure and removal of any person within its limits, except through the action of its constituted authorities. The claim is made, and the delivery follows through the operation of the proper officer in the State where the accused is found. The term "*shall be delivered up*," in the case of the person charged with crime, contains a clear implication that some authority is to *make the delivery*. To seize a person and carry him off is no *delivery*. A *delivery* consists of three particulars. First: A person who acts in making the delivery; secondly: A person who receives that which is delivered; and, thirdly: The person or thing that is delivered.

The accused is to be delivered up on *demand* of the Executive, &c. This also shows that there is some person or magistrate who must be applied to, and of whom the demand must be made.

There does not appear to be anything in the letter or the nature of the clause respecting reclaiming the person escaping from service or labor, and being found in another State, which requires or authorizes a different construction as to his *delivery*. Daniel Webster declared his own opinion to be that this clause of the Constitution was to be executed by the action and law of the State where the runaway should be discovered, and that it did not confer any grant of power upon the General Government. The doctrine of Mr. Webster, as thus declared, would result in this, that State legislation on this subject is constitutional, and Congressional legislation on the subject contravenes the Constitution.

As an original question, the construction put upon this clause by Mr. Webster would seem more in harmony with the constitutional theory of the strict constructionists, who are very unwilling to invest Congress with a grant of power which is nowhere expressed.

The tenth amendment to the Constitution declares that "The "powers not delegated to the United States by the Constitution, "nor prohibited by it to the States, are reserved to the States respectively, or to the people."

It is difficult, and apparently impossible, to extract from the clauses touching the delivery of fugitives either from justice or from service, a grant of power, even by implication. The latter clause refers to two States—the one, from which the fugitive has escaped, the other, into which he has fled. It also expressly refers to the laws of the former State, as being the *tenure* by which the labor or service is held; and to the laws of the latter, as not being allowed to *discharge* such tenure. It mentions the person to whom the labor or service may be due under the laws of the one State, and declares that on his *claim* the person so held shall be delivered up.

To deliver up a person or a thing *on claim*, most clearly shows that a claim must be asserted in some legal mode, and before some officer, person or tribunal, which must necessarily try the question whether the person so claimed has in fact escaped, whether he is held to service or labor under the laws of the State from which he came, and whether such service or labor is due to the claimant.

As on the one hand, the clause in question does not appear to *delegate* any power to the United States, so, on the other hand, it does not *prohibit* any power to the States; and in that case, it must necessarily follow, by the very terms of the tenth amendment, above recited, that the power in question is reserved to the States or to the people.

The opinion of Mr. Webster on such a constitutional question—not a new one, but one long considered and deliberately expressed—accords so fully with legal principles and the just rules of interpretation, and appears so well supported by the text and the letter of the Constitution, that its rejection would be a matter of regret. Such interpretation, also, harmonizes with the terms and the practical construction of the preceding clause, relating to the reclamation of persons charged with crime.

In answer to this view of the question, it may be replied, that Mr. Webster afterwards surrendered his convictions, and yielded to the opposite view, that Congress does possess the power of legislation on this subject. But it does not appear that Mr. Webster ever changed his own conviction, although he exchanged his judgment in the general compromise of 1850, for the judgment of several other less enlightened men. If he had in reality changed his views, it would by no means follow that the public should all change their own opinions, and especially so, if the public should believe that Mr. Webster was right before he himself underwent that transformation. There have been several modern instances of eminent public men changing opinions, while the public at large have very obstinately declined to adopt such changes.

It is quite apparent to the unexcited observer that it would have been far better, and more productive of peace and kindly national sentiments, if the Courts had originally adopted and firmly adhered to the same interpretation of the same words in these two consecutive clauses of the Constitution, regarding the delivery of fugitives from justice and fugitives from service. And it will be a difficult task to satisfy honest and enlightened people (and especially since the more recent exhibitions of judicial interpretation), that the difference of construction put upon the very same words is not the result of an interest, a bias and a design, not creditable to the spotless ermine which should enrobe the oracles of the law.

But whether, in point of fact, such surrender should be made by the State, or by the Federal authorities, or concurrently by both, there is nothing in this clause which encourages, extends, or naturalizes Slavery. It is not easy to perceive how a thing is advanced by being returned, or how its outward progress and expansion are guaranteed by enforcing it back into the State from which it may have escaped. This is one of those curious and paradoxical notions, the absurdity of which needs no illustration.

A particular instance will exhibit the unsoundness of the principle: A Georgia planter has under his control, by the Georgian law, an humble African. The African is "held to service and labor" to the Georgian, under the laws of that State. The planter claims to be the proprietor or the owner of the man of color. The African, infected with the love of liberty, runs away from his possessor, in like manner as the celebrated Captain John Smith justly called the founder of the noble State of Virginia, once ran away from his Turkish master, whom, with much irreverence of the sacred Moslem law, he "hailed" most literally, before his escape. Now the gentleman from Georgia pursues his locomotive property into the State of Massachusetts, and by virtue of the Constitution of these United States, the colored man is delivered up, when found, to the claimant; he is taken back, with all the constitutional forms, to the sovereign State of Georgia. Has all this process for his return extended Slavery to the far Western Territories? Has it extended Slavery into any Territory whatever? The proposition is merely ridiculous, and the proffered opinions of gentlemen claiming to be statesmen or judges cannot redeem such vagaries from the sovereign contempt to which common sense consigns them. If the return of a slave extends Slavery, then, also, does the return of a felon extend felony; and by a like process of reasoning, the return of a traitor nationalizes treason.

Cotemporaneously with the formation of the Constitution, the then existing Congress of the confederation, enacted a law of abolition of Slavery in the Territories. Every inch of the Federal possessions were thus made *free* by act of Congress, and with the general applause of the nation. Many members of that Congress were at the same time delegates, holding seats in the Constitutional Convention. There was a hearty concurrence between the Convention and the Congress, and there was a general and publicly-expressed desire to rid the country, not only in its territories, but in the States themselves, of the pernicious influences of Slavery. It was denounced as an evil, moral, social, and religious, by the most eminent and enlightened characters of the day. Washington, Jefferson, Patrick Henry, Madison, of whom Virginia was then, and still ought to be, as she is, justly proud, with all their distinguished compatriots, joined in the declaration which abounds in the private and public writings of the period, and may easily be produced and reproduced in a thousand forms, and from a thousand sources, that Slavery was a curse and a blight upon the country—its industry and its honor.

It is as certain as any historical fact is, or ever was, whether of ancient or of modern times, that Slavery was looked upon with supreme disfavor by the men of our Revolutionary period. That they attempted to limit it in every possible method, and looked forward to its not distant extermination. That sentiment is read distinctly, in the Constitution, and in every clause of it which has been already considered.

The question, How is Slavery connected with our Constitutional obligations? further considered.

MODERN CHANGES.

It is not, however, to be disguised, that the opinions of the framers of our Constitution are not acknowledged by the men who have taken possession of the Federal Government. The national compact has been misinterpreted by the Judges and grossly abused in a series of instances by the Executives. A new and dangerous interpretation of the Constitution has been invented, which actually alters it, without the observance of those conditions precedent to its amendment, which are contained in the instrument itself. The incumbents of the chief executive office have been guilty both of usurpations on the one hand, and of derelictions on the other, as unconstitutional and dangerous to liberty, as those which cost one King of England his head, and another his richest provinces. Both these departments of the General Government have been shamefully perverted, in a manner which evinces concert of action between them, and a flagrant conspiracy against the rights of the States and the sovereignty of the people. In addition to these breaches of the highest official duties of the Executive and Judicial departments, the Legislative department has been invaded by Executive influences, and the integrity of its members has fallen before the temptations of office and of personal emolument. The vast and corrupting patronage which has held millions of the public treasure at its disposal, has been sedulously exerted by the Executive department, to extend the odious institution of Slavery over the whole region of the national territories. The judges have uttered their dicta on questions not requiring any decision of the questions thus considered, in order to give a judicial sanction to the unconstitutional encroachments of the President. Military expeditions have departed from our shores in defiance of the laws and with the ardent connivance of the President, to attack and plunder the neighboring people, with whom we were at profound peace, for the avowed purpose of extending Slavery and incorporating new Slave States into the Union. The Vice-President of the United States left his seat in the Senate and organized armed bands of men, and marched in martial array into a Territory, to defeat by force the will and wishes of the people at the ballot-box, for the same nefarious purpose. A great public river was closed to the passage of peaceful steamers, and cannon planted on its shores to arrest its navigation, while hotels, private houses and public bridges were burned and destroyed by the officials holding commissions under the seal of State and the sign manual of the President.

Nothing but the indignant voice of the people, expressed through the ballot-box, has been able even to check the ferocity of those enemies of the popular liberties, by depriving them of the further use of the House of Representatives to effect what they intended.

This spirit of Slavery has begotten in the minds of many thinking and moderate men in the Free States, an intense hatred of the system which has thus exhibited its natural tendencies. It has been under such provocations as these that even men of moderation have given vent to their irrepressible indignation. They have heard the alarming doctrine extra judicially announced from the Supreme Bench, that Slavery is national—that the Constitution of the United States carries of its own force Slavery into all the Territories—and they have witnessed a flagrant attempt upon the sovereignty of our own State to enforce the transit of slaves through our great metropolis as a mart for men. They have seen the Slave States the cruel and inhuman execution of the Fugitive Slave law, amid the indignation of the citizens. They have seen free men seized and surrendered to false claimants, by summary proceedings without the ordinary forms of law—deprived of the habeas corpus and of the trial by jury—sentenced and delivered to Slavery by petty Commissioners who have received double compensation for a decision unfavorable to liberty. The public treasury has been squandered for private purposes, and the temples of justice girded with chains, in the recovery by a claimant of this species of property. Men, and even women, have been driven from some of the States of the Confederacy, not for any offense against the peace or the laws of the States where they were sojourning, but because they had in correspondence with friends at home, or with the press in distant States, expressed their dislike of the slave system at the South, or related some startling fact that fell under their own observation.

Can it, then, be regarded as a matter of surprise or astonishment, that these accumulated wrongs and outrages should excite some portion of our own people? Can it be matter of astonishment, that they should appeal to the sovereign Legislature of the State of New-York, by petition or by bill, to throw additional safeguards and securities around the personal rights of the inhabitants of a Free State? What, though they ask more than we can grant? These men are not traitors, nor the enemies of civil or social order. Our denunciations should be first hurled at those real foes to the public peace, and to the Constitution and to the Union, who, armed with power and filled with insolence, proudly trample in the dust the very principles of the popular liberties. In these petitions we may "*pardon something to the spirit of liberty*."

The majority of this committee affirm, in their report, that the parties asking for the passage of this bill, were not acting in ignorance of the national laws and Constitution, and repeat that these are too well known and too generally discussed to leave room for any such conclusion. But the undersigned, while highly esteeming the very distinguished ability of the honorable Senators who have given sanction to that report, begs leave to differ most radically and totally from the above conclusion. That people should disagree upon the meaning of the Constitution, or a statute, is not strange, but common. Such disagreement arises in our familiar discussions of such subjects, in our legislative debates, at the forum, and even among the occupants of the highest seat of justice. That these respectable petitioners should differ, on such topics, from the members of this committee, may not unreasonably be expected.

There are several legal propositions contained in the majority report, from which the undersigned totally dissents, deeming them more grossly unconstitutional than any proposition to be found in the bill which it denounces. One of these errors is embraced in the following extract from that report:

"The language of the Court, in one of the cases above cited, that 'The Constitution of the United States does not *confer*, but 'secure the right to reclaim fugitive slaves against State legislation,' puts this question upon its true ground." "It is no law of "*this State, it is no provision of the Constitution that makes or* "*surrenders* a slave; it is the law of the State where it is created, "with which rests alone this responsibility."

The undersigned believes that no sentence can be extracted from the opinions delivered in the Dred Scott case, by any of the judges, which is more flagrantly unconstitutional, and more subversive of the rights of the States and of the people, than this. It is this very doctrine by which Slavery expects to be carried, by judicial legislation, into our entire national domain. It is this doctrine by which she threatens to force herself into the Free States, to find a lodgment and a mart in the heart of our own metropolis. According to this idea the right to reclaim fugitive slaves *against State legislation*, mark these words—AGAINST STATE LEGISLATION—is not *conferred* by the Constitution; that is, it exists without even the aid of the Constitution, and that, too, *against* State legislation. The Constitution, if this be true, *secures* that right; in other words, sanctions that right; but it is a right which exists outside of the national compact. Consequently State legislation could not, even if the constitutional clause were not in existence, prevent, by all its statutes, courts, or executive forces, the entry into our own State limits of the master in pursuit of his escaped slave.

Against this doctrine the undersigned enters his solemn protest; in his own name; in the name of the Republican party; in the name of the Free States; in the name of State Rights; in the name of the Constitution.

The majority report also contains these words:

"We need not cite authority to show that the Supreme Court of the United States is competent to pass upon the constitutionality of a law of Congress, and that the decision becomes the law of the land. So far, then, as this bill seeks to overthrow any provisions of laws of Congress held constitutional by the Supreme Court of the United States, it is revolutionary."

To so much of the preceding as asserts that *the decision becomes the law of the land*, the undersigned totally dissents. The decision becomes the end of the controversy between those litigating parties; it ends their lawsuit, and execution follows the judgment rendered; but no decision becomes *a law* beyond such extent in any judicial proceeding whatever. It will be regarded by the profession, and by the public, as stronger or weaker evidence of what the Court would be likely to do in a like case, again before the Court; but it is not the law of the land. Nor does the Constitution anywhere declare that the decision of that, or of any, Court shall be the *law of the land*. If it were the *law of the land* the Court could not decide in other cases against it, because the Court cannot *alter the law*. *Jus dicere non jus dare* is the rule that binds all Courts; to declare what the law is in the case before them, not to *make* the law. A Court *makes a decision*, but does not *make the law*.

The Supreme Court of the United States have in numerous instances *reversed* their own solemn decisions. They have decided one case one way, and afterward have, on further consideration, decided the same case the other way. The first decision, though wrong, was still the law to the parties before the Court; but when the second decision came, it ceased to be longer respected. This is what is declared in the Constitution itself. "This Constitution, and the laws of the United States which "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*."

We do not find any countenance in the Constitution to the notion that a judicial decision between A and B is or ever was the law of the land. This would clothe the Supreme Court with more than Papal infallibility, and establish among us a new jurisdiction, like the iron code of the Medes and Persians, that changes not.

It is undoubtedly true that the Fugitive Slave act has caused great ill feeling in the Northern mind. There are many people who doubt the Constitutionality of many of its provisions, and many others who doubt the whole of it. These opinions are by no means confined to laymen, but are entertained by very able members of the legal profession. There is no doubt whatever that it suspends the writ of *habeas corpus*. The evidence of that fact is contained in the majority report of this Committee, in the following passage:

"And it is further declared by said section that such certificate"—referring to the Commissioners' certificate for the return to slavery of the person claimed—"shall be *conclusive* of the right of the person or persons in whose favor granted, to remove such fugitive to the State or Territory from which he escaped, and shall prevent all molestation of such person or persons by *any process issued by any* COURT, JUDGE, MAGISTRATE, or any person whatsoever."

Language could not be made plainer than this. If *no process* can reach a person thus held, *issued by any Court, Judge or Magistrate*, how can the *process of habeas corpus* be brought into requisition?

The Constitution, on the other hand, declares as follows: "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."

How, then, without a violation of the Constitution, in a time of peace, when rebellion or invasion does not exist, can the privilege of this sacred writ be suspended and totally abrogated?

There is still another unconstitutional and most dangerous doctrine advanced in the majority report, which is this, that the army and navy lie at the disposal of the President as his ordinary means to execute the laws. This is boldly asserted in the report as established authority. On the contrary, the army and navy cannot be thus employed in the States for the execution of judicial process, except in such emergencies as Congress have authorized the use of them. The friends of republican government may be permitted to hope that the time is far distant when navies or armies shall be allowed to move at the Presidential nod, and enter within the State jurisdictions for such a purpose.

The supplemental report of two of the Committee closes with certain words, marked as a quotation: "An irrepressible conflict "between the North and the South;" and the public, from that circumstance, with its evident allusion to a distinguished statesman, may be erroneously led to attribute that expression to him. The two members of the Committee are, however, mistaken themselves in this respect. The irrepressible conflict mentioned by him was between two principles, two systems of labor; and he never said there was an irrepressible conflict between the North and the South.

The undersigned has treated the subject in hand at far greater length than he at first contemplated. He does not believe that any serious dangers threaten the Constitution or the Union. On the contrary, the popular elections, which are an index of public sentiment, have furnished recent proofs of a satisfactory kind, that both the Union and the Constitution are sacredly regarded by the mass of the people in the Free States. Obedience to the Constitution and loyalty to the Union, do not demand of us any sacrifice of those sacred personal rights and liberties which should be the first object of every Christian government. The *habeas corpus and a trial by jury are a part of the Constitution*, and the preservation and careful protection of the privileges of these two ancient monuments of freedom do not evince any want of fealty to the government under which it is our fortune to live.

The undersigned reports the following resolutions, and recommends their passage:

Resolved, That the bill be recommitted, with power to amend, and report complete.

Resolved, That a Personal Liberty bill ought to pass, containing the *habeas corpus* and *trial by jury*, with other guaranties and securities of the rights and liberties of the people of the State.

All which is respectfully submitted. G. D. LAMONT.

SLAVE-CATCHING—MR. DIVEN'S REPORT.

To the Editor of The N. Y. Tribune.

SIR: In common with the multitude, I have read, with chagrin and deep regret, the report of two of our most eminent Senators upon the Personal Liberty bill; and it in no degree diminishes that regret that the sentiments of the report are "cordially concurred in" by the two Democratic Senators who were members of the same Committee.

In the expression of this feeling, I neither approve or disapprove the bill before them, in form or substance. The bill was one thing: the doctrines inculcated in the report are quite a different matter, and must stand or fall upon their own merits.

I propose now to review some of the positions taken in that report, and show, if I can, that they are not sustained either by right, reason or authority.

The old but nearly obsolete maxim—obsolete, I mean, as applied to the growing usurpations of our National Government—*obsta principiis*, demands vigilance, and the active cooperation of all who would not see themselves robbed of the last vestige of State Sovereignty.

I propose to examine, first, the propositions of the Committee, and then the decisions of the United States Supreme Court upon which those propositions seem to be founded.

The peculiar phraseology used by the Committe in the opening paragraph, and elsewhere in the Report, must strike every reader as extraordinary, when coming from a Committee of such distinguished lawyers. In five distinct instances, in that opening paragraph, "the laws of Congress" and "the provisions of the Constitution" are blended and confounded together, so as apparently to give to the one the same obligatory force and binding power over the conscience and the action, as the other. One would infer, from the general tenor of the Report, that a law of Congress was entitled, whether constitutional or not, to the same reverence and obedience as the Constitution itself.

The Government of the Union, in all its branches, Executive, Legislative and Judicial, is one of limited and special jurisdiction; and in this respect the principles which govern the construction of powers applicable to sheriffs, supervisors, and justices, are applicable respectively to the President, Congress and the Judges. As officers of special and limited jurisdiction, every act of theirs not clearly sanctioned by the authority by which they are created is utterly void. In this respect, our Congress differs most essentially from the English Parliament. That body has often been pronounced "omnipotent." It is absolute; for there is no power to control or stay its progress. Hence it has become a maxim, "*Parliamentum omnia potest*." Far different, however, is the theory, whatever may be the growing practice, of our own. Our whole Government is a creature of the Constitution—as much so as a justice of the peace is of the law of the State. With the single exception of the larger powers granted to them, the Judges of the Supreme Court of the United States are on precisely the same footing as our justices of the peace. In this respect, the Government of a State, in all its branches, and in every respect, is infinitely superior in dignity to that of the United States. The State Government is absolute, except so far as its power is *restrained* by the Constitution. The Government of the United States is a non-existence, except so far as power is expressly "*delegated*" by the Constitution.

There are men, and some well-meaning men, who are continually blurting out their determination "to abide by the compromises" of the Constitution; and this phrase has become a kind of political watchword and party make-weight, whenever the influence of Slavery is needed to carry a Union election.

What do those who use this phrase mean by it? I know of nothing to which it can be applied properly but to those constant "compromises," by which Freedom is, little by little, slaughtered on the altar of Slavery. At the formation of the Constitution, certain differences of opinion existed between the members, the more difficult and distracting of which—the formation of a Senate—had no relation to Slavery. These differences were all finally adjusted, or, in modern slang, "compromised." But the whole history of that Convention shows that there was no "compromise" demanded or granted in relation to the clause about delivery on demand "persons held to service," but that the whole matter was disposed of with entire harmony. The Constitution was formed and adopted, and every man who now holds, or has held office, has sworn to support that instrument. Does, then, the affirmation to abide by "the compromises" of the Constitution mean something different from abiding by the Constitution? Certainly, in the minds of those who use it, for they would not be guilty of the folly of using such a circumlocution, meaning nothing. What, then, *does* it mean? If it means one whit more, or one whit less than we have all sworn—namely, to support the Constitution—then it means rank treason. To me, the object and design of the phrase seems evident enough. The Constitution says nothing directly of Slavery. It gives Congress no power ever it, except to suppress the traffic in slaves. But the progress of events has demonstrated that the interest of that loathsome practice needs for its furtherance, and even for its permanent existence, the interposition of Congress in its behalf. As this interposition could not be obtained, by virtue of any delegated power of that Constitution, which we have sworn to support, it became necessary to foist in to that instrument, by hook or by crook, a meaning and power which its plain language does not import. Hence the radicals, who would adulterate the pure fountain of our country's happiness and security, coined the smooth but treacherous phrase, and announced the doctrine that they would abide by (not the Constitution. Oh, no!) but the "*compromises*" of the Constitution.

In the Report, the "Laws of Congress" and "the provisions of the Constitution" are so jumbled together that a plain man would suppose them to mean pretty nearly the same thing. The doctrine of the report, so far as I understand it, is, that the laws and the Constitution are equally solemnly binding upon us all, and any resistance to any law of Congress is treason. This doctrine received extensive attention and careful examination, in those years, when the subservient agents in this country of an overbearing and despotic ministry in England attempted to enforce upon the people of that day their favorite dogma of passive obedience and non-resistance, as the true principle of human government. Whether the people of to-day, after an education of seventy-five years in the elements of civil liberty, are ready to subscribe to the servile doctrine which their fathers rejected with such scorn remains to be seen.

Ours is, theoretically, a Constitutional Government. My conscience and my conduct are both bound by the Constitution—but by all the laws of Congress—not by a long shot. Congress, as well as the Judiciary, is the creature of the Constitution. Every law enacted in accordance with that Constitution I am bound, conscientiously, to obey. Any law of Congress for which no warrant is found there I am no more bound by than I am by the ecclesiastical rescripts of the Mormon Junto.

The eighth section of the first article of the Constitution confers power on Congress. It commences, "The Congress shall have power;" and then in 16 subdivisions distinctly states upon what subjects Congress shall have power to legislate. Not a syllable there can by any contortion be perverted into a grant of power over Slavery, except (by implication) in the District of Columbia. Where, then, is the authority of Congress to enact a Fugitive Slave Law found? I judge from the Report that it is claimed only under the third subdivision of the first section of the fourth article, which reads as follows:

"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."

Upon this provision the Committee remark:

"The right of the *master to retake the fugitive* from service does not depend on the laws of Congress, but is guaranteed by the Constitution itself."

Indeed! will the reader look again and discover, if he can, in what part of it this monstrous proposition is found? If you do not find anything like it there, turn again to the Report:

"A citizen of another State from which a *slave* absconds, may pursue and *take* him, *without warrant*, and use as much force as is necessary to carry him back to his possession."

The Constitution of the United States is not polluted with the name of "slave." The Constitution of this State ignores the existence of such a being. The moment a *man* steps within the boundary of this State, whatever may have been his condition before, he is a *freeman*; and he who calls him slave is guilty of a libel upon human nature. Every "member" of this State is invested with the dignity of a man; and we have the solemn guaranty of our own State Constitution, that no such "member" can be disfranchised or deprived of any of the rights or privileges of any citizen, except by the law of the land, or the judgment of his peers.

"Slave" is a word unknown to our legal and constitutional vocabulary. Its use is a solecism which ought to be prohibited in respectable society. A "Member of this State" can be no more a slave than a saint could inhabit hell or a demon take up his abode in Heaven. He may be a slave before he enters the State and a slave after he leaves it, but while here he is only a "person" held to service, liable to be deprived of any of the rights of a "citizen," only by the law of the land.

The doctrine that every villainous slave-hunter, trapper and stealer may, at his own good pleasure, enter the precincts of this State, rove where he will, and grab whomsoever he chooses to claim as his slave, *without warrant*, and carry him out of the State, is utterly and irreconcilably at war with the private rights of every "member" of the State, and subversive of all independence and State Sovereignty.

The clause of the Constitution, which I before quoted, from the 1st section of the 4th article, is confessedly the only one in that instrument which confers any power on Congress to enact a Fugitive Slave Law.

The report of the Committee proceeds:

"The Constitution does not stop at the mere enunciation of the *right* of the *owner* to *seize his fugitive slave*. It declares that the fugitive shall be delivered up on claim of *property*."

Could any one, on reading the above quotation, avoid the inference, that in the Constitution there are two distinct grants of power, or assertions of right, namely, 1st. That the "*owner*" may seize his "*fugitive slave*;" and 2d. That the "*fugitive slave*" shall be delivered up on claim of "*property*"? And yet there is not, in the whole instrument, the remotest allusion to a "*seizure*" by the "*owner*" of a "*fugitive slave*." The use of the terms, "owner," and "*property*" and "*slave*," in this connection, is carefully and designedly excluded. There is not a word or syllable in the whole Constitution which can be made, directly or by implication, to affirm the right of property in human flesh. It is unworthy of any "member" of this State to designate any other as the "*owner*" of a man, or to describe any one as "*property*" or as a "*slave*." Such language is not justified by any organic law under which we live, nor is it becoming a Christian in the 19th century.

The grand question, after all, is: Does the clause referred to confer any power at all on Congress? I think none will claim that such power is conferred by the first branch of the clause:

"No person, held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any laws or regulation therein, be discharged from service or labor."

In this there is allusion to no body politic or corporate, but the *State* and *State Legislature*. The injunction then proceeds:

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

Now, this is all. If this does not grant the monstrous power claimed by Congress over the independence, legislation and sovereignty of the States, then there is no such grant anywhere. It cannot be bolstered up by any other provision, but it stands as the naked warrant for the despotic authority of Congress to enter every man's dwelling, kidnap his domestics, sever the ties of kindred, break the bonds of affection, snap the fingers at State interference to protect its citizens, and to trample the laws and dignity of the State in the dust. To my understanding, the meaning of the Constitution is as clear as words can make it. It first prohibits the *State* authorities from discharging, by law, persons held to service, and then in the same clause, and without the intervention of a period, colon or semi-colon, proceeds: "*But shall be delivered up*." Who shall be delivered up? Certainly, the person who has been *proved* to owe service to another, whether he be black or white, bond or free. And who shall deliver him up? The long iron arm of the United States? No, there has been no allusion to the United States Government in the whole clause, and no such power is "*delegated*," but the State authority where the person is found.

The Committee say: "The question as to the right "of Congress to provide for carrying out this provision "of the Constitution has been too long acquiesced in," "to be questioned at this time. Very well. "Acquiescence" in a law, I suppose, means non-resistance to that law. Non-resistance, then, to this law of 1793, is evidence of its constitutionality. But a large part of the Report is made up of an argument to prove that any resistance to a law of Congress is treason. "What then," say they, "will be the attitude of this "State toward the General Government but rebellion, "and what the acts of the State officers but treason"? A law, then, is enacted by Congress, notoriously unconstitutional. An individual cannot resist it, for that would be "treason." He therefore "acquiesces." The State cannot resist, for that would be "rebellion." The State therefore "acquiesces." Of course, nobody would be guilty of "treason" or "rebellion," and, therefore, its constitutionality cannot be tried before the court. Hence all "acquiesce," and finally this grave Committee pronounce this enforced "acquiescence" proof postive of the constitutionality of the law. *Quod erat demonstrandum*. If there be any doctrine more servile than this in the practice of the despotic governments of Europe, I beg to know what it is.

But does this rule of constitutional amendment, by "acquiescence" apply to all the country, or only to such parts as the Slave Interest may choose to have it? Nearly forty years ago, Congress enacted a law called a "Compromise," one part of which secured all that portion of United States Territories lying north of 36° 30' north, to Freedom. After it had been acquiesced in more than thirty years, the Supreme Court declared it unconstitutional. Why? Because it secured Freedom and not Slavery. And does the rule of acquiescence apply only where Slavery is to be the gainer? I know of no such mode of enlarging the basis of our constitutional rights and restrictions. If the right of Congress to enact a Fugitive Slave Law did not exist in 1793, it has no existence now, and, depend upon it, this doctrine of constitutional acquiescence, will land the country on rocks and quicksands which will shatter the Union into atoms.

"The constitutionality of this act has been repeatedly "decided by the Court." So says the Report. And in support of the dictum, they refer to four cases, namely, Stewart vs. Laird, 1 Cranch, 229; Martin vs. Hunder, 1st Wheaton, 304; Cohen vs. Virginia, 6 Wheaton, 264. In neither of these cases, so far as I am able to discover, did the Fugitive Slave Law come into question; nor was there any decision, direct or incidental, affecting that law, or its constitutionality. And of this I am the more certain, as in the later case of Prigg vs. Pennsylvania, Judge McLean says, "this clause of "the Constitution is now, for *the first time*, brought "before this Court for consideration." So recklessly do menin official and responsible stations dispose of principles and rights of supreme importance.

The only other case referred to is the celebrated one of Prigg vs. The Commonwealth of Pennsylvania, 16 Peters R., 539. In examining this case I remark, first, that the only question properly before the Court, was the constitutionality of a law of Pennsylvania, and as no opinion of a Court is of any validity, except so far as the question at issue is involved, nothing said or done by the Court could, upon well settled principles, be drawn in as a precedent to govern future cases beyond that particular law of Pennsylvania.

In this position I am confirmed by the remark of Judge Daniel, who agreed with Judge Story in the conclusion, but differed upon the opinion. He said:

"Guided by the rule just mentioned, it seems to me that the regular action of the Court in this case *is limited to an examination of the Pennsylvania statute*, to a comparison of its provisions with the third clause of the fourth article of the Constitution, and with the act of Congress of 1793, and that to accomplish these purposes, *a general definition*, a contrast *of the powers of the State and Federal Governments*, was neither requisite nor proper."

It is well known that, at the time of the adoption of the Constitution, a very large party, comprising, undoubtedly, a majority of the people in many of the States, with Hamilton at their head, were anxious for a stronger government. They were not satisfied with its democratical features, but would have given much more power to the General Government. Into the hands of this party, the exercise of the functions of the Government first fell; and many able and upright men, in the performance of their duties, in building upon the foundation laid, felt disposed to, and did, use great latitude in swelling the structure, sometimes much beyond the fair constitutional limits.

Such sentiments added to the universal conviction, which time has abundantly verified, that no man could attain the highest honors of our Republic, who should acquire the ill-will of the Slave States, has seduced many men of great talents and deserved consideration, into strange anomalies in reference to slave law.

No one holds the late Judge Story in higher estimation than I do, and yet I think it impossible for any one to read his opinion in the case last quoted, without discovering the effervescense of this old Federal leaven, somewhat clouding and warping his usually clear and correct judgment.

"In the case of Prigg vs. The Commonwealth of Pennsylvania. *The Court say.* Now this is the loose manner in which solemn and enduring principles are disposed of.

"The Court say": Surely this must mean the whole, or a very large majority of the Court. The quotation was from the opinion of Judge Story. There appears to have been seven Judges present. Of them, Wayne agreed in opinion with Story; while five others, namely, Taney, Baldwin, Thompson, Daniel and McLean, individually and distinctly declared that they *did not* agree in the opinion with what is called the opinion of the Court, though three of them *did* agree in his conclusion, the unconstitutionality of the Pennsylvania law. One of them (Baldwin) dissented entirely from the opinion of Story and from his conclusion, and only concurred on the ground that the person claimed had admitted that he was a slave. Three other Judges—Taney, Thompson and Daniel—held that the power of the States is concurrent with that of the United States, while Judge McLean sustained the Pennsylvania law on another ground. It is worthy of note here that the two strong arguments for absolute power in the General Government, were given by Judges from Free States. The opinions in favor of State rights and jurisdiction, were given by Judges from the Slave States. Now, what is this case worth even in reference to the law of 1793? and how infinitely less, as applied to the law of 1850?

In his opinion, Judge Story says: "If, indeed, the "Constitution guarantees the right, and if it requires "the delivery upon the claim of the '*owner*' [where "in the Constitution is that word or idea found?], as "cannot be doubted *the natural inference certainly is*, "that the National Government is clothed with appropriate authority and functions to enforce it." How was it possible for one as eminent as Judge Story, by a mere *inference*, to clothe Congress with a power so unusual and monstrous, and at the same time be aware of the provision that "*the powers not delegated* to the "United States by the Constitution are reserved to the "States or People?" Chief-Justice Taney, in his opinion, truly says: "The obligation to protect rights "of this description is *imposed upon the several States*, "as a duty which they are bound to perform;" and his reasoning, applied to the law of 1850, seems to me quite unanswerable. "The language used in the Constitution," he says, "does not, in my judgment, justify "the construction given by the Court" (that is the opinion of Story). "It contains no words prohibiting "the several States from passing laws for enforcing "this right; and the words of the article which direct "that the fugitive 'shall be delivered up' seem evidently designed to impose it as a duty *upon the people* "*of the several States* to pass laws to carry into execution the compact into which they thus solemnly entered with each other."

The soundness of another statement of the Chief Justice has been fully sustained by our experience of the working of the law of 1850. He says:

"If a State could not authorize its officers, upon the master's application, to come to his aid, the guaranty contained in the Constitution was of very little practical value."

Of what practical value is the law of 1850? It was stated recently in a Southern paper that the last slave had been reclaimed under that law. This may not be literally so; but the law is now not practically worth the paper it is printed on.

He further asserts, what will be new to many, that the Act of 1793 does not authorize the Judge to issue a warrant to arrest the fugitive; *but evidently relied on the State authorities* to protect the owner in making the seizure. They legislate with express reference to State support, and it will be remembered that when this law was passed (1793) the Government of the United States was administered by the men who had but recently taken a leading part in the formation of the Constitution, and the reliance obviously placed upon State authority, for the purpose of executing this law, proves that *the construction now given to the Constitution had not entered into their minds*.

Such, then—no more—is the force and authority of the famous case of Prigg vs. the Commonwealth of Pennsylvania. As a prop to the constitutionality of the Fugitive Slave Law—even the old one, infinitely less exceptionable than the new—it is utterly worthless.

The case of Jack vs. Martin went up to the Court of Errors from our Supreme Court, where Judge Nelson held the Fugitive Slave Law constitutional. In the Court of Errors, the case was disposed of upon another point; but Walworth, in giving his opinion, denied the right of Congress to legislate on the subject. In this instance, we have a signal illustration of the demoralizing and baneful influence which, upon the subject of Slavery, is quietly undermining the moral firmness and political integrity of our Northern statesmen. Nelson pronounced an opinion in favor of the Fugitive Slave Law; Walworth against it. I hold both gentlemen in high estimation for their many estimable qualities and high legal attainments—Walworth, certainly in no respect inferior to Nelson. Both were alike strict adherents of the Democratic party. Walworth was nominated for the post of Judge of the Supreme Court of the United States; but his upright and independent opinion against the constitutionality of the Fugitive Slave Law was a fatal bar to his confirmation, and Nelson succeeded.

How deplorable must be the influence of one such case upon the integrity of ambitious and aspiring men! But this is one only of many which have occurred, and the lamentable results are manifesting themselves daily in the subserviency of our most eminent men to the dictates of Southern interests.

Opposed by all the world, my opinion would be as decided as it now is. But when sustained by the judgment of such men as Taney, Walworth and Webster, before his colossal mind had been shaken by adversity, I feel the more confident in the soundness of my own. S. W. T.

*Canandaigua, April 20,