AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 4: The Early National Era – Powers of the National Government

House and Senate Debate on the Missouri Compromise (1819)[1]

Sectional tensions intensified in 1818, when the people of the Missouri Territory petitioned for admission into the Union. Republican Representative James Tallmadge of New York proposed that Missouri be admitted only if the state agreed to pass laws that would require the gradual emancipation of slavery. Opponents claimed that Congress had no authority to prevent the introduction of a new slave state into the Union or require any other special condition for statehood that was not demanded of existing states. The House voted 82 to 78 to require the exclusion of slavery in the new state of Missouri. When the Senate rejected the restriction, the Fifteenth Congress ended without an agreement on admitting Missouri.

By 1819 the Missouri question became the chief political issue facing the country. State legislatures bombarded the Congress with petitions on all sides of the issue. An opportunity for compromise arose when Maine applied for admission as a state. On February 16, 1820, the Senate agreed to unite the Maine and Missouri bills into one bill. The following day the Senate agreed to an amendment that would prohibit slavery in the Louisiana Territory north of latitude 36º30′—a line south of such existing and proposed slave states as Missouri, Kentucky, and Virginia. The House initially rejected the compromise that was proposed by the Senate, passing a bill that admitted Missouri without slavery. However, after a House-Senate conference agreed to the Senate version, the House voted 90 to 87 to allow slavery in Missouri. It then voted 134 to 42 to prohibit slavery in the Louisiana Territory north of latitude 36º30′.

Most of the constitutional debate focused on Congress's authority to impose a "restriction" on a new state and whether new states must be admitted on "equal footing" with existing states (as provided by the Northwest Ordinance). We take for granted that new states have the same control over their internal affairs as older states and are no more or less subject to federal authority or supervision. But heated exchanges took place on this fundamental question of what it means to admit new states into this Union. Could they be admitted conditionally or on more restricted terms than other states?

On the issue of Congress's authority to regulate slavery in the territories there was significantly less attention and division. The vote in the Senate on accepting the territorial ban was 34 to 10. Southerners generally supported the territorial restriction. In their view, the northern regions of the Louisiana Purchase were unlikely to be settled in the foreseeable future. Tolerating limits on slavery where slaveholders were unlikely to settle seemed, at least in 1820, a small price to pay for obtaining Missouri as a slave state. Nevertheless, virtually all southerners who spoke on the matter insisted that Congress had no power to ban slavery in the territories. Many anticipated arguments that would later be used when the constitutional status of slavery in the territories heated up again in the Jacksonian Era. Before signing the compromise legislation, President Monroe asked his Cabinet whether Congress could impose such a ban in the territories. Everyone agreed that the answer was yes.

The Missouri Compromise successfully managed a serious political crisis, but it did not resolve the underlying conflict. A little more than a month after the resolution, Jefferson wrote: "the momentous question, like a fire bell in the night, awakened and filled me with terror. I considered it at once as the knell of the Union. It is hushed, indeed, for the moment. But this is a reprieve only, not a final sentence. A geographical line, coinciding with a marked principle, moral and political, once conceived and held up to the angry passions of men, will never be obliterated; and every new irritation will mark it deeper and deeper."[2]

[1] Excerpt taken from *Annals of Congress*, House, 15th Congress, 2nd Session (1819), 1169–1213.
[2] Thomas Jefferson, "To John Holmes, April 22, 1820," in *The Writings of Thomas Jefferson*, ed. Paul Leicester Ford, vol. 10 (New York: G.P. Putnam's Sons, 1899), 157.

Mr. John W. TAYLOR (Republican, New York)

Mr. Chairman, . . . those whom we shall authorize to set in motion the machine of free government beyond the Mississippi, will, in many respects, decide the destiny of millions…. Our votes this day will determine whether the high destinies of this region, and of these generations, shall be fulfilled, or whether we shall defeat them by permitting slavery, with all its baleful consequences, to inherit the land. . . .

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. . . The third section of the fourth article declares, that "the Congress shall have power to dispose of and make all needful rules and regulations respect the territory, or other property, belonging to the United States." It would be difficult to devise a more comprehensive grant of power. . . . Until admitted into the Union, this political society is a territory; all the preliminary steps relating to its admission are territorial regulations. Hence, in all such cases, Congress has exercised the power of determining by whom the constitution should be made, how its framers should be elected, when and where they should meet, and what propositions should be submitted to their decisions. After its formation, the Congress examine its provisions, and, if approved, admit the State into the Union, in pursuance of a power delegated by the same section of the Constitution, in the follow words: "New States may be admitted by the Congress into the Union." . . . [I]f Congress has the power of altogether refusing to admit new States, much more has it the power of prescribing such conditions of admission as may be judged reasonable. The exercise of this power, until now, has never been questioned. The act of 1802, under which Ohio was admitted into the Union, prescribed the condition that its constitution should not be repugnant to the ordinance of 1787. The sixth article of that ordinance declares, "there shall be neither slavery nor involuntary servitude in the said Territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted." The same condition was imposed by Congress on the people of Indiana and Illinois. These States have all complied with it, and framed constitutions excluding slavery. Missouri lies in the same latitude. Its soil, productions, and climate are the same, and the same principles of government should be applied to it.

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Mr. P. P. BARBOUR (Republican, Virginia)

[W]e have no Constitutional right to enact the provision. . . . [W]hilst the proposed State continued a part of our territory, upon the footing of a Territorial government, it would have been competent for us, under the power expressly given, to make needful rules and regulations—to have established the principle now proposed; yet, the question assumes a totally different aspect when that principle is intended to apply to a State. This term State has a fixed and determinate meaning; in itself, it imports the existence of a political community, free and independent, and entitled to exercise all the rights of sovereignty, of every description whatever. . . . It is true that slavery does not exist in many of the original States; but why does it not? Because they themselves, in the exercise of their legislative power, have willed that it shall be so. But, though it does not now exist, it is competent for them, by a law of their own enactment, to authorize it—to call it into existence whenever they shall think fit. Sir, how different would be the situation of Missouri, if the proposed amendment be adopted. . . .

. . . But it has been said that we imposed conditions on the admission of the State of Louisiana into the Union. What were these conditions? That civil and religious liberty should be established, and the trial by jury secured. It cannot be necessary to remind the House, that these several provisions attached also to the original States, by the most explicit declaration to that effect, in the first, fifth, and seventh amendments to the Constitution of the United States…. All that he contended for was, that we could impose no condition upon the new States, which the Constitution had not imposed upon the old ones; . . .

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Mr. JAMES TALLMADGE (Republican, New York)

Sir, the … gentlemen, from Georgia [Mr. Cobb], . . . has said, "that, if we persist, the Union will be dissolved;" and, with a look fixed on me, has told us, "we have kindled a fire which all the waters of the ocean cannot put out, which seas of blood can only extinguish."

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Sir, if a dissolution of the Union must take place, let it be so! If civil war, which gentlemen so much threaten, must come, I can only say, let it come! . . . If blood is necessary to extinguish any fire which I have assisted to kindle, I can assure gentlemen, while I regret the necessity, I shall not forbear to contribute my mite. . . . An evil so fraught with such dire calamities to us as individuals, and to our nation, and threatening, in its progress, to overwhelm the civil and religious institutions of the country, with the liberties of the nation, ought at once to be met, and to be controlled. If its power, its influence, and its impending dangers have already arrived at such a point that it is not safe to discuss it on this floor, and it cannot now pass under consideration as a proper subject for general legislation, what will be the result when it is spread through your widely extended domain? Its present threatening aspect, so far from inducing me to yield to its progress, prompts me to resist its march. Now is the time. It must now be met, and the extension of the evil must now be prevented, or the occasion is irrecoverably lost, and the evil can never be contracted.

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. . . Whenever the United States have had the right and the power, they have heretofore prevented the extension of slavery. The States of Kentucky and Tennessee were taken off from other States, and were admitted into the Union without condition, because their lands were never owned by the United States. The Territory Northwest of the Ohio is all the land which ever belonged to them. Shortly after the cession of those lands to the Union, Congress passed, in 1787, a compact which was declared to be unalterable, the sixth article of which provides that "there shall be *neither slavery nor involuntary servitude* in the said territory, otherwise than in the punishment for crimes, whereof the party shall have been duly convicted." . . .

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Sir, there is yet another, and an important point of view in which this subject ought to be considered. We have been told by those who advocate the extension of slavery into the Missouri, that any attempt to control this subject by legislation is a violation of that faith and mutual confidence upon which our Union was formed and our Constitution adopted. This argument might be considered plausible, if the restriction was attempted to be enforced against any of the slaveholding States, which had been a party in the adoption of the Constitution. But it can have no reference or application to a new district of country recently acquired. . . . The Constitution provides that the Representatives of the several States to this House shall be according to their numbers, including three-fifths of the slaves in the respective States. This is an important benefit yielded to the slaveholding States, as one of the mutual sacrifices of the Union. . . .

But none of the causes which induced the sacrifice of this principle, and which now produce such an unequal representation of the free population of the country, exist as between us and the newly acquired territory across the Mississippi. That portion of the country has no claims to such an unequal representation, unjust in its results upon the other States. . . . Abstract from the moral effects of slavery, its political consequences in the representation under this clause of the Constitution demonstrate the importance of the proposed amendment.

Mr. DANIEL COOK [Republican, Illinois]

. . . . Congress' discretionary power to admit states into the Union] was given for the purpose of allowing Congress to prohibit or admit the extension of slavery, as in its wisdom might seem most conducive to the general welfare. And, to establish this position, I will now ask the attention of the Committee to the history of this provision, while under consideration of the Convention. In the draught

of a constitution reported on the 6th of August, by the committee of five, after proposing that it should be necessary for two-thirds of the members present, of each branch of Congress, to consent to the admission of new States, they further report, that "if the admission be consented to, the new States shall be admitted on the same terms with the original States." On the 30th of August, when this part of the report of the committee was acted upon, it was moved to strike out that part of it which proposes their admission on "an equal footing with the original States," and it was agreed to.

Previous to this time, I will again repeat it, it was agreed that the slaves should be represented, and also that the States then existing should have the right of deciding whether they would tolerate the importation or migration of slaves previous to 1808, or not. To say that the new States, therefore, should be admitted on the same terms with the original States, was to give to them the power also of admitting or rejecting slavery; and as, in the exercise of that power, the new States might destroy the leading principle of this compromise, by giving the balance of power to the slaveholding States, and allow its unlimited expansion; and because it would, as I have before stated, virtually authorize the new States to be formed in the Northwest Territory to repeal the restriction imposed by the compact contained in the ordinance of 1787; it was stricken out, leaving Congress, therefore, to exercise the very discretion which is now proposed to be exercised in admitting Missouri.

Mr. WILLIAM PINKNEY [Republican, Maryland]

What is [the] Union? A confederation of States equal in sovereignty, capable of everything which the Constitution does not forbid, or authorize Congress to forbid. It is an equal Union between parties equally sovereign. They were sovereign, independently of the Union. The object of the Union was common protection for the exercise of already existing sovereignty. The parties gave up a portion of that sovereignty to insure the remainder. . . . [I]t is to that Union that a new State is to come. By acceding to it, the new State is placed on the same footing with the original States. . . .

It is into "this Union," that is, the Union of the Federal Constitution, that you are to admit, or refuse to admit. You can admit into no other. You cannot make the Union, as to the new State, what it is not as to the old, for then it is not *this Union* that you open for the entrance of a new party. . . .

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Is the right to hold slaves a right which Massachusetts enjoys? If it is, Massachusetts is under this Union in a different character from Missouri. . . .

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It is said that the word *may* necessarily implies the right of prescribing the terms of admission. . . . Give to that word all the force you please, what does it import? That Congress is not *bound* to admit a new State into this Union. Be it so for argument's sake. Does it follow that when you consent to admit into this Union a new State you can make it less in sovereign power than the original parties to that Union [?]. . . . You can prescribe no terms which will make the compact of Union between it and the original States essentially different from that compact among the original States. You may admit, or refuse to admit: but if you admit, you must admit a State in the sense of the Constitution. . . .

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. . . . [W]e are informed that there is a clause in this instrument which declares that Congress shall guaranty to every State a republican form of government; that slavery and such a form of government are incompatible; and, finally, as a conclusion from these premises, that Congress not only have a *right*, but are *bound* to exclude slavery from a new State. . . .

. . . [However,] the introduction of continuance of civil slavery is manifestly the mere result of the power of making laws. It does not, in any degree enter into the form of the government. . . . [Moreover,] do gentlemen perceive the consequences to which their arguments must lead, if they are of any value? Do they reflect that they lead to emancipation in the old United States—or to an exclusion of Delaware, Maryland, and all the South, and a great portion of the West, from the Union?