JOHN VAN DYKE

(April 3, 1805 - December 24, 1878)

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1. The Compromise of 1850.

"Every man in this House" ought to resign, [Linn] Boyd [of Kentucky] blasted, and let the people "send here Representatives better disposed to do their duty and to save the Union."

So, for the next several days, the struggle continued amid "great confusion" in the chamber and "constant disorder." There were repeated demands for a roll call—eleven, to be exact— but the Speaker [of the House, Howell Cobb] managed to ward them off and keep control. President Fillmore met privately with Whig members and used what influence he had with them to win their support for the compromise. Clay, too, pressed his friends to help. "It was an exciting time," reported the *New York Herald* on September 7, "and much confusion prevailed." Members left their desks a circulated around the chamber, talking up the compromise or denouncing it according to their commitment.

Finally, on September 6, the engrossment of the "little omnibus" came up for a final vote. As the roll call proceeded, members crowded around the clerk's desk to see which way the vote was going. The count ended and Cobb rapped his gavel to announce the result.

"Ayes 107," he cried. Then, he halted when he saw a late comer enter the chamber and record his vote.

"Yeas 108," Cobb corrected himself, "nays 98."

The House exploded with cheers, shouts, whistles, and foot stamping. For all intents and purposes the Union was saved. The Compromise of 1850 had passed.[1]

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[1] **Robert V. Remini, *At the Edge of the Precipice: Henry Clay and the Compromise that Saved the Union* 150 (Basic Books, 2010) (citations omitted).**

The Compromise of 1850 was a series of individual settlements of five interdependent controversies: public slave markets in the District of Columbia were abolished; a tough Fugitive Slave Act requiring the return of runaway slaves was enacted; California was admitted to the Union as a free state; the territories of Utah and New Mexico were organized with popular sovereignty provisions (that is, slavery could be banned or introduced at the option of their settlers); and a dispute over the Texas-New Mexico boundary was resolved when the federal government assumed debts of Texas.

While all political and sectional factions in Congress were torn by these controversies, the two dozen or so Northern Whigs in the House of Representatives were particularly buffeted. Most had vowed to not permit slavery to be extended to a new territory, yet they were under pressure from party leaders, senators and the Fillmore administration to compromise with Southerners to preserve the Union.[2] Among them was John Van Dyke, a prominent lawyer and former mayor of New Brunswick, New Jersey, who was serving his second term when the bills embodying the various compromises were debated and voted upon.[3]

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[2] **Michael F. Holt, a master historian of the ante-bellum period, writes:**

> **From the [Fillmore] administration's viewpoint, acceptance of the Compromise as a settlement of the four year old quarrel over the territories was necessary for the good of the nation and the survival of the Whig party.**
>
> **Across the North, however, most Whigs viewed endorsement of the Compromise as a betrayal of principles and a prescription for electoral disaster. It flouted commitments they had made to northern voters, and, they believe, it nullified their significant advantage over northern Democrats by aping Democrats' pro-Compromise posture.**

Michael F. Holt, *The Rise and Fall of the American Whig Party: Jacksonian Politics and the Onset of the Civil War* 551 (Oxford Univ. Press, 1999).

[3] **A contemporary congressional directory gives the results of his elections:**

> **Van Dyke, John, . . . was elected a representative from New Jersey in the Thirtieth Congress as a Whig, receiving 6,340 votes against 5,173 votes for Kirkpatrick, Democrat; was re-elected to the Thirty-first Congress, receiving 7,282 votes against 6,023 votes for Hilliaid, Democrat, serving from December 6, 1847, to March 3, 1851. . . .**

Benjamin Perley Poore, *The Political Register and Congressional Directory* 674 (1878).

Van Dyke's major contribution to the debates leading to the Compromise occurred on March 4, 1850, when he delivered a lengthy address on the House floor ostensibly on the question of the "Admission of California" but really countering Southerners' allegations that Northerners were insulting and acting aggressively toward slaveholders. He combined the techniques of a trial lawyer's closing argument with a politician's rich rhetoric — facts, history, sarcasm, hyperbole, more facts, flattery, ridicule, poetry and still more facts — to demolish Southern claims.[4]

Six months later, when the various bills came for a final vote, Van Dyke and other Northern Whigs faced the predicament of trying to abide by their anti-slavery vows while preserving their party and the Union. On September 6, 1850, he voted against the bill setting the Texas border and organizing the New Mexico Territory with a popular sovereignty clause.[5] The next day, he voted to admit California as a state,[6] but against organizing the Utah Territory, probably

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Van Dyke's entry in the online *The Biographical Directory of the United States Congress* has several errors: he was born in 1805, not 1807; he served in the Minnesota House in 1872, not the Senate; and he was a district court judge from March 1873 through the end of that year, not to 1878:

> **VAN DYKE, John, a Representative from New Jersey; born in Lamington, Somerset County, N.J., April 3, 1807; completed preparatory studies; studied law; was admitted to the bar in 1836 and commenced practice in New Brunswick, N.J.; prosecuting attorney of Middlesex County in 1841; mayor of New Brunswick in 1846 and 1847; president of the Bank of New Jersey at New Brunswick; elected as a Whig to the Thirtieth and Thirty-first Congresses (March 4, 1847-March 3, 1851); declined to be a candidate for renomination in 1850; resumed the practice of law; delegate to the Republican National Convention in 1856; judge of the New Jersey Supreme Court 1859-1866; moved to Minnesota in 1868 and settled in Wabasha, Wabasha County; member of the State senate in 1872 and 1873; judge of the third judicial district of Minnesota 1873-1878; died in Wabasha, Minn., December 24, 1878; interment in Riverview Cemetery.**

[4] Congressional Globe, 31st Cong., 1st sess., Appendix, at 321-27 (March 4, 1850). His address is posted in Section 8, pages 32-40 below.

[5] Congressional Globe, 31st Cong., 1st sess., at 1404, 1412-13 (Sept. 6, 1850). It passed 108-97.

[6] Congressional Globe, 31st Cong., 1st sess., at 1423-24 (Sept. 7, 1850). It passed 150-56.

because it also contained a popular sovereignty provision.[7] On September 12, the Fugitive Slave Act was passed while he abstained.[8] And on September 17, the bill suppressing the slave trade in the nation's capitol was approved, but curiously he abstained or, more likely, was absent for a personal reason.[9] To Michael Holt, the voting behavior of individual Northern Whigs can be explained by their "succumb[ing] to pressure from the administration and northern Democratic senators" on some measures and by abstaining on others, such as the Utah Territorial bill and the Fugitive Slave Act, because they knew they could kill them if they joined the majority of their colleagues in voting against them.[10] Van Dyke, it seems, voted his conscience only when it would not jeopardize passage of the Compromise, a pact that he supposed would save the Union.[11]

He did not seek re-election. Back in private practice, he maintained an interest in politics. By mid-1855 the Whig party had disintegrated, and he became a Republican. In 1859, he was appointed to the state Supreme Court, where he earned a reputation for independence. His term expired in 1866, and again he

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[7] Congressional Globe, 31st Cong., 1st sess., at 1425-26 (Sept. 7, 1850). It passed 97-85.

[8] Congressional Globe, 31st Cong., 1st sess., at 1451--52 (Sept. 12, 1850). It passed 109-76.

[9] Congressional Globe, 31st Cong., 1st sess., at 1487-88 (Sept. 17, 1850). It passed 124-59.

[10] *Michael F. Holt, The Fate of Their Country: Politicians, Slavery Extension, and the Coming of the Civil War* 82 (Hill and Wang, 2004).

[11] The aftermath of the Compromise of 1850 was weighed by the inestimable David Potter:

> **Hindsight has long since shown that the Compromise of 1850 did not bring either the security for the Union which many hoped for or the security for slavery which others feared. But at the time, this was not yet evident. Realistic men like Douglas and Chase knew that North and South had not really acted in accord and that the arrangements for Utah and New Mexico did not really answer the territorial question. But if the measures were not themselves a compromise, might they yet become a compromise? [New York Senator] Daniel S. Dickinson hoped so, and he remarked that "neither the Committee of Thirteen, nor any other committee, nor Congress have settled these questions. They were settled by the healthy influence of public opinion." At the very least, this Congress, through the leadership of Henry Clay, Daniel Webster, Millard Fillmore, and Stephen A. Douglas, had averted a crisis, and it had reached a settlement of issues which four preceding sessions of Congress had been unable to handle. It remained to be seen whether the American people, North and South, would, by their sanction, convert this settlement into a compromise.**

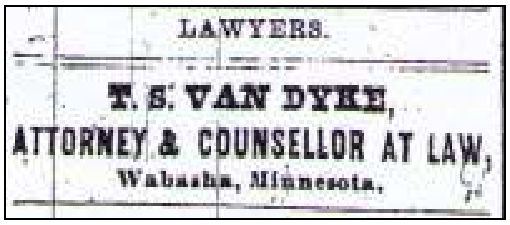
David M. Potter, *The Impending Crisis: 1848-186*1 120 (compiled and edited by Don E. Fehrenbacher, 1976) (citations omitted).

returned to private practice. He was sixty-one years old. Two years later, he moved with most of his family to Wabasha, Minnesota.

This sketch, albeit unbalanced, enables us to understand what happened next—how John Van Dyke came to play an unexpected but small and important part in the legal history of his adopted state.

2. Wabasha, Minnesota.

Why Wabasha? He reportedly moved to Minnesota because he thought its healthful climate would benefit his family.[12] He may have learned this from his son, Theodore S. Van Dyke, who lived and practiced law in Wabasha.[13] The *Lake City Leader* carried the business card of T. S. Van Dyke: [14]


LAWYERS.

T. S. VAN DYKE,
ATTORNEY & COUNSELLOR AT LAW,
Wabasha, Minnesota.

The firm never became Van Dyke & Van Dyke, and John Van Dyke's business card never appeared in local newspapers. He occasionally consulted with local lawyers about their cases.

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[12] Two sons, Theodore and Robert, practiced law in Wabasha, while another found his calling in academia. John Charles Van Dyke (1856-1932) grew up in Wabasha, attended Columbia Law School, was admitted to the bar but never practiced. About the time of his father's death, he moved back to New Brunswick, where he became the first professor of art history at Rutgers University, publishing studies of old world masters, and a controversial monograph on Rembrandt. He became the model for a character in Edith Wharton's *House of Mirth*. See "John C. Van Dyke" in Lee Sorensen, ed. *Dictionary of Art Historians* Website (2000).

[13] His entry in Warren Upham & Rose Barteau Dunlap's semi-official *Minnesota Biographies, 1655-1912* 806 (14 Collections of the Minn. Hist. Soc., 1912), provides:

> **Van Dyke, T. S., lawyer, b. in New Jersey in 1842; came to Minnesota in 1867; settled in Wabasha; was a representative in the legislature in 1873.**

[14] *Lake City Leader*, July 17, 1873, at 3. A few years later, Robert Van Dyke published his card in the *Wabasha Herald*. See, e.g., issue of February 26, 1879, at 1.

Running as a Republican in November 1871, he was elected by a wide margin to the state House from District 15, which covered Wabasha County:

> **John Van Dyke (Republican).....455**
> **A. T. Sharpe (Democrat).....273** [15]

He was assigned to the Federal Relations Committee, and to the Judiciary and Joint Judicial District Committees, which he chaired. He did not seek re-election. His son, T. S. Van Dyke, received the Republican party's endorsement and was elected in November 1872 to House seat 15. [16] **He served one term.**

3. Appointment, Nomination & Confirmation.

An elected official's ability to place a political supporter in a government job benefits the patron in obvious ways, but it may also leave bitterness in those not selected and their supporters. With considerable finesse, Governor Horace Austin reconciled the credit and debit sides of patronage when he filled a vacancy on the Third Judicial District Court caused by the death of Judge Chauncey

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[15] ***Lake City Leader*, November 17, 1871, at 1. Unabashedly partisan, The *Leader* wrote that the District "honored itself in the triumphant election of Judge Van Dyke." *Lake City Leader*, Friday, November 10, 1871, at 1.**

[16] **He was endorsed by the *Lake City Leader*:**

> **In this district, the Republicans have placed in nomination Theo. S. Van Dyke, of Wabasha. He is the son of the esteemed Judge Van Dyke, and is a practicing attorney in that city. His personal friends and acquaintances speak in high terms of praise of his abilities and qualifications. He will undoubtedly contest the district with Mr. Kepler very closely.**

***The Lake City Leader*, November 1, 1872, at 4. In the election on November 5th, he received 54% of the vote:**

> **T, S. Van Dyke.....389**
> **S. S. Kepler.....331**

***Lake City Leader*, November 15, 1872, page 1.**

Waterman on February 18, 1873.[17] Even before Waterman was buried, rumors floated about his successor. On March 1st, the *Rochester Post* reported that each county in the Third Judicial District had its own contender:

> **The Judgeship of this District, made vacant by the death of Hon. C. N. Waterman, is to be filled by appointment by the Governor. The appointee will hold till January, when the office will be filled for a term of seven years by some one to be chosen at the general election next fall. As the individual who may get the appointment from the Governor is most likely to be nominated and elected in the fall, the commission is a considered quite worth having. Hon. C. M. Start, Esq., has the recommendation of the bar of this County; Hon. Thos. Simpson that of Winona, and W. W. Scott, Esq., of Wabasha County. It is about as easy to foretell whom the Governor will select, as it is to prophesy where lightening will strike, but he could not do better than to appoint Mr. Start.[18]**

Realizing that his support in two counties, especially among the bar, would be eroded if he selected a candidate from the third, Austin shrewdly appointed a lawyer who had a lengthy record of public service but no ambitions for a career on the bench, who agreed to serve until "the people" elected his successor in November: John Van Dyke of Wabasha.

Van Dyke had a background in law and politics that must have impressed Austin. He had been a successful lawyer and respected judge in New Jersey, a two-term Congressman who had served with the Great Triumvirate, Webster, Clay and Calhoun, and been a delegate to the first Republican convention in Philadelphia in 1856. Austin might even have heard the story of how Van Dyke had voted nearly two decades earlier —on March 3, 1849, to be exact, the last day of the

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[17] Horace Austin (1831-1905) served on the Sixth Judicial District, 1865-1869. He was elected governor by a narrow margin in November 1869, and re-elected with 60% of the vote in 1871.

[18] *Rochester Post*, Saturday, March 1, 1873, at 2. Austin appointed Van Dyke on February 28, but news of this reached the *Post* after it went to press.

Thirtieth Congress — to organize the Territory of Minnesota.[19] And he had supported the governor during his recent term in the state House of Representatives. But what led Van Dyke to accept an offer of a short term judicial post that required him to travel and be away from his family? The answer could be that he was bored in retirement, and thought that ten months on the bench would be invigorating. [20]

Austin's deft exercise of the prized power of patronage was not received favorably by the local press. The Winona *Daily Republican* reported the rumor that Van Dyke had agreed to serve only through the end of the year:

> **The Governor, it will observed, has filled the vacancy in the office of Judge of the Third Judicial District by the appointment of Hon. John Van Dyke, of Wabasha, to that position. Mr. Van Dyke was formerly one of the nine judges of the Supreme Court of New Jersey, and he also represented that State in Congress for one or two terms. He is thereof not lacking in experience, although the appointment of a younger and more vigorous man, and one more intimately acquainted with law practiced in this State, would have proved more satisfactory to all classes of persons having business in the Courts of the district. It is understood however, that the appointee does not intend to become a candidate before the people nest Fall, and that he will hold the office only as a temporary expedient until the election and qualification of a successor.[21]**

The *Winona Herald* was not impressed by the "pleasant old" appointee, and recalled his opposition to the grant of a ferry charter across the Mississippi when he served in the legislature:

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[19] Journal of the House of Representatives, 30th Congress, 2nd sess., at 620-21 (March 3, 1849). It passed 107-70. For an account of the bare-knuckle politics behind the passage of the bill, see William Watts Folwell, 1 *A History of Minnesota* 241-46 (Minnesota Historical Society, 1956) (published first, 1921).

[20] By this time, he had been out of public office for a year. The Fourteenth Legislature was in session from January 1, 1872, to March 2, 1872.

[21] *Winona Republican*, Saturday, March 1, 1873, at 2.

APPOPINTMENT OF A JUDGE

> **Hon. John Van Dyke of Wabasha, has received the appointment of Judge of this District vice C. N. Waterman deceased. Mr. Van Dyke was formerly Judge of the Supreme Court of New Jersey, also a member of Congress from that State. He was a member of the House of Representatives in Minnesota in 1872, and *opposed* a bill granting a charter for a ferry across the Mississippi River, which was passed, but in consequence of the Governor's veto, did not become law. Mr. Van Dyke is a pleasant old gentleman in his manners, but somewhat antiquated in his ideas, but for all that may make an impartial and exemplary judge.**
>
> **It is rumored that the appointment has been made with the understanding that he is not to be a candidate at the coming fall election. What the Governor of this State won't do there isn't any body who will know, until the opportunity is presented.**[22]

The *Rochester Post* expressed disbelief that the "old gentleman" would not seek election to a full term that Fall:

> **The Governor filled the vacancy in the judgeship of this District last week, by the appointment of Hon. John Van Dyke, of Wabasha, an old gentleman whose age and experience on the bench give respectability to the appointment. It is reported that the appointment was accepted with the understanding that the Judge will not be in the way of the other candidates next fall, but we do not believe that the Governor would make or the Judge accept so undignified a bargain.** [23]

His appointment was followed by an odd gubernatorial act. He was appointed on Friday, February 28, and on Monday, March 3rd, the first day of the Spring term, held court in Rochester. There he presided the rest of the week. On Friday, March 7, Austin submitted fourteen nominees, including Van Dyke, to the Senate

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[22] ***The Winona Herald*, Friday, March 7, 1873, at 2 (emphasis in original).**

[23] ***Rochester Post*, March 8, 1873, at 2. Van Dyke's first session of the district court was reported in this issue. See Section 4 (a) below, at 16-18.**

for its advice and consent. In executive session that day, the Senate unanimously confirmed him and the others.[24] But Article VI, §10, of the state Constitution grants the governor exclusive authority to fill a vacancy:

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[24] **The Governor's nominations were recorded in the *Senate Journal*:**

STATE of MINNESOTA,
EXECUTIVE DEPARTMENT,
ST. PAUL, March 7, 1873.

Hon. Wm. H. Yale, President of the Senate:

SIR :—I have the honor to submit for the consideration of the Senate, the following nominations:

For Railroad Commissioner, A. J. Edgerton, of Dodge county, re-appointment.

For Superintendent of Public Instruction, H. B. Wilson, of Goodhue county, re-appointment.

For Judge of District Court, Third Judicial District, John Van Dyke, of Wabasha county, *vice* C. N. Waterman, deceased.

For Regents of State University, H. H. Sibley, of Ramsey county, and Chas. S. Bryant, of Nicollet county, re-appointments.

For Inspector of State Prison, E. G. Butts, of Washington county, re-appointment.

For Director of Deaf and Dumb, and Blind Institute, R. A. Mott, of Rice county, re-appointment.

For Member of Board of Managers of State Reform School, S. J. R. McMillian, of Ramsey, re-appointment.

For State Normal School Directors, Rev. S. Y. McMasters, of Ramsey county; D. L. Kiehle, of Fillmore county; Sanford Niles, of Olmsted county; Thomas Simpson, of Winona county; Daniel Buck, of Blue Earth county, and J . G. Smith, of Stearns county.

Very respectfully,
Your obedient servant,
Horace Austin,
Governor.

On motion, the Senate advised with and consented to the nominations by the Governor of the several persons named in the foregoing communication.

No further business appearing, the executive session rose.

A. A. Harwood,
Secretary of the Senate.

***Journal of the Senate*, Appendix, March 7, 1873, at 461-62.**

> **In case the office of any judge become vacant before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the governor, until a successor is elected and qualified. And such successor shall be elected at the first annual election that occurs more than thirty days after the vacancy shall have happened.**

The most likely explanation for this blunder is human error or, more precisely, clerical error.[25] A secretary of the governor probably added Van Dyke's name to the list of names by mistake, unaware that this was not necessary or permitted.

In making the surprise appointment of Van Dyke, Horace Austin may had the immediate purpose of avoiding a potential loss of political support, but he may also have been moved by a keen insight—or foresight—into the politics of judicial elections. He foresaw that if he selected one of the favorite sons of the three county bars, one or both of the men passed over would challenge his appointee for the Republican party endorsement and, possibly, in the November election. His appointee would have an insecure tenure, to his detriment and to the judicial system as well. He surely recalled that Chauncey Waterman, who failed to get the Republican party's endorsement in 1864, defeated Judge Lloyd Barber for that endorsement in the Fall of 1871, bringing Barber's seven-year judicial career to an end. And he could not have forgotten Francis M. Crosby's controversial defeat of incumbent Charles McClure for the party's endorsement for judge of the First Judicial District after 112 ballots in September 1871. He may have hoped or anticipated that the bars of the three counties would coalesce around the candidate selected at the Republican Judicial Convention in the autumn of 1873. But he could not have envisioned that during the interlude of Van Dyke's judgeship, all political parties and the bar would unite behind one lawyer, a

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[25] For an example of repeated clerical errors in the placement of a territorial judge, see the three mistakes in Presidents Taylor's and Fillmore's commissions to Associate Justice Bradley B. Meeker in 1849 and 1850, discussed in Douglas A. Hedin, "Documents Regarding the Terms of the Justices of the Supreme Court of Minnesota Territory: Part One: Introduction" 17-18, 26-28 (MLHP, 2009-2012), and "Documents Regarding the Terms of the Justices of the Supreme Court of Minnesota Territory: Part Two-B: Associate Justice Bradley B. Meeker" (MLHP, 2009-2010).

Democrat no less, who would run without opposition for the Third Judicial District Court in November 1873. Re-elected in 1880, again without opposition, he would become the state's greatest jurist: William Mitchell of Winona. [26]

4. Van Dyke on the Bench.

Van Dyke served from February 28, 1873 to January 8, 1874. At this time, the legislature set the dates of the spring and fall terms of the district court in each county. [27] **While this schedule required him to travel to Rochester, Winona, and Wabasha, he was not followed by an entourage of lawyers who lodged in each town during the term. In Minnesota, even in territorial days, trial judges did not "ride circuit" as, for example, Judge David Davis famously traversed Illinois'**

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[26] **On November 8, 1873, Mitchell received a total of 7,857 votes from the three counties. *Journal of the House of Representatives*, January 8, 1874, at 19.**

On November 2, 1880, he received 12,705 votes. *Journal of the House of Representatives*, January 5, 1881, at 10-11.

[27] **The law entitled "An act fixing the time for holding the general terms of the District Courts in the Third Judicial District" provided:**

> **SECTION 1. The general terms of the district court in and for the several counties of the third judicial district of this state shall be held as follows, viz.:**
>
> **In the county of Olmsted on the first Monday in March and the second Monday in September in each year.**
>
> **In the county of Winona on the first Monday in April and the second Monday in October of each year.**
>
> **In the county of Wabasha, on the second Monday in May and the second Monday in November of each year.**
>
> **SEC. 2. All writs, process, bonds, recognizances, continuances, appeals, notices, and proceedings had, issued, read or returnable to the terms of court in and for each of said counties as fixed by law prior to the passage of this act shall be deemed and construed as made, taken and retulrnable to the terms of court in and for said counties respectively as fixed by this act.**
>
> **SEC. 3. All acts and parts of acts inconsistent with this act are hereby repealed.**
>
> **SEC. 4. This act shall take effect and be in force from and after its passage.**
>
> **Approved January 23, 1873.**

1873 Laws, ch. 74, at 194.

Eighth Judicial Circuit in the early 1850s, accompanied by Abraham Lincoln and other lawyers looking for work.[28] Nevertheless, lawyers from St. Paul, Minneapolis and "abroad" frequently represented clients in the Third Judicial Circuit.

In keeping with journalistic practices of the day, local newspapers published detailed accounts of the proceedings in Van Dyke's court. A random sample of articles in newspapers in Rochester, Winona and Wabasha follows. They reveal much about the day-to-day work of a trial court and the trial bar in the 1870s.

Van Dyke had the assistance of a clerk of court but not a court reporter. His successor, however, did. The legislature authorized the judge in the Third Judicial District to hire, "in his discretion," a "stenographic or short-hand reporter" on February 19, 1874.[29]

Civil cases dominated his calendar, a pattern typical of the time.[30] Most trials in the nineteenth century took about a day. But not all cases were tried, and in the disposition of many civil disputes, lawyers performed one of their most important functions—they worked out settlements. Plea bargaining, however, was rare. He heard applications for citizenship and petitions for bar admission; noticeably absent from his docket are personal injury, divorce and statutory actions. A decade later, suits against railroads by injured employees would dot the calendar.

In sessions in Rochester and Winona, Van Dyke "assigned" lawyers to represent defendants in several criminal cases. The law regulating the appointment of counsel in effect in 1873 provided:

> **Whenever a defendant shall be arraigned upon an indictment for any criminal offense punishable by death or by imprisonment in the state prison, and shall request the court wherein the indictment is pending, to appoint counsel to assist him in his defense, and shall**

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[28] Willard L. King, *Lincoln's Manager - David Davis* 71-98 (Harvard Univ. Press, 1960).

[29] 1874 Laws, ch. 88, at 231-33 (February 19, 1874).

[30] This pattern appears on the calendars of other district courts about this time. For example, in Faribault County in 1872, there were 39 civil and only 2 criminal cases on the calendar, and in 1873, there were 40 civil and 4 criminal cases J. A. Kiester, "The Bench and Bar of Faribault County" 4-5, 34, 42 (MLHP, 2011)(published first, 1894).

> **satisfy the said court by his own oath or such proof as the said court shall require that he is unable by reason of poverty to procure counsel, the court shall appoint counsel for said defendant, not exceeding two, to be paid by the county wherein the indictment was found, by order of said court. The amount of compensation of such counsel shall be fixed by the said court in each case, and shall not exceed ten dollars per day for each counsel, and shall be confined to the time in which such counsel shall have been actually employed in court upon the trial of such indictment.** [31]

Perhaps a few lawyers undertook these assignments because of a sense of professional responsibility but most did because they needed the income.

Frequently he "referred" a civil case to a local lawyer —i. e., "S. H. Humason vs. Claus Oleson. H. C. Butler for plff., Stearns & Start for deft. Referred to R. H. Gove, Esq." These orders were made under a specific statute governing trials by Referees. [32] **He cleared his calendar of so many cases by "referral" that it is**

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[31] **1869 Laws, ch. 72, at 86 (effective March 5, 1869); codified as Stat., Supplement, ch. 53, §12, at 978-79 (1873)**

[32] **It provided:**

> **TRIAL BY REFEREES.**
>
> **SEC. 228. Upon the agreement of the parties to a civil action, or a proceeding of a civil nature, filed with the clerk or entered upon the minutes, a reference may be ordered:**
>
> ***First.* To try any of all the issues in such action or proceeding, whether of fact or law, (except an action for divorce,) and to report a judgment thereon;**
>
> ***Second.* To ascertain and report any fact in such action, or special proceeding or to take and report the evidence therein.**
>
> **SEC. 229. When the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference in the following cases:**
>
> ***First.* When the trial of an issue of fact requires the examination of a long account on either side, in which case the referee may be directed to hear, and decide the whole issue, or to report upon any specific question of fact involved therein;**
>
> ***Second.* When the taking of an account is necessary for the information of the court, before judgment, or for carrying a judgment or order into effect;**

tempting to conclude that they were petty commercial disputes or squabbles over small sums, which were quickly decided by the "referral" lawyer after he had heard both sides. A trial by a Referee resembled an arbitration, with the same result. [33]

> ***Third.*** **When a question of fact other than upon the pleadings arises, upon motion or otherwise, in any stage of the action; or,**
>
> ***Fourth*****. When it is necessary for the information of the court in a special proceeding of a civil nature.**
>
> **SEC. 230. A reference may be ordered to any person or persons, not exceeding three, agreed upon by the parties, or if the parties do not agree, the court or judge shall appoint one or more persons, not exceeding three, residents of any county in this state, and having the qualification of electors.**
>
> **SEC. 231. The trial by referees shall be conducted in the same manner and on similar notice as a trial by the court. They shall have the same power to grant adjournments and to allow amendments to any pleadings, as the court upon such trial, upon the same terms and with like effect. They shall have the same power to administer oaths and enforce the attendance of witnesses as is possessed by the court. They shall state the facts found and the conclusions of law separately, and their decision shall be given and may be excepted to and reviewed in like manner, but not otherwise, and they may in like manner settle a case or exceptions. The report of referees upon the whole issue shall stand as the decision of the court, and judgment may be entered thereon in the same manner as if the action had been tried by the court. When the reference is to report the facts, the report shall have the effect of a special verdict.**
>
> **SEC. 232. When there are three referees, all shall meet, but two of them may do any act which might be done by all; and whenever any authority is conferred on three or more persons, it may be exercised by a majority upon the meeting of all, unless expressly otherwise provided by statute.**

Stat., ch. 66, Title 18, §§228-232, at 482-83 (1866).

[33] The Arbitration Act in effect in 1873 required the agreement to be in writing and imposed other requirements to safeguard the fairness and integrity of the process. Stat., ch. 89, at 586-588 (1866); re-codified as Stat., Supplement, ch. 46, at 935-938 (1873). The last sentence of §19 of the statute provided: "Nothing in this chapter contained shall preclude the submission and arbitrament of controversies, according to common law." It is clear that Van Dyke was not enforcing arbitration agreements drafted according to the requirements of this statute in the cases he "referred" to lawyers.

In his court—and probably in most state trial courts in the mid-nineteenth century — lawyers had considerable control over the proceedings or, put another way, he paid considerable deference to the lawyers' needs and wishes. He granted every motion for a continuance, which is not surprising because it seems no such motion was ever opposed. He was aware of the practical difficulties facing lawyers in his court and accommodated them. The first day of the November term in Wabasha ended quickly:

> **Case No's. 14 and 15 were continued by consent. No. 18 continued. Then followed the second call of the Calendar. There being no case ready for trial, Court, after a few more motions, adjourned until Tuesday morning at 9 A. M.**

Over time and for a multitude of reasons, judicial deference to the trial bar, a conspicuous practice of Van Dyke, declined as the bench asserted greater and greater control over matters of pleading, motion practice and the preparation and trial of cases.

**

a. Monday - Friday, March 3-7, 1873.
Rochester.

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THE DISTRICT COURT

> **The March term of the District Court of this county, commenced its session on Monday. Hon John Van Dyke presided as Judge, and C. T. Benedict, Esq., Clerk.**
>
> **The business this week has been quite light and there have been no trial of any particular interest. The following is the disposition of cases on the Civil Calendar:**
>
> **Zelic Raymond vs. E. K. Bell. C. C. Willson for plff. James George for deft. Dismissed without costs to either party.**
>
> **Adrian Webster vs. Lucius Cutting. H. C. Butler for plff., L. Barber for deft. Dismissed without costs to either party.**
>
> **G. Van Houton vs. Wm. Krakow. P. M. Tolbert for plff, C. C. Willson for deft. Judgment for plaintiff by consent.**

J. V. Daniels vs. James Crawford. C. C. Willson for plff., Pierce & Taylor for deft. Judgment for plaintiff by consent.

S. H. Humason vs. Claus Oleson. H. C. Butler for plff., Stearns & Start for deft. Referred to R. H. Gove, Esq.

E. Beckworth vs. E. P. Lesuer. H. C. Butler for plff., James Bucklin for deft. An action by Dr. Beckworth for services as a physician, at the rate of $1.50 per visit. It is claimed in defense that a contract had been made for $1.00 a visit and, also, offsets were set up. The case was tried by a jury who gave a verdict for the defendant.

Charles Mulig vs. Mariah Mateson. C. S. Andrews for plff. S. W. Graham appointed guardian ad litem of minor defendants.

School District No. 69 vs. F. M. Pierson. T. H. Armstrong for plff, S. W. Graham for deft. Action dismissed by consent without costs to either party.

H. C. Nisson vs. J. Dooley. E. A. McMahon for plff., C. C. Willson for deft. Suit for wages. Trial by jury. Verdict for plaintiff for $38.90.

Sarah A. Ketchum vs. Lucy J. Taylor. L. Barber for plff, Mitchell & Yale for deft. Referred to E. A. McMahon.

E. M. Bennett vs. F. Holmes. H. C. Butler for plff., P. M. Tolbert for deft. Action on account. Jury trial. Verdict for defendant.

Caroline Mott vs. F. H. Barnes. Tolbert & George for plff., Parker & Hoyt for deft. Jury trial. By consent of attorneys, a verdict of $150 was rendered by the jury without leaving their seats.

The case of H. T. Horton vs. A. K. Williams was on trial when we went to press. Stearns & Start for plff., L. Barber for deft.

The criminal calendar has been one of the lightest in years.

The Grand Jury was charged by the court on Monday afternoon, and Mr. J. B. Clark, of this city, was appointed foreman. The jury was in session till Thursday at noon, when they were discharged. They found three indictments.

Andrew R. Thompson has been indicted for larceny in stealing wheat from E. B. Jordan near this city. P. M. Tolbert was assigned by the Court as his counsel. He has not yet been tried.

Isaac Grover has been indicted for assault on his wife with a dangerous weapon, and P. M. Tolbert was assigned by the Court as his counsel. He has plead not guilty, but has not yet been tried.

In the case of F. M. Pierson, who was bound over to answer to a charge of illegal action as treasurer of a school district, the Grand Jury voted to find no indictment.

In the case of State against Wm. Ober and John Scott who had been bound over to answer to a charge of assault against Kinmore, the barber near Chatfield some time ago, the recognizances were ordered to be satisfied and canceled and the parties and their bail released on the payment of $100.

It is expected that the court will be in session nearly all next week.[34]

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b. Wednesday, October 15, 1873.

Winona.

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DISTRICT COURT

Hon. John Van Dyke Presiding—E. E. Gerdtzen, Clerk.

***Wednesday's Proceedings.*—Court opened at the usual hour.**

The application of Thos. McCauley for admission to citizenship was granted.

The case of Caroline Buswitz *vs.* Fred W. Kempe, for assault was brought to trial. Indictments having been found against John Crooks and Cornelius Sullivan for larceny, they were arraigned and by their attorney, Wm. Mitchell, plead not guilty.

At this juncture the case of Buswitz *vs.* Kempe, was amicably settled, and the court proceeded to call the calendar for new business.[35]

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[34] ***Rochester Post*, Saturday, March 8, 1873, at 3.**

[35] ***Winona Daily Republican*, Wednesday, October 15, 1873, at 3.**

c. Thursday, Friday & Saturday, October 16-18, 1873. Winona.

DISTRICT COURT

Hon. John Van Dyke Presiding—E. E. Gerdtzen, Clerk.

Thursday's proceedings.—**The jury in the case of E. Ball & Co. *vs.* H. W. Barlow, brought in a verdict on Wednesday afternoon in favor of the defendant, assessing his damages at $4l7.15.**

H. S. Youmans *vs.* Township of Austin; defendant not appearing, judgment given, for the plaintiff in the sum of $283.40.

A special session of the Court was held on Thursday evening for the examination of applicants for admission to the bar. Messrs. Dennis H. Flynn, David Barclay, John C. Noe, of Winona, and John P. Pope, of Whitewater, were examined.

Friday's proceedings.—**On hearing the report of the Committee on Examinations, due motion having been made, it was ordered that the applicants above named be admitted.**

The cases of the State *vs.* Luetke and the State *vs.* Kercine and Wachtel were dismissed on motion of the County Attorney, who stated that it would be for the interest of peace between the parties offended against and the offenders and for their neighborhood.

The Grand Jury came into Court, and, having finished their business, were discharged.

In the afternoon the prisoners against whom indictments had been found were arraigned.

Ransom Smith, charged with an assault upon James Gorden, in the town of New Hartford, appeared by his attorney, Hon. Thomas Wilson, and asked time to plead.

John Quinn and Michael Cauley were accused of assaulting Wesley Arrasmith in August last. J. Dyckson appeared, as their attorney and asked the usual time to plead.

Michael Hennigan was accused of larceny, committed in the town of Homer, on the 23d of September, from John McCulloob,

stealing $135 in money. Hon. Thomas Wilson was appointed by the Court as counsel for the prisoner. The usual time was asked to plead.

Thomas Wilson (not a lawyer) was arraigned for taking a bolt of cloth from the store of. J. W. Thomas & Co. He plead guilty to the charge, said it was his first offense, and threw himself on the mercy of the Court.

Henry Gorham was charged with stealing several watches and money from Fred Grapenthein, in the town of Hart, on the 9th day of August. The Court appointed Hon. Thos. Wilson as counsel and, the usual time was given to plead.

S. W. Smith, arraigned on the charge of larceny on the 1st day of July, in the town Dresbach, having taken eleven dollars from one Robillard. Wm. Gale, Esq., was appointed to defend the prisoner and asked the usual time to plead.

On motion of Wm. Mitchell, Esq., John Baldwin was discharged from trial, having been under bond to appear at the District Court and no indictment having been found against him.

John Heffernan was likewise discharge, on motion of Hon. Thomas Wilson.

John H. Roth was discharged for a similar reason, on motion of J. W. Dyckson, Esq.

John King, of St. Charles, was also discharged.

The Court then proceeded with the civil cases.

It is expected that the trial of Isaac Page for shooting Frank, Eaton, in the town of Homer, will be called on Tuesday next.

***Saturday's Proceedings*.—Henry Gorham plead guilty to the charge of larceny in stealing several watches, etc., in the town of Hart, and was sentenced to one year in the State prison.**

The tria1 of Hennegan for stealing $135 in Pleasant Valley was taken up, and at noon the Court adjourned until Monday afternoon.[36]

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[36] *Winona Daily Republican*, Saturday, October 18, 1873, at 3 (italics in original).

d. Tuesday & Wednesday, October 21-22, 1873.
Winona.

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DISTRICT COURT

Hon. John Van Dyke Presiding—E. E. Gerdtzen, Clerk.

***Tuesday's proceeding.*— Continued. —The trial of Isaac Page for shooting Frank Eaton in the town of Homer, last Spring, was called on for trial, on Tuesday afternoon. Norman Buck, Esq., assisted by A. H. Snow, Esq; appeared for the prosecution; Messrs. Thomas Simpson, Wm. Mitchell and J. W. Dyckson for the defense.[37] The defendant came into court looking rather pale from his long confinement but nevertheless in good health. Although a man sixty-five of age, he walked with a firm step to his seat near his attorneys. After the Prosecuting Attorney had moved the cause, Mr. Mitchell indicated a desire on the part of the defense to have a full panel of Jurors before the case was taken up, and suggested the propriety of waiting until the jury already out in the Hennegan case was in. It appearing that there were only six other jurors remaining, the Court issued a special venire for thirty-six jurors, intimating to the Sheriff that it would be desirable to summon the jurors from those parts of the county where they would be least likely to have any acquaintance with the case or the parties concerned in it. The Court then adjourned, at about 4 o'clock, until 10 o'clock on Wednesday.**

Sheriff Martin immediately proceeded to the work of getting the new jurors. The time was short and admitted at no delay, but by calling the telegraph to his aid, the business was rapidly dispatched. Deputy Sheriff Crippen was telegraphed to at St. Charles to summon a list of thirteen jurors from the towns of St. Charles, Saratoga and Elba. A list of seven in Utica was sent to Captain Allred at Lewistown. The combined delegation of twenty arrived

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[37] Arthur Snow served on the Third Judicial District Court from 1897 to 1915. See "Arthur H. Snow (1841-1915)" (MLHP, 2010-12).

promptly on the morning accommodation. Meanwhile Deputy Sheriff Bogart had taken a list of sixteen scattered about the towns of Rollingstone, Hilledale and Mount Vernon, which completed the list.

***Wednesday's proccedings.* —At a late hour on Tuesday afternoon, the jury in the case of Hennegan, charged with stealing money from McCulloch, in Pleasant valley, returned a verdict of not guilty.**

One Sullivan indicted for stealing timber in the town of St. Charles, appeared by his attorney, Wm. Mitchell, Esq., and asked leave to withdraw his former plea of not guilty and enter a plea of guilty of larceny to an amount of property not exceeding eighty dollars. He was sentenced to six months in the State prison.

The prisoners, Quinn and Cauley, who engaged in the Arrasmith stabbing affray, appeared by their attorney, J. W. Dyckson, Esq., and entered a plea of not guilty.

Hon. Thos. Wilson intimated the desire of the attorneys to have the adjourned term placed for the fourth Monday in January.

The Page trial was again taken up, but owing to the non-arrival of some of the jurors in an adjournment was taken until half past 3 o'clock. [38]

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e. Monday, Tuesday & Wednesday, November 10-12, 1873.

Wabasha

DISTRICT COURT—
NOVEMBER TERM

Monday.

[38] ***Winona Daily Republican*, Wednesday, October 22, 1873, at 3. Newspaper accounts of the Page trial will be posted at a later date on the MLHP.**

The District Court of the Third Judicial District, Wabasha county, opened on Monday, November 10th, at 2 P. M., the Hon. John Van Dyke presiding. The following list of Grand Jurors was then called:

. . . . [names omitted] . . . .

Eighteen being found present the Court proceeded with its charge to them, occupying half an hour in a very clear and able charge. H. N. Smith was then sworn as an officer to have charge of said Jury during their sitting. The list of the Petit Jurors was then called as follows:

. . . . [names omitted] . . . .

Seventeen of whom were present. The case of Fish Bros. vs. Black was then continued by consent.

Case No. 18, Lamb vs. Lamb, was referred to Mr. Jacobs of Lake City. The balance of the day was spent in an informal call of the Calendar. On Motion Mr. Chas. Allen in case of Dana vs. Chas. Allen, No. 12, filed a supplemental answer in said case.

Case No. 13, Quian vs. Bennett referred to W. J. Hahn, of Lake City.

Case No's. 14 and 15 were continued by consent. No. 18 continued. Then followed the second call of the Calendar. There being no case ready for trial, Court, after a few more motions, adjourned until Tuesday morning at 9 A.M.

Among the attorneys from abroad in attendance on Court on Monday, we noticed the following gentlemen: Messrs. Office, of St. Paul, Minn.; Stocker, of the firm of Brown & Stocker, of Lake City, W. J. Hahn and W. W. Scott, compromising the firm of Scott & Hahn, Lake City, John A. Murdoch, of Ottawa, Kansas, Frank Wilson, of the firm of Kinney & Wilson, Chas. Allen, of Minneapolis, and Hon Thos. Wilson, of Winona.[39]

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[39] For their obituaries, see "John N. Murdoch (1831-1898)" (MLHP, 2012), and "Wesley Kinney (1837-1926)" (MLHP, 2012).

Mr. R. E. Arnold, of St. Paul, and Geo. Berry, of Oakwood, are acting as assistants for Sheriff Box, in the Court room during this term.

Tuesday, Morning Session.

Court called at 9 A. M., and after a few motions, case No. 6, Phebe F. Hunt vs. Eddy, Seymour and Hall settled.

Case No. 8, Bengston vs. Powers, was referred to Stewart for trial.

Case of Phebe F. Hunt vs. Wm. Box, was then called on the peremptory call of the Calendar, and was rested and passed.

The case of Luther Dana vs. Chas. Allen was then called and the argument of the motion to file a supplemental answer continued from yesterday morning, Judge Wilson for Plaintiff, Allen and Campbell for Defendant. The case was then continued on motion for the Defendant.

The case of Emma Stahman, et al, vs. Christian Theilman was then called and a motion to make Wm. Stahman a co-Defendant was made by the Defendants and granted. S. L. Campbell & Son for Plaintiffs and Hon Thos. Wilson, John N. Murphy and T. S. Van Dyke for Defendants, Case held till 2 P. M.[40]

Case of Carl Selitz vs. Henry Beyer was then moved, T. S. Van Dyke for Plaintiff, S. L. Campbell & Son for Defendant. Motion for judgment of returns by Plaintiff. Time granted to Defendant to decide whether he will oppose motion. Court then adjourned till half past two P. M.

Afternoon Session.

The criminal case of the State of Minnesota vs. Wm. Wilson was called up and a motion was made by Mr. Murdoch for continuance of the same for want of witnesses and was granted by the Court.

Case of Emma Stahman el al, vs. Christian Theilman, mentioned this morning was then called and a jury impanelled in the

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[40] For his bar memorial, see "Samuel Lewis Campbell (1824-1910)" (MLHP, 2012).

same, occupying the balance of the afternoon until 5 P. M., when a motion was made by Mr. Hahn and also by Hon. Wm. Wilson, of Rochester. Court then adjourned until half past nine A. M., Wednesday.

Besides the gentlemen from abroad in attendance on Court Monday, are Judge Putnam, of Minneiska, and Hon. Wm. Wilson, of Rochester.

Wednesday—Morning Session.

In the case of Dana vs. Allen, an attachment for contempt of Court was issued as the Defendant.

Case of A. B. Hanscom vs. M. Herrick and Sarah Herrick, his wife, John H. Brown for Plaintiff, and Brown & Stocker for Defendant, was then moved, and a motion for trial by Court or Referee was then argued by the different counsel, for and against. Motion granted. Exception taken.

John Burrick was discharged from custody, no bill being found against him.

Case of Emma Stahman, *et al, vs*. Chris Theilman continued until half past twelve. Court then adjourned till half past two P. M.

John H. Brown Esq., a prominent attorney from Willmar, Minn., made his appearance in our Court this morning. [41]

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5. Obituary

John Van Dyke died on December 24, 1878, in Wabasha, at age seventy-four. The *Winona Daily Republican* carried the story:

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[41] ***The Wabasha Herald*, Thursday, November 13, 1873, at 4.**

John Harrison Brown was a judge on the Twelfth Judicial District from 1875 to his death in 1890. See "John Harrison Brown (1824-1890)" (MLHP, 2008).

Judge Van Dyke, of Wabasha, died on Tuesday morning, the 24th inst. The Herald says it has been noticed that ever since the death of his wife, some three years ago, he had seemed to lose his interest in life and to be gradually failing. Since his return from his Kansas farm last Fall it has been noticed that he was enfeebled to an extraordinary degree, but up to that fatal morning he had been confined but little to his bed, and even some of his nearest relatives refuse to believe that there was nay danger of immediate death. He dropped away peacefully and without pain. It seemed more of a simple yielding up of life than of death by disease. He was in the 74th year of his age.[42]

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6. Memorials

On December 26, 1878, John N. Murdoch, a prominent member of the county bar, delivered the funeral oration. It was reprinted in the *Wabasha Herald* and accompanied by an article from a New Brunswick newspaper: [43]

OBITUARY ADDRESS.

_____

Delivered by J. N. Murdoch, Esq., at the Funeral
Of Hon. John Van Dyke, at Wabasha,
***Minn., December 26, 187*8.**

_____

We "come to bury Caesar, not to praise him."

I do not favor the custom, "to my mind more honored in the breach than in the observance," of delivering eulogies over the dead bodies of our friends. In ordinary cases it is better far to commit them to mother earth tenderly, reverentially and with due religious ceremony, but simply and without ostentation; but when as now, we gather around this coffin of an old man who had died full of

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[42] ***Winona Daily Republican*, Friday, December 27, 1878, at 2.**

[43] ***Wabasha Herald*, Wednesday, January 1, 1879, at 3.**

years and honors, it is surely fitting for us to cast at least a glance backward and learn a lesson from the life which has passed away from among us.

John Van Dyke was born in Hunterdon county, New Jersey, April 3, 1805. His father was a farmer immoderate circumstances, and upon the farm he worked faithfully through all the years of youth to early manhood. His early education was gained only in the winter school of his native district, and though eager to acquire knowledge and determined upon professional life, he did not desert his childhood's home at twenty-one but gave two years of manhood to his father's service. At twenty-three he entered an academy of a high grade for a few months and then spent a year in teaching, and at the age of twenty-five entered the office of a leading lawyer in New Brunswick, N. J., as a student. Four years of hard study and regular attendance at terms of court fitted him not only for admission to the bar, but to commence the practice of his profession, able to cope with lawyers of unquestioned ability and long experience.

He began his life work late, as we count years, but the simple life and hard labor on the farm had given him physical strength and vigor, and four years of study had so cultivated and enriched his mind that he was ready to step at once into the front ranks of his profession. He commenced practice in New Brunswick and for over thirty years was the leading lawyer of that city and was recognized by all as not only an able lawyer but also as man to be trusted at all times and every where. Though he never sought office, his services were almost constantly required by his fellow citizens. Though fully occupied by his large and increasing practice he found or made time during the first ten years of his professional life to fill with honor to himself and to the satisfaction of all, the offices of alderman, recorder and mayor of New Brunswick, holding the latter office more than once. Though no partisan, Mr. Van Dyke was yet a politician in the best sense of that much-abused word, an

eager Whig, he took an active part in the conventions of his party, and in 1846 he reluctantly consented to accept a nomination for representative in Congress and was triumphantly elected, serving out the term honorably and creditably, was re-elected in 1848. At the expiration of his second term he peremptorily declined to be a candidate again and returned to the active practice of his profession.

During his second term the excitement ran high on the slavery question, and it was a dangerous matter to question the divinity of the "peculiar institution" on the floor of the House, but Judge Van Dyke was an earnest anti-slavery man and knew no fear when in the path of duty and so he rose in his place , when in his judgment the time had come for him to speak, and calmly, dispassionately but fearlessly discussed the slavery question, but mindful of the fate of Sumner, he kept on his desk before him a half-drawn sword cane and the chivalry did not see fit to molest him. The little incident is eminently characteristic of the man.

Shortly after resuming practice he was appointed receiver of a broken bank in New Brunswick and in this position developed business qualities of a rare order. The affairs of the bank were in desperate condition but he managed them so prudently and skillfully that every debt was paid in full with interest and a large amount of the stock was saved; so well were the stockholders pleased with his management that they reorganized the bank, replaced the stock and elected Judge Van Dyke its president, a position which he held nine years, during which time he raised the stock form $50,000 to $300,000. In 1860 (sic) he was appointed by the governor of New Jersey one of the judges of the supreme court and accepted the position. An able lawyer at the meridian of life Judge Van Dyke was speedily recognized as an ornament to the bench of his native State. His reported decisions are models of judicial style. During his term the Camden & Amboy railroad, which for many years controlled the State of New Jersey, was

interested in many cases, which came before Judge Van Dyke for decision, and his perfect independence and impartiality made the managers of that corporation bitterly hostile to him, and at their demand he was very much to his credit, retired at the expiration of his term and again returned to the practice of his profession, but the increasing ill-health of several members of his family caused him to seek a new home, and in the spring of 1868 he removed to Wabasha with his family.

As a lawyer his active life closed when he left his native State, though he was consulted and accepted retainers and rendered valuable service in several important cases here. He was elected representative to our State legislature by a large majority in a Democratic district, though an earnest Republican. He was also judge of the district court for the third district for nearly a year, having been appointed by Gov. Austin to fill the vacancy caused by the death of Judge Waterman.

In the ten years of his life here Judge Van Dyke was regarded as an able, high-minded gentleman, dignified but eminently social and ready to devote both time and money in aid of every worthy enterprise. We learned to prize his friendship and to value his counsel and advice; but as the great lawyer, the leading businessman, the far-seeing politician and statesman he was best known in the State where he was born and the city where his active life was passd, and though not a few of the friends and associates of his early life and mature manhood have passed away before him, yet in his old home many, when the tidings of his death reaches them, will drop a tear in the memory of a great and good man gone from earth.

Eminently happy in his domestic relations, home was to him a true resting place from the cares of active life.

The death of his beloved wife, which occurred nearly four years since, gave a shock to his system, from which he never fully

recovered. The brightness seemed to be taken from his life and although in comfortable health, till within the past year, he seemed to be only waiting to join her on the other side of the dark river.

He has left to his sons the noble legacy of a pure, honorable and useful life.

The Judge at His Former Home.

The papers of New Brunswick, New Jersey, the former home of Judge Van Dyke, contain lengthy obituary notices of one who was held there in the highest esteem. We only have space to give the following from the "New Brunswick Fredonian:"

EX-JUDGE JOHN VAN DYKE.

An eminent jurist at the New Jersey Bar, born at Lamington, N. J. April 3, 1805, died at Wabasha, Minn. Dec. 24, 1878.

To many people of our city the name of Van Dyke will strike familiarly on the ear and mingle with the recollections of New Brunswick twenty years ago, at which time the subject of our notice was at the height of his prosperity. None of the incidents of his youth come to our ears now, nor are they of interest to our readers in this short sketch. Our first remembrance of Judge Van Dyke is that of a student presenting himself for admission at the law office of Judge Nevins, and disregarding the Judge, a kindly advice to "go back and work on the farm," asking but for a trial. It was granted by that one man out of a thousand who was willing to try "the rugged metal of the mine." In three years, he was a partner, and we next find him crowding on the public gaze in the celebrated trial of Peter Robinson for the murder of Abram Graham, the criminal lawyer. The memory of the case is too fresh in the minds of the people, and our dear friend's laurels, well worn, are still too green to admit of useless repetition here.

He soon became Mayor of this City, and rose in fame as a jurist by his masterly trial of several important cases, among which was the Goodyear Rubber case.

In 1847 he was elected to Congress by the Whig party, serving two terms, and declining the nomination for a third —while there distinguishing himself by his bitter opposition to slavery.

His crowning success came in 1859 when appointed one of the judges of the Supreme Court. It was then he proved to his friends how easy it was to transform the shepherd's crook—borne in his hand—to the judicial rod which he swayed with so much credit to himself and justice to all litigants.

When holding this position he removed to Trenton, and from thence, in 1868, urged by the failing health of certain members of his family and a desire on his own part for retirement, he removed to Minnesota. His reputation soon followed him and he was soon called back to public life and served in the Legislature of that State, and was afterwards specially appointed Judge of the Third Judicial District of Minnesota, in place of Judge Waterman, deceased.

Physically he was a noble looking man, of commanding figure, penetrating eye, and of complexion so dark that many of our townsmen will him better a "Blackhawk," a *soubriquet* bestowed on him by the Democratic party. Mentally he ranked among the first jurists of his day, and morally he was peer to any in this land.

He died of no well defined disease, but rather of a gradual "break up" of the system. Since the death of Mrs. Van Dyke, three years ago, he has never been entirely well, and a slow dissolution dates from that time, until at last, without a word, look or sign to denote other than pleasure, he passed away.

He leaves five sons—three in Minnesota, one in California, and one at present residing in this city.

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8. SPEECH OF MR. JOHN VAN DYKE, OF NEW JERSEY,

IN THE HOUSE OF REPRESENTATIVES,

March 4, 1850.

In his speech to the House on March 4, 1850, Van Dyke aimed to rebut Southerners' charges that the North was committing acts of "aggression":

> **My object in rising, sir, is to vindicate the North, so far as I am able, against the gross and unjustifiable charges made against it, with little or no discrimination, by the South. Scarcely a southern gentleman rises to speak upon this subject, but accuses the North, in the bitterest terms of reproach, of oppression, aggression, and outrage upon the rights of the South; and there is scarcely a newspaper published on the southerly side of the line, that does not assert the same thing. If the South is to be believed, the North, as a people and as States, are a set of Goths and Huns—Alarics and Attilas—robbers, cut-throats, and constitution breakers, whose great object is to free the slaves, burn the dwellings, cut the throats of the masters, and dishonor the wives and daughters of the South. If, indeed, the North be guilty of all these sins, both actual and intended, then, to be sure, we are greatly in the wrong, and our brethren of the South do not complain without cause. But, sir, I deny these charges utterly. It is not true that the North has been guilty of any aggressions upon the South. It is the mere creature of the imagination—"the baseless fabric of a vision." I hold myself ready to prove the position which I take; and I invite your attention, sir, and that of the committee, to those stubborn things, called facts, to sustain me in what I say.**

These long festering accusations were inflamed by a speech by John C. Calhoun at a Congress of Southerners in February 1849, suggesting that secession was a realistic possibility.[44] At the time, Calhoun made few converts, but in the

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[44] **Michael F. Holt, *The Fate of Their Country: Politicians, Slavery Extension, and The Coming of the Civil War* 53-4 (Hill and Wang, 2004)("Calhoun's Southern Address rehearsed a long**

following months, the legislatures of Florida, Missouri, and South Carolina agreed to cooperate for a common defense.[45] More militants in Mississippi called for a convention, described by the late Robert Remini:

> **So Mississippi stepped in to undertake the task. A convention held in that state on October 1, 1849, passed a resolution that included a statement avowing devotion to the Union. But it went on to condemn the idea that Congress had the right to prohibit slavery in the territories, abolish slavery in the District of Columbia, or agitate for the emancipation of slaves. The time had arrived, read the resolution, when the South should come together and decide on what action to take. The resolution further stated that a convention of the slaveholding states should be held at Nashville, Tennessee, on the first Monday in June, next, to devise and adopt some method of resistance to northern aggression. Several months later, the Mississippi state legislature added its endorsement for convening the Nashville meeting. The call quickly gained approval from all the southern states, and the most extreme of those who eventually attended the convention planned to initiate secession.[46]**

This is the background of Van Dyke's speech.[47] To read it is to be transported back to a time when slavery was a vibrant institution, defended by some, abhorred by others, a time when the Union lay on the precipice of Disunion.

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litany of supposed northern aggressions against slaveholders' rights, starting with the adoption of the Missouri Compromise line in 1820. To right these wrongs, he demanded that slaveholders be given equal access with Northerners to the Mexican Cession. Far more ominously, he warned that northern aggressions were leading inevitably to the social cataclysm of abolition and to Southerners would be justified in using any method of resistance to avoid that horror. In short, he hinted that Southerners might secede unless the North retreated.").

[45] David M. Potter, supra note 11, at 88-89.

[46] Robert V. Remini, supra note 1, at 56.

[47] **Congressional Globe, Appendix, 31st Congress, 1st sess., at 321-327 (March 4, 1850), available at "A Century of Lawmaking for a New Nation: U.S. Congressional Documents and Debates, 1774 – 1875," at the website of The Library of Congress.**

him, whether he signed or vetoed the Wilmot proviso. If it could be done without a sacrifice of principle, I frankly confess, I would like to see the cup put to his Executive lips—not that I would desire to see any personal calamity befall him; far from it. His friends may build to his well-earned military fame, a monument as high as the sun; I will never reach out my hand to tear a block from the pyramid. But I do not think it important to know whether or not he interfered. The people met—formed their constitution at their own time, in their own way, and it is republican in its form, and that is all we have a constitutional right to know.* It was submitted to the people for their consideration, either to be ratified or rejected. They ratified it by an overwhelming majority; and, sir, more—they have elected a Democratic Governor and Lieut. Governor. They elected Democratic delegates to the convention—they formed a truly Democratic constitution—they elected Democratic delegates to Congress, and Democratic Senators; and this satisfies me that these people, had then, and have yet, sound judgment, and just notions of republican liberty, in spite of Executive influence.

If the Executive counsels had effected anything, would not the California constitution, like his own notions of masterly inactivity on this slavery question, have prevailed, and a profound silence been observed? No, sir, these people that voted and acted in this matter, were, nineteen-twentieths of them, Americans, who knew their rights, and the flashing of Executive patronage in their faces, could not deter them from the right. More, sir; these people were, and are yet, nearly all plain Democrats, and General Taylor and his Cabinet could not have influenced them one way or an another. I have the pleasure of a personal acquaintance with many of these people. They love freedom and equality. They understand the *blessings* of civil and religious liberty—the freedom of the press and of speech. Did this Administration prevent them from inhibiting all banks and banking institutions? I ask southern Democrats if they think that this clause was made by the consent of this Whig Administration? I presume not.

But, Mr. Chairman, I hope to be pardoned for turning aside to notice a remark made by the honorable gentleman from Pennsylvania, [Mr. Stevens.] He, sir, is a distinguished leader of the Whig party, and like the honorable gentleman from Massachusetts, [Mr. Mann,] he must bear his share of the responsibility of this dangerous agitation. He says:

"But in this glorious country, where nearly two thirds of the people are free, we can say anything within these walls or beyond them with impunity, unless it be to agitate in favor of human liberty—that is *aggression!*"

Agitate for human liberty! That is the cant phrase. What does he propose to accomplish by agitation? He admits that we cannot disturb slavery in the States. He admits, and declares, that there is no slavery in California, or New Mexico. He admits, and declares, that they are now free. And now, I ask, who does he propose to make free? What bonds does he ask to break? What chains fetter the limbs of the freemen of the territories? I suppose he, like others of his party, is very much alarmed, lest these hard-fisted, honest-hearted people of the far West *will abolish freedom*, and load themselves with chains and slavery. Mr. Chairman, this is the style of all the free-soil arguments I have ever heard; but I desire to ask the free-soil Democrats one question. After you have got this slavery question settled, where do you intend, as a political party, to go? or what do you intend to do? Do you still intend to make it a political test of party organization? If you do, at this point you and I must part company. I claim to love liberty, my country, and the Constitution, as well, and as devotedly, as any man in any party. I, for one, will stand by the Constitution and the union of these States. Come what will, or may, "the Union must be preserved." "Indiana knows no North, no South—nothing but the Union."

I commend to the eye of the restless political demagogue—whose political *existence* depends upon his ceaseless efforts at slavery agitation—the following extract from the late letter of Governor Brown of Florida:

"These are times of excitement; and men remarkable for wisdom, honesty, and discretion, are rarely, if ever, conspicuous in promoting schemes of agitation. Such men, at such times, and in such schemes, usually give place to the *restless politician and forward demagogue*, who generally manage to render themselves prominent and "popular, and of course successful."

Now, Mr. Chairman, I beg to say one thing to the great national Democratic party, of which I claim to be an humble member. You have held the control of this mighty nation for fifty years out of sixty. Its prosperity and its glory have been the work of your hands. You have passed through many storms of political strife, and have brought the ship of State, each time, safely into port. You have been beaten occasionally, but "never conquered." Your temporary fall has only given renewed energy and vigor to your time-honored principles of republican liberty. You have strangled to death that hydra-headed moneyed monster, that once threatened the freedom of the laboring millions, until the name of "United States Bank" stinks in the nostrils of every Democratic republican. You have sustained, triumphantly, the doctrine of "equal rights to all men, exclusive privileges to none." You have sympathized with, and sustained, the progress of human liberty throughout the world. Your voices, your strong arms, and stout hearts, have always been raised in defence of your country; and while your countrymen were bleeding at every pore—while your brethren were offering up their lives upon the altar of their country—you have encouraged and sustained them; and while they were pouring out their blood in a foreign land, in defence of the national honor, you never told the soldier, when he was returning from the field of blood, that he had just been engaged in a war that "was unconstitutionally and unnecessarily begun." You have, while holding the reins of Government, extended and enlarged the bounds of human freedom. In 1848 you fell, defending the right of the people to settle this vexed question, and all others, for themselves. The present Executive, General Taylor, has approximated to the truth, you fell defending. Even the great northern light—the great Ajax of northern Whig principles—after having made a most unjust and unfounded attack upon northern Democrats, has finally given in his adhesion to the northern Democratic doctrine, that there is no necessity for passing this "Wilmot"—I will add, "proviso:" he does not dignify it so much.* And now, when all parties, with but few exceptions, are giving in their adhesion to the truth of the Democratic doctrine of non-interference, on the subject of slavery in the territories, I hope to see northern Democrats standing in one rank upon the great rock of the Constitution, to save their beloved country from this threatening crisis. If you will, we shall have preserved our country, our national identity as a party, and our liberal, patriotic spirit as men. Then shall we have added another Democratic triumph to the long list of victories over error in by-gone days.

In conclusion, sir, allow me to say, that my people, who have so generously intrusted me with their confidence, if they were now to speak, would say, admit California into the Union—settle the Texas boundary—organize the territories, leaving the people, who are there, in the fullest enjoyment of their inherent rights to self-government—and abolish the slave trade in the District of Columbia, In doing these things, let every *Democrat*, north and south, unite in one fraternal bond of union. Then will the Union be saved. Then will the country be quieted. Then will disunionists, north and south, be consigned to the "tomb of the Capulets," and your beloved principles will again attest the truth, that "the people are capable of self-government."

ADMISSION OF CALIFORNIA.

SPEECH OF MR. JOHN VAN DYKE,

OF NEW JERSEY,

In the House of Representatives,

March 4, 1850.

The House being in Committee of the Whole on the state of the Union, and having under consideration the bill for the admission of California into the Union as a State—

Mr. VAN DYKE rose and said:

Mr. Chairman: I have but a single object in view in rising to address the committee at this time. It is not my intention to "agitate," particularly upon the "peculiar institution" of the South, nor to discuss, at much length, the great question which has recently been started here, whether slavery be or be not "a social, civil, political, and religious blessing." I leave these matters to those whose whole souls seem to be entirely engrossed by them, on both sides, and who can neither see, hear, nor think of anything else. Nor shall I stop, in the short time allowed me, to calculate the value of the Union, as certain southern gentlemen tell us they *have* done already, and who have proved very satisfactorily to themselves, I presume, by figures—which it is said cannot lie—that it is worth but little, and that they will be quite as well off out of it as in it. Nor shall I attempt to examine that other question, lately grown into immense importance here, viz., whether the impulsive, fiery, and chivalrous South, or the cold-blooded, phlegmatic, and calculating North, usually furnish the larger number of officers, and more and braver soldiers, for that great test of human greatness—the field of slaughter. This subject has been rung in our ears until I have thought I heard the cannon roar, have imagined that I actually smelt gunpowder, and in fact saw something in the papers about muskets and buckshot; but I leave this subject also to be settled by the "militia colonels" of Congress, and those who have never yet reached that important and dignified station. One thing is very certain, (and of this I suppose we are fully satisfied,) and that is, that we are all very brave when there is no danger. There is yet another subject much spoken of here—the scenes which are to follow a dissolution of the Union. The trumpet's clang, the clash of arms, and the shock of battle—the tossing plumes, the prancing steeds, and the flashing steel—the wasted fields, the flaming cities, and the streams of blood—are paraded before us with all the "pomp and circumstance of glorious war;" but from such scenes I beg leave also to turn away. I cannot, with any degree of pleasure, contemplate the triumphs of Anarchy, as he waves his blood-stained sceptre over the broken fragments of this once happy and powerful Union; nor do I believe for a moment that there is the slightest reason for any such contemplation. This Union was never stronger, nor in less danger, than at the present time; and although we may have a little dispute among ourselves, our attachments will be

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* Mr. Calhoun introduced the following resolution into the United States Senate in 1847:

"*Resolved*, That it is a fundamental principle in our political creed, that a people, in forming a constitution, have the unconditional right to form and adopt the government which they may think best calculated to secure their liberty, prosperity, and happiness. And that in conformity thereto, no other condition is imposed by the Federal Constitution on a State in order to be admitted into the Union, except that its constitution shall be republican; and that the imposition of any other by Congress, would not only be in violation of the Constitution, but in direct conflict with the principles on which our political system rests."

* And I have therefore, sir, to say, in this respect also, that this country is fixed for freedom to as many persons as shall ever live there, by an irrepealable law—a more irrepealable law, than the law which appeals to the right of holding slaves under legal enactments. And I will say further, sir, that if a resolution or a law were now before us to provide a territorial government for New Mexico, I would vote to put into it no prohibition whatever. The use of such a prohibition would be idle, as it respects any effect upon the territory. I would not take pains to reaffirm an ordinance of nature, nor to reënact the will of God. I would put in no Wilmot Proviso, for the purpose of a taunt and reproach—an evidence of superior votes, or superior power—to wound the pride, even—whether a just and rational pride, or an irrational pride—to wound the pride of the gentlemen and people of the southern States. I have no such object, and no such purpose. They would think it a taunt and an indignity. They would think it to be an act taking away from them what they regard as a proper equality or privilege. Whether they are expected to realize any benefit from it or not, they would feel that at least a theoretic wrong—something derogatory, in some degree, more or less, to their character—had taken place. I need not inflict any such wound upon the feelings of anybody, unless in a case where something essentially important to the country, and efficient to the preservation of liberty and freedom, is to be effected. Therefore, I repeat, sir—and I repeat it because I wish to be understood about it—I do not propose to address the Senate often upon this subject. I desire to pour out all my heart as plainly as possible. I say, therefore, sir, that if the proposition were now here, for a government for New Mexico, and it was moved to insert a provision for the prohibition of slavery, I would not vote for it."—*Webster.*

all the stronger when the storm shall have blown over, and the quarrel shall have been adjusted.

My object in rising, sir, is to vindicate the North, so far as I am able, against the gross and unjustifiable charges made against it, with little or no discrimination, by the South. Scarcely a southern gentleman rises to speak upon ths subject, but accuses the North, in the bitterest terms of reproach, of oppression, aggression, and outrage upon the rights of the South; and there is scarcely a newspaper published on the southerly side of the line, that does not assert the same thing. If the South is to be believed, the North, as a people and as States, are a set of Goths and Huns—Alarics and Attilas—robbers, cut-throats, and constitution breakers, whose great object is to free the slaves, burn the dwellings, cut the throats of the masters, and dishonor the wives and daughters of the South. If, indeed, the North be guilty of all these sins, both actual and intended, then, to be sure, we are greatly in the wrong, and our brethren of the South do not complain without cause. But, sir, I deny these charges utterly. It is not true that the North has been guilty of any aggressions upon the South. It is the mere creature of the imagination—"the baseless fabric of a vision." I hold myself ready to prove the position which I take; and I invite your attention, sir, and that of the committee, to those stubborn things, called facts, to sustain me in what I say.

I know very well that certain persons in the North have done and said particular things, not approved of anywhere, well calculated to displease the South, and of which I shall speak more fully hereafter; but it is equally true that portions of the South have done the same thing; and while it is not my intention to charge the South with aggression upon the North, yet I do affirm that the whole course of the legislation of the country, from its foundation, has been to suit the views of the South; and no law, whether for protection, improvement, or otherwise, that did not accord with the wishes of the South, has ever been allowed to pass, or, if passed, to remain long on the national statute-book. The complaints, the domination, or the superior abilities of the South, have always enabled it in the end to have its own way.

Mr. Chairman, I am not precisely certain whether I should class the State from which I come among the northern or southern States. If that magic line, of which we hear so much, known as Mason and Dixon's line, should be run straight through to the Atlantic, it will cut our State directly in two, leaving a part of it on each side of the line. And besides this, I find, on looking at the map, that the southerly part of the State of New Jersey is on the same parrallel with the District of Columbia, which, with that part of the State of Maryland lying north of it, claims I believe to be purely southern; but whether it be southern, northern, or neither, one thing is pretty certain, that neither she nor any of her representatives are very *fanatical* on the subject of slavery. She does not countenance mere frantic agitators at home, nor does she desire that her Representatives should become such here; but I am sure that I speak only the truth when I say, that among her whole people there is a deeply-seated and abiding conviction on the subject of slavery. Having had the institution herself, and having gradually abolished it—having fully examined and fully tried both sides of the question, as our friends of the South have not—she does not believe that it is either a social, civil, political, or religious blessing, but she believes directly to the contrary; and she believes, further, that all legislation which may lawfully take place on this subject, should be to *restrain*, and not to *extend*, either its power or its area. As she would resist, with all the energy within her power, the reëstablishment of slavery within her own borders, so she will never consent to its reestablishment in any territory of the country where it has been once abolished by law, and where it does not now exist. But, having used all the means within her power to frustrate any such attempt, if she shall find herself voted down by a majority in the national Congress, I think I may say for her, that whatever she may *think*, she will not attempt to dissolve the Union in consequence.

But to return to the charges of *aggression*, which is the word commonly used to comprehend every kind of northern iniquity. In the great Southern Address, of last winter, which was signed by most of the southern members, occurs the following passage; and I quote it, because it is more temperate in its tone than usual, and because it bears the signatures of a majority of southern members in both Houses of Congress. In speaking of what it terms a "conflict" between the two great sections of the Union, the Address continues:

"The conflict commenced not long after the acknowledgment of our independence, and has gradually increased, until it has arrayed the great body of the North against the South on this most vital subject. In the progress of this conflict, *aggression has followed aggression, and encroachment encroachment, until they have reached a point where a regard for your peace and safety will not permit us to remain longer silent.*"

This charge of *aggression*, in some form of other, is iterated and reiterated by almost every gentleman who speaks from a slaveholding State, and it is the only true ground, or pretence of ground, on which a dissolution of the Union is threatened; and yet no one has, thus far, been able to lay his hand upon, or specify, one single act or instance in all the North, which can be either seen, felt, or known, which can possibly justify or sustain this most unjust and slanderous charge. All is known by hearsay. One manufactures a story; others put it into circulation, until nearly worn out; it is then newly vamped up and recirculated, until, with the aid of a rather easy credulity, the southern people come to believe it is actually true, and, having heard it told so often, they assert it with all imaginary positiveness, without ever thinking whether there be any evidence of its truth, or not.

But I have, without hesitation, denounced the whole string of charges, both in the aggregate and in detail, as being without foundation and untrue; and although the burden of proving them true naturally rests on the party who makes them, yet I am willing, in this instance, to reverse the usual order of evidence, and prove the direct contrary to be true.

These charges of aggression are divided into four classes, viz:

Aggressions by acts of Congress;

Aggressions by State legislatures in relation to fugitive slaves;

Aggressions by State courts and State officers on the same subject; and

Aggressions by the northern people in aiding the escaps of slaves.

And first, *the aggressions by acts of Congress:* I have already stated, sir, that the whole legislation of the country has been of a character to favor the South, and not encroach upon her. And now let us look at the facts.

The Southern Address goes back for its aggressions to a time prior to the adoption of the Constitution; and to that period I propose to follow it. When the Constitution was adopted, we had but thirteen States. Since that time, seventeen new States have been admitted into the Union; *nine* of these have been admitted as slaves States, and *eight* of them as free States. As Congress, then, has thus far admitted more slave States into the Union than it has free States, and as these slave States could never have been admitted without the consent of the North—for the North has always had the majority in the House of Representatives—and as we have seldom heard of any resistance being made to such admission, we are bound to suppose that the North has not been very aggressive in this matter, but directly the contrary.

Again: of the territory embracing the present States of this Union, more than two-thirds of it is slave territory, and less than one-third of it is free territory. The number of square miles embraced in all the free States, is four hundred and fifty-four thousand three hundred and forty; the number of square miles embraced in the slave States, is nine hundred and thirty-six thousand three hundred and eighteen. While the number of white inhabitants in the free States is much more than two to one over the slaves States, yet the slave States, in extent of territory, have more than two to one over the free States; and as nine of these slave States have been admitted by Congress, which always had control over the question of boundary, and as these States, thus extended, could never have been admitted but by the consent of the North, I do not think that it was very aggressive upon the South in this matter.

Again: so anxious has the South ever been for the admission of new States from that section, with a view to preserve the equilibrium, as she calls it, and so willing has the North ever been to accommodate her in this particular, that three of the southern States have now only population enough to entitle them to one Representative each. Whether they will ever have any more, or not, is among the unknown things; but no such thing exists in the North. The last three States that have been admitted from the North, were kindly kept back from affecting the equilibrium principle, until they were entitled to two members each; and the very last one which has been admitted from the North, and admitted by the last Congress, has now three members on this floor. In this matter of congressional action, then, it cannot be said that the North has been very aggressive, but quite otherwise.

As another evidence of the oppressive and aggressive disposition of the North, in 1803 it agreed to purchase and add to the country that mighty territory, known as the Louisiana purchase, lying on the west side of the Mississippi, and reaching from the southern point of Texas, to the most northerly line of our possessions, and stretching westward in part to the Pacific ocean. This vast domain, every foot and inch of which was at the time covered, theoretically at least, and practically in part, by slavery, the North contributed its treasure to purchase, and gave it up to the uncontrolled dominion of slavery and the South, for a period of nearly twenty years; and the moment the North began to hint that slavery had proceeded far enough, we heard threats of a dissolution of the Union. But here again the South proposed its own terms; the North acceded to them, as usual, and all things went on smoothly. But let us pursue this subject a step further, in search of northern aggressions. Of the territory thus acquired from France, four States have thus far been created—Louisiana, Arkansas, Missouri, and Iowa—three of them slave States, and one of them a free State; and all this by the consent, agreement, and treasure of the North. Truly the North has been shockingly aggressive!

But again: out of the entire territory which we have acquired, since the Louisiana purchase, excluding the New Mexican territories, two States have been made—Florida and Texas—and both of them are slave States; and this, too, be it remembered, was done with the consent of the North, and without whose aid no such acquisitions could have been made. Florida was acquired in 1819, and admitted as a State in 1845, while Texas was acquired and admitted in 1845.

The gentleman from Georgia [Mr. Toombs] admits that the North behaved very well up to 1820. I feel very thankful, sir, for this small favor in the way of admission, because it comes directly across the great Southern Address; but he falls into the usual strain of vituperation against her since that time. Now, sir, I beg leave to call the attention of our southern friends very particularly to this business of the acquisition of Texas, which I have shown happened long since 1820. I do so, because it furnishes in itself a most extraordinary instance of northern aggression upon the South The gentleman from Maryland [Mr. McLane] insists, that the annexation of Texas was *not* a question of *southern* policy. He says it was a *Democratic* measure. I know very well, sir, that during the Presidential campaign of 1844, "the reannexation of Texas, and the whole of Oregon," were prominently displayed on the gaudy banners of the Democracy, to catch both the North and the South; and I know, also, that through the influence of a southern President, then present, through the power of the lash and caucus screws of the South, where the Democracy were strong, that enough of the north men to carry the measure were forced into it; but every one knew, and everybody knows, that the measure was of southern origin—that its great and only object and result was, to benefit the South, to strengthen its hands, and give to it political power and influence, by adding to its section a slave territory larger in extent than the States of Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania,

Ohio, Indiana, and Illinois put together, and nearly large enough to embrace Michigan also—Texas having three hundred and twenty-five thousand, five hundred and twenty square miles, and the other States mentioned, exclusive of Michigan, but two hundred and ninety-three thousand, two hundred and fifty-nine. I also know, very well, that the southern men, with a few exceptions, did not publicly avow that their object was, and the result would be, to strengthen slavery, and the South. The more captivating, but false and shallow argument was, that if we did not take it, England would get it—a thought which the more heedless of our people could not abide for a moment. But suppose the gentleman from Maryland [Mr. McLane] be correct in his view—suppose the North did of its own free choice, and without force or pressure, agree to obtain this vast country, and to surrender every foot of it to the South, to strengthen its position, and enable it to propagate and perpetuate slavery—how then stands the case, as to the question of northern aggression? Is not the case much stronger? Is not the north entitled to much more credit, as between her and the south, if she did this thing willingly, than if it were wrung from her by force?

But you, men of the South, who charge aggression and outrage against the North, please to bear in mind, still further, as we go along, that this same vast and valuable country of Texas, was thus given over to the South without one praticle of set-off, or equivalent, on the part of the North. The South very quietly and coolly takes and appropriates the whole of it to herself; and now, when, as a clear result of that annexation, through the war which grew out of it, we have acquired other territories, not worth a quarter as much as Texas, she claims to retain this lion's share of Texas, undisturbed, within her own clutches first, and then asks to divide the balance even with us. Yes, sir, this wonderful and high-minded section of the country, known as the South—containing but little more than one fourth of the entire *white* population of the Union—actually claims, and it is this very claim which we are now disputing about, to appropriate to herself the whole of Texas first, and then demands, in tones of menace, which smell of sulphur and bristle with bayonets, that she shall have half of the balance. And the refusal to accede to this extraordinary demand, is pronounced "an impudent assumption on the part of the North." Yes, sir, this is the language of the gentleman from North Carolina, [Mr. Clingman;] but if there ever was impudence more unblushing, and effrontery more brazen than any other, it is that put forth by the South, in the claim to which I have referred.

But the South asks, she says, nothing but justice, and will take nothing less; but where, pray, did she get those ideas of justice? Suppose for a moment we throw all the territory together—for I repeat that there was, in fact, but one acquisition. We annexed one portion, and we had to fight to maintain it; in the settlement of the fight, there was additional territory added. This is the proper mode, if a fair division of property is what she is after. Let us divide it, then; and if the South takes the whole of Texas, and nothing more, I ask you, men of the South, in all fairness and honesty, if your share is not worth four times at least as much as all the rest put together? I ask you, gentlemen of Texas, would you exchange your State, that was once a nation of itself, for a half dozen Californias and New Mexicos? I receive no answer—I know you would not. And again, I ask and demand an answer, if any one is prepared to give it: is there a man on this floor, from the South, who would to-day agree, if the thing were possible, to surrender up Texas to freedom and to the North, and take in its stead the whole of the other territories put together? Alas, sir! echo, with her thumb to her nose, answers "not exactly." And this is all the response that I get. In any event, then, and under any circumstances, the South has much the better part of the bargain; and with this she should be satisfied, and to this she must submit, so far as I am concerned, if her only alternative be, that we shall by law inflict slavery upon an unwilling people, and reëstablish it in territories where it has long since been abolished, and where it does not now exist. This is what Congress has never yet done, and has never before been called upon to do; and I think I am clearly right in saying that it never can be yielded. I can do almost anything else to reconcile difficulties, real or imaginary, but not this.

Mr. Chairman, I have not overlooked the fact that, in the resolutions annexing Texas, a trap was set, which perhaps caught some northern gulls, under the pretence that the portion of territory lying north of 36° 30′ was to be free. Yes, sir, such an idea was supposed to be contained in the resolutions, and the South are now laughing derisively at us for being so silly as to be caught by any such bait. The truth is, that the part lying north of the line, will never have inhabitants enough to make a State; and until it becomes a State, it is not to be free; and by the terms of the resolutions themselves, it is never to become a State, until the balance of Texas consents to it. When that consent will be given, you who are Yankees can probably *guess*. But in the meantime, the slave constitution and slave laws of Texas cover every foot and inch of the territory, and so will continue, until the South, as well as Texas, agrees to the contrary.

Some one—I think it was a Senator from Alabama—has said that, *Oregon* was an offset against Texas, but certainly not more so than the rest of the wild territory lying north of the line of 36° 30′. Our *title* to Oregon was not acquired when we settled the boundary line between England and ourselves. Our title to Oregon was just as perfect when the Missouri compromise was adopted, as it is now, and just as perfect as it was to any other territory. It was insisted on, in our controversy with England, on three different grounds—first, by dsicovery at an early day; secondly, under the Louisiana purchase from France, in 1803; and thirdly, by release from Spain when she ceded Florida to us, in 1819—all before the Missouri compromise—so that our ownership of Oregon was just as complete, and the slavery question was just as much settled therein, at the time of that compromise, as in any other territory that we then possessed. The only question with England was, whether we should keep the whole, or only a part.

And now, sir, let us pursue this Oregon question a little further, by way of seeing what aggressions were committed by the North upon the South, in the adjustment of that question. This, bear in mind, was northern territory. If the whole of it should be procured, it would add strength to the North in the future admission of States. And although the "whole of Oregon" answered very well for a political campaign, and although in the inaugural address we were informed that our title to the *whole* was "clear and unquestionable," and the North had reason to expect that our right to it would be maintained very valiantly; but all at once we were informed that a title, perfectly clear, was surrendered to the half of it, and the poor North had to content itself with the remainder. When our right to *southern* territory was in dispute, the nation was unceremoniously plunged into a foreign war to defend an extreme and preposterous limit; but when *northern* territory was the question, at the first growl of the British lion the South "caved in," and thought their "niggers" of more value than northern territory; the North soon followed, and we took the half of that, to the whole of which we had, as we were told, a perfect right. This was clipping the wings of the *North*, and lessening its power; but to this the North consented, and yet the South accuses her of aggression.

Mr. Chairman, the country, we are told, is nearly turned upside down on the subject of what is called the "Wilmot proviso." The people, it is said, are greatly excited on this subject; and some persons, I am told, are expecting every morning to wake up and find themselves dead. I know nothing of this excitement among the people in my section of the country, and the reason probably is, that no pains have been taken to excite them. It may be otherwise in the South; and why is it so? Not because the people have either seen or felt any pressure upon them from any quarter, for there has been no such pressure, but the reason clearly is, that gentlemen from the South come here, and make the most inflammatory speeches possible, in which they accuse the North of everything that is bad, and call upon their people, by everything that they hold dear, to arouse and resist the outrage and aggression. These speeches they circulate thick all over their districts, and the people, hearing nothing else, and knowing no better, really imagine that there is something terrible ahead; and thus the excitement of which we hear so much. But excited about what? Why, the Wilmot proviso. But the Wilmot proviso has never yet passed Congress, and it is perfectly certain that it never will. Even if it should pass this House, it is well known that it cannot pass the Senate. And gentlemen here make threats of what they will do, when the proviso passes, that almost make one's hair stand on end—threats which they know full well they are entirely safe in making; as it is very certain they will never be called on to put them in execution. But, then, we have *talked* about the proviso. Yes, we have talked much about it, and shall probably talk much more; and we once passed it through this House. A year ago, when we had an extreme pressure upon us, growing out of the peculiar situation of California, to give her a territorial government, we did pass such a law, and we put the proviso in it. For this I voted, and I did so under a solemn sense of duty to that people. I had abundance of evidence before me, and I so firmly believed that the people of California so desired it—a belief that has been more than confirmed since, by the entire unanimity with which they have themselves excluded slavery from their limits by their constitution now before us. Satisfied as I was that such was the desire of that people, I should be unworthy of a seat in this House, if I had voted otherwise.

And here allow me to express my view of a Representative's duty in such cases. It is not, in my judgment, the right or the duty of the Representatives from Massachusetts, or any other northern State, to insist, that the particular laws which suit them at home, should be enacted in another and remote territory, nor is it the right or the duty of the Representatives from South Carolina, or any other southern State, to insist on any such thing, in any such remote region. The question is, not what kind of laws the North wants, or the South wants, in California; but the great question, under proper restrictions, is, what kind of laws does the territory require and need? If a territory desire slavery within its limits, and if it be a "great, social, civil, political, and religious blessing—a blessing to the slave, and a blessing to the master"—if it tend to make a country great, and strong, and prosperous, and happy, and if it tend to develop their resources, to increase enterprise, and encourage industry and labor, then, if we think so, let them have it; but if, on the contrary, we believe it to be a great evil—a great moral wrong—a blight and a curse upon every country where it exists—if it hinder emigration, if it depress enterprise, if it discourage industry and labor, by making it disreputable for a white man to work, and, above all, if the people to be affected are deadly hostile to it—I ask, in the name of all that is just and reasonable, why should we either put it upon them, or allow it to go there, if we can prevent it? If it became necessary for us to give local laws to South Carolina, or Massachusetts, it surely would be our duty to give them such laws as those States respectively desired and needed in their particular locations. And why is this not true when we are legislating for a territory?

But, Mr. Chairman, I every day hear it asserted, and repeated on this floor, that the territories in question were acquired by the common treasure and the common blood of the Union, and that, therefore, the people of all the States have an equal right to emigrate to those territories, and to carry with them their property of every description, and to be protected in it there. This is true to a certain extent; but judging from the course of argument on this subject, I infer, that those who insist upon this consider, because we all have a kind of equal interest and partnership in the public property, that therefore each one has a right to march at once into the new territories with his horses, cattle, and negroes, clutch the first five hundred or a thousand acres that happen to suit him, squat down upon it, and claim it as his share of the plunder, with the right to hold it, and work it with horses, oxen, or negroes, as he may think

proper, whereas, in truth and in fact, there is not one of us who is entitled to an acre of that land any more than an inhabitant of Kamschatka. It is true, we have all an *interest* in this public property—that is to say, we are the *cestui que trusts;* the Government is our trustee, and we are entitled to have the proceeds of the sales, or other disposition of the property, justly appropriated for our joint benefit; but not one of us is entitled lawfully to have or touch a foot or inch of that land unless we buy it, and pay for it, and take the Government deed as our title. This the inhabitant of Kamschatka can do just as well as we. We are not bound to do this—we can keep our money, and purchase better land elsewhere, if we like. We stand in the same relation toward these territories precisely as we do toward the other public lands of the nation, lying within or without the different States of the Union.

But let us approach this subject a little closer. We have the same power to legislate for these territories that the legislatures of the different States have to legislate for their particular States. And is it true, that legislative power cannot restrain the people within its jurisdiction from holding and using certain kinds of property, and even from pursuing certain kinds of business for a livelihood, if the holding and using of such property, or the pursuit of such business, be injurious to the public morals, or detrimental to the public good? If there be no such power, what becomes of your laws to restrain piracy, counterfeiting, horse-racing, gambling, rum selling, and the like, which have been enacted a thousand times? Have not the northern States repeatedly exercised this power in the abolition of slavery itself, wherein they have enacted that their citizens should not either hold or use slaves within their limits, and this, too, when a large portion of their citizens were slaveholders at the time of such enactments, and desired to remain so, and who protested loudly at the time against any such laws? Suppose, that in giving government to a territory, we should insert a clause prohibiting piracy, counterfeiting, gambling, and rum selling, as we have an undoubted right to do, would not every pirate, counterfeiter, gambler, and rum seller in the land cry out that they had an equal right with others to this territory, and that the Congress had passed a law which prohibited them from emigrating to these territories, and carrying *their* property with them, and *using* it like the rest of the people of the country? I suppose our southern friends are not willing to put slavery on the same footing with piracy, but many people think that it stands ahead of it; and besides, the slave-trade is already made piracy by law, and the difference between the two is not so very clear, after all, as they always exist together, and cannot exist apart. When we had slavery in New Jersey, even in a modified form, we always had slave-dealers. Slavery cannot go into the new territories without the slave-trade going with it; and it is now one of the very grounds on which a dissolution of the Union is threatened, if we abolish the slave-trade between the States—a traffic daily carried on between them. If, then, we permit slavery to go into the new territories, we must also send this piratical slave-trade with it.

But, gentlemen of the South, you have another difficulty in the way of carrying your property to the territories, which you say but little about, but you all know full well that it is the real insuperable obstacle in your way. It is this: with regard to property, known as such the world over, you stand on the same footing with the North precisely; but with regard to that thing which you *call property*, when speaking on this subject, it is *not* property everywhere, like horses, cattle, &c. It is property nowhere, except in particular places, where the local law has made it property, and authorized man to hold it as such. Your slaves, which you call property in the South, are *not* property in the North; and you cannot hold them by law in the free States, if you take them there, as you can your horses. They are not *property* anywhere under the whole heavens, outside of your particular limits, if you once take them outside of them. They are not now property in any of the new territories, because slavery has been abolished there; and it cannot exist, nor can slaves be held there as property, unless we reëstablish it there. This is the great point in question. Gentlemen may talk around and evade the direct issue, but it comes to this at last. You want us to reëstablish slavery or at least in some way to recognize its existence in some part of these territories which is now free from it; you want us, by some affirmative act, to make property for you in the territories—nothing else will satisfy you. What but this is meant by your proposition to run the Missouri compromise line through to the Pacific? What but this is meant by *all* your offers to divide it? Suppose we continue the compromise line through to the ocean, or any other line, what then? North of the line is to be free, south of it is to be—what? Free also? Does the South want it for free territory? No, sir; she wants it for slave territory. And how is she to make it slave territory—the people there being opposed to it—unless Congress itself shall, by positive legislation, reëstablish it there? This, I repeat, is the real question at issue; and as I have before said, this is forcing upon us a new precedent. It is a thing which Congress has never before done, and never even been called upon to do; and I am strongly inclined to think that it will ask to be excused from doing it now.

If this be not the real question, pray tell us what the question is. "What's the cause of this commotion, all the country through?" The people are said to be excited; the South we are told are united like one man for defence. A great Southern Convention is to be held. A Southern Confederacy is being whispered. The Union is threatened, and even the day of its death has been fixed; and this very day revolvers and bowie-knives were to be as plenty here as members; and I saw a few Senators come into the hall to witness the great catastrophe of final dissolution. I shall be glad, sir, if the Union be found existing in the morning; for if we can once get past the time fixed, we will probably be like the followers of Father Miller, who, when they found that the explosion did not take place at the time appointed, began to think that after all it possibly might not take place just yet.

But really, sir, what is there before Congress to produce the excitement, and to justify the speeches that are made here? Nothing—nothing but a simple bill for the admission of a State into the Union. But is there any thing necessarily exciting in this? It is a thing we have done seventeen times before; and it is a people, too, to whom we have refused a territorial government, and they now ask to come under our protection in another form, and gentlemen seem to be greatly excited about it. But she has excluded slavery by her constitution. Well, we have admitted States in all ways—some with slavery in, and some without it, and some that said nothing about it; but we have never yet refused a State because she either had it in, or had it out. But to resist California for this reason, and to dissolve the Union on this ground, when the people there, according to the true southern State-rights doctrine, have decided the matter for themselves, is a position a little more pro-slavery than even our southern friends are willing to assume. And hence they say they do not resist her on that ground; but they say that the President has interfered in the matter, and that the irregularities and illegalities in her mode of organization are so monstrous, and the persons who voted such vagabonds and vagrants, that the thing cannot be tolerated for a moment. Well, there seems to be some irregularities about it, I admit; but then we have no standard of regularity by which to be governed. The Constitution gives the power, but says nothing about the mode and manner of doing the thing. Thus far there has been scarcely two States that have been admitted in the same way—it is always a matter for the sound discretion of Congress. But the understanding that I wish to have with our southern friends is, that if they refuse to admit California on the ground of *irregularity* alone—this being a question where a difference of opinion should not make ill blood or ill friends, if there should happen to be a majority who think differently—and should vote accordingly to admit California, what I want our friends to promise is, that they will not dissolve the Union merely on account of this *irregularity*.

With regard to the remaining territories, we have nothing before us concerning them, and I do not know that we shall have; when it comes, it will be time enough to meet it. Some weeks ago we had a resolution before us in favor of applying the scarecrow proviso to them; but as that was laid on the table, by a large majority, and as the gentleman from Alabama [Mr. Inge] insists that that proviso is dead, and he having pronounced a funeral oration over it, I do not see what there is left for excitement and disunion to feed upon.

But the gentleman from North Carolina [Mr. Venable] says we are trying to dishonor them; that this is a thing never attempted before, and I understood him to say, with great vehemence, that he would rather die—I have forgotten how many deaths—than submit to dishonor; and I understood him also to say, that he would far rather that all the little Venables in North Carolina should share the same fate, than that they should submit to dishonor. These are brave words, and they were bravely spoken. The gentleman also told us that there should be no skulking or dodging in this House, if he could help it—that every man should "face the music;" and yet that gentleman, but the day before, from midday till after midnight, did nothing else but shirk and dodge the question before the House. He was famous among the famed in calling the yeas and nays on every frivolous question that could be started, to avoid a direct vote on the pending question. Why, sir, I left the hall for a few moments, and on returning, found the clerk calling the yeas and nays I inquired anxiously what the question was, and was informed that the gentleman from North Carolina [Mr. Venable] asked what?—to face the music? No, sir, he asked to be *excused* from voting; and this is what he calls "facing the music."

Mr. VENABLE. Did not the gentleman, when the President sent in the constitution of California, vote against my proposition to refer the subject to the Committee on Territories? did he not vote for a reference of that subject to the Committee of the Whole on the state of the Union? and did he not, a few days after, vote for the resolution of the member from Wisconsin [Mr. Doty] to take that bill out from the Committee of the Whole, and refer it to the Committee on Territories, with peremptory instructions to bring in a bill under the previous question? It was this that I resisted, and the South resisted, by all the means which parliamentary rules afforded.

Mr. VAN DYKE. Mr. Chairman, I do not distinctly recollect all the votes that I have given on unimportant subjects; but I do recollect very well a very important one that I gave. I voted to *excuse* the gentleman from North Carolina from voting, as I understood he was urgent on the subject; and if I voted to refer the California matter to the Committee of the Whole, instead of to the Committee on Territories, as moved by the gentleman from North Carolina, it was because that, in the latter committee, it would certainly have been smothered, while in the former it was thrown open to debate, and beyond the power of the previous question—the very thing which the gentleman seems so much to desire. I did not at any time vote to take this matter again out of Committee of the Whole, and refer it to the Committee on Territories, with peremptory instruction, and under the previous question, to bring in a bill admitting California as a State; and I know of no such vote having been taken. I did vote against laying on the table the resolution of the gentleman from Wisconsin, [Mr. Doty,] but I did *not* vote to sustain the previous question on that resolution which cut off debate. I voted also against all the "stave off" motions made on that eventful day, except the one to excuse my honorable friend from North Carolina; but I did not vote to continue that child's play long after the usual hour for adjournment.

But, Mr. Chairman, what of all this? What difference did it make what particular committee had charge of the California constitution? It was, after all, the only thing before us on the subject of slavery, and the territories. And if the gentleman felt himself and his section dishonored, it must have been by the simple fact that we were talking about the admission of a State; and as the main ground of hostility to such admission is the question of *irregularity*, the gentleman cannot help but perceive that the dishonor, if any, must attach to those who vote to overlook this shocking *irregularity*, and not to those who vote against it—so that the gentleman and his friends, if they vote against

this irregularly got-up constitution, will be entirely free from dishonor on that score.

But, Mr. Chairman, I have been led somewhat from the main object of my remarks, which was, to repel the charge of aggression made against the free States by the South. I have not done with the subject, but return to it again, as it is one which, in my judgment, the country at this time should fully understand.

Another cause of complaint and charge of aggression is, the alleged interference of the North with the question of slavery in the District of Columbia. Sir, there has never been a doubt—in the North at least—that Congress had full power over the question here, at any time, and in any way, to abolish both slavery and the slave trade; and it is equally true that the North has most of the time had the number of votes necessary to carry such a measure through Congress, if it had seen fit to use them. And yet, sir, it is true, that with all this power of Constitution and of numbers, the North has, down to this very hour, permitted in this District, not only slavery, but the *slave-trade*—that infamous traffic, which the laws of nations and the laws of Congress have long since made piracy, and punished with death, when engaged in by persons of different nations. This infamous traffic, I say, in its most offensive forms, is, down to the present hour, permitted to be carried on between the citizens of our own country, and the States of the Union, with perfect impunity, here in the metropolis of the nation, in sight of the Capitol, and beneath the flag of the Union! Is this aggression, sir? Why, if we had swept it away long ago, we could not have been accused of aggression. But allow me to ask gentlemen of the South why they insist upon the continuance of these things here? Why must the one hundred and seventy members of Congress, coming from the North, be forced to look upon the loathsome and repulsive scenes connected with this traffic? Why must the representatives and official personages from every Government on the face of the earth, and every stranger and traveler who visits our capital, be forced to look upon our slave pens, and droves of miserable half-naked negroes, bound together, and driven along the streets like cattle or swine, to a railroad depôt, or steamboat landing, to be shipped to a southern market? I feel almost degraded, when I admit that the North has thus far tolerated and consented to all these outrages against humanity and decency; and because we tolerated them, we are accused of aggression in this respect. And the gentleman from Georgia [Mr. Stephens] told us at an early day in the session, and with much warmth, that if we abolished slavery in the District of Columbia, the day we did it we would dissolve the Union. But do not gentlemen stand greatly in their own light in this matter of the slave traffic, especially in the District? Would they not enjoy their own institutions in more peace and quiet at home, where no sensible man desires to pursue them, if they would at once agree to put it out of our sight? For myself, I can only say, that before I came here, I felt but little concern on the subject; but when I was forced to look, as I have done, upon a drove of negroes, of both sexes and of all conditions, bound together, and publicly driven along Pennsylvania avenue, amid the hootings and shouts of the boys, I confess that, although my nerves are not easily disturbed, this was a little more than I could look upon with composure; and I doubt not it is so with others. I felt very much inclined to adopt the elegant but forcible lines of Cowper,

> "I would not have a slave to till my ground,
> To carry me, to fan me while I sleep,
> And tremble when I wake, for all the wealth
> That sinews bought and sold have ever earned."

And now, a word or two on the subject of slavery in the District of Columbia. The gentleman from Maryland [Mr. McLane] says that he does not look upon slavery as a blessing, exactly, but he looks upon it as a *necessity*. This may be true, to some extent, in certain places; but it is *not* true in regard to this District, nor is it true with regard to the State of Maryland itself. There is no necessity for its existence in either place, more than there is in New Jersey, which lies almost beside them, and where, under circumstances similar to theirs, they terminated that necessity long ago. But I shall confine my remarks to the District. There is neither cotton, rice, nor sugar, nor even tobacco—so far as I have seen—raised in the District; nor is there any kind of labor carried on here, in which it can be pretended that slave labor is essential. Indeed, the principal use to which slaves are here applied, is for domestic servants, and to hire out for wages; and there is no good reason, that I can see, why a gradual emancipation should not commence. But I am no fanatic on this subject. I would not vote to-day, nor at any other time while I expect to have a seat in this House, for the *immediate* abolition of slavery in this District, although I would vote for a proper bill for the gradual abolition of it. Any sudden change on the subject would be unwise and wrong; and besides this, it is not the way in which the northern States themselves got rid of it.

But further, Mr. Chairman, on the subject of northern aggressions, which are going to dissolve the Union. Since the adoption of our Constitution, out of the sixty-four years which will have elapsed on the 4th of March, 1853, when General Taylor's presidential term expires, the South will have had the President and the entire control of the Government fifty-two, and the North twelve. Now, sir, I care nothing about the question of which section has had the most honors. The North does not complain of it. She could have prevented it. But when the South talks of aggressions on the part of the General Government, through its different departments, I desire to know what kind of aggressions they can be, when the North has, for fifty-two years out of sixty-four, surrendered up to the South the whole control and management of the Government, in all its branches? Not only have they had the Presidents, but through them the cabinets, the courts, the foreign ambassadors, and all the officers of every grade throughout the country. The shaping, the forming, and modeling of the system, has been theirs. The putting the machine in motion, and establishing precedents, as well as the powerful Executive influence over even the legislative department of the country, has, during all this time, been with the South—sometimes having the President and Vice President both—and all this, too, when the North could always have prevented it, as her electoral vote has always been the largest—but she did not. And yet the North is accused of aggression upon the South!

But still further, sir: since these very troubles, which now so disturb our peace, have been upon us—since the acquisition of these territories—the great and really only cause of our unhappy strife—the North, with a majority of fifty electoral votes over the South, and consequently with full power to prevent it, has gone and again elected a far southern man—a large slaveholder—and has again, through him, surrendered the whole powers of the Government into the hands and control of the South, for four years more, and during which time these very questions must, in all probability, be settled—thus placing this whole question of difficulty beyond our control, and placing ourselves almost entirely in the power of the South; and yet, with all these facts before us, our ears are daily stunned with the charge of aggression.

But, sir, let us come one step further down in search of these northern aggressors. About the first of December last, the two Houses of Congress met. The august branch at the other end of the Capitol, having through the Vice President all the necessary powers to make it otherwise, quietly bound itself up, both body and soul, in all its organization, and rolled itself over leisurely into the arms of the South, where it has remained ever since, and which is in itself a northern aggression scarcely to be submitted to, while at this end of the Capitol, the Democratic party went into caucus, and selected for Speaker a southern slaveholder; and with it I find no fault. The Whig party, strong at the North, also went into caucus for the same purpose; but before a selection was either made or spoken of, a portion of our oppressed and down-trodden friends of the South, started the remarkably modest project of compelling the entire Whig party, in that informal and preliminary meeting, to pledge itself not to legislate at all on the subject of slavery or the territories, except to suit the South, or that they should have no organization at all. This sage proposition, the party declined to accede to just then; and thereupon our southern friends, before referred to, withdrew in a body, and in this House labored for weeks to carry into execution their purpose of disorganization; and one of them publicly reiterated here, upon this floor, the same atrocious sentiment, that unless this House would first "*give security*" that it would not legislate adversely to the wishes of the South, that "discord should reign forever;" and this disloyal and disorganizing sentiment was clapped, and stamped, and applauded, not by the entire South, I am proud to say, but by every fanatical disunionist from that section of the country; and if there had not been patriotism enough in the House to adopt the plurality rule, and thus tumble overboard the whole disorganizing gentry, they would doubtless have kept the House and the country at bay until this time. Well, sir, these patriotic southern gentlemen, after a struggle of three weeks, succeeded in defeating a Whig Speaker and a Whig organization, and to that extent a Whig Administration. The northern Whigs were particularly disappointed, mortified, and provoked; but what did they do? Did they go to their northern friends on the Democratic side of the House, and propose a northern action to sweep this offensive southernism from the House? No, sir, they quietly submitted. Well, what next? Why, our Democratic friends had a northern candidate for Clerk, whom they were very anxious to elect, and to which they were clearly entitled as against their southern Democrats, who then had the Speaker, and they came very near electing him; when all at once the southern Democracy became too patriotic longer to sustain a northern man, and over they went, several of them, and voted for a southern man, Whig though he was, and elected him, not because they preferred a Whig, not because they were excessively attached to the individual, but because he was a *southern* man. And now it became the turn for the Democrats of the North to be provoked and outraged by their southern friends, as they were. But what did they do? Did they go to their offended northern brethren and propose a northern organization for the balance of the officers? No, sir, they quietly submitted to the outrage. Here, then, the South, with a little more than a third of the body, has, by its domination and noise, and by its infidelity to its friends, driven the North from its every position—has procured the two chief and only officers who can, by possibility, have any influence on the legislation on this subject of slavery, and this, too, when the North, had full power, at any moment, if they would have drawn a sectional line, to have excluded the South altogether; but yet they stood by, and submitted to all this, simply because they *would not* draw a sectional line, or form a sectional party. The North could have organized the House in an hour; but it preferred seeing all the officers of the House, and all the organization through its committees surrendered up to the South, rather than *seem* in any way to encroach either upon their rights or their feelings; and yet we are continually annoyed with the perpetual clamor about northern aggressions.

Having examined, and as I think answered, the charges of aggression brought against the North, so far as the action of Congress and the General Government are concerned, I will examine briefly the charges of aggression brought against northern *Legislatures*, when acting in behalf of their respective States. The charges are of two kinds—the adoption of anti-slavery resolutions, and their action on the subject of runaway slaves; beyond these two, there is no pretence of complaint. With regard to the first, the adoption by northern legislatures of the resolutions in question is, as every one knows, but the mere expression of an opinion by those bodies, which have no binding effect upon any one. They have no force in themselves; they cannot, and do not, affect the question of slavery in any sense; and even though these opinions be expressed in intemperate language, yet it is their undoubted right to do so; and although the South may not be *pleased* with them, yet it furnishes no ground of complaint—certainly it is no aggression; and besides this, it is the very course pursued by the legislatures of the South—the only difference being, that those from the South take the other side of the question. It was but the other day, that resolutions on the subject of slavery, from the Legislature of Ver-

mont, were offered in the Senate, and indignantly refused admittance; but a few days after, resolutions from the Legislature of North Carolina were offered, on the same subject, but of course on the other side of the question, and in which the *North*, without distinction, was accused of "*fanaticism and political dishonesty;*" but these resolutions were *received*, with but two dissenting voices.

And now, with regard to the second class of legislative aggressions, viz., their action on the subject of runaway slaves. Although the Constitution of the United States nowhere contains the word *slave* or *slavery*, yet it does contain the following clause:

"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 the claim of the party to whom such service or labor may be due."

This clause, although it does not say slaves, it has always been understood was intended to apply directly to them, and is certainly broad enough to cover them. It will be perceived, however, that it only confers the right of capture on the master, but does not prescribe the mode and manner of carrying it out. Well, sir, on the 12th of February, 1793, the States then being nearly all slave States, and the South having everything pretty much their own way, the Congress of the nation passed an act in aid of this constitutional provision, in which is laid down and prescribed the particular manner, and through what officers, such runaways were to be claimed and given up. The same act goes further, and inflicts a penalty of five hundred dollars upon any person who shall either rescue such fugitive, or harbor or conceal him, after notice that he is such. In further aid of this constitutional provision, and of this act of Congress, the legislatures of most, if not all, the States, at the instance of the slaveholding States—for no others desired it—passed, years ago, additional laws on this subject, to regulate the mode of capture and surrender; but in January, 1842, the Supreme Court of the United States, in the celebrated case of Prigg *vs.* the Commonwealth of Pennsylvania, where the right and power of a State legislature to pass any law on this subject was brought directly before the court, and for the express purpose of obtaining its opinion thereon; the court, after elaborate argument and great examination, decided the law to be unconstitutional, and utterly void. It took the broad ground, that this being a constitutional provision, it was a matter for the General Government alone to carry out, and that neither the State legislatures nor the State officers, as such, had any right to interfere in the matter at all; and that all such laws were mere nullities. Under this sweeping decision, and in obedience to its high and undoubted authority, the legislatures of most of the northern States repealed the laws which they had enacted on the subject, and some of them prohibited the interference of their officers. This, sir, is the whole of it, and nothing more. The northern States, after having passed laws to aid their slaveholding brethren, found those laws suddenly stricken down and swept away by a decision of the Supreme Court. They simply abandon them, and stand precisely where they stood before they enacted them. This was not their fault, because it was that which they could not avoid; and yet they are denounced as aggressors.

Again: the Southern Address charges our northern *courts* with obstructing them in reclaiming their fugitive slaves. This charge, like most of the others, is made without any one being able to furnish a single example to prove it. I know of no such thing, and have never heard of an instance; but I do know of an instance, within the last six or eight years, in the State of New Jersey, where a claim was made to a slave. The case was tried by a jury, which found in favor of the master, and the slave was surrendered. And within the last five years, a suit was brought by slaveholders in the State of Michigan—a very free-soil region—against persons charged with aiding and abetting the escape of slaves, and a jury of Michigan gave a verdict in favor of the slaveholders, and against their own free-soil people, of about nineteen hundred dollars; and in the case of Prigg *vs.* Pennsylvania, it appears that he had the warrant of a Pennsylvania officer, by which he carried a woman and children out of that State into Maryland without interruption. So much, then, for aggressions by the northern *courts*.

But it is said, again, that the South is obstructed in recovering their slaves by *mobs*. Well, sir, some of the people of the North, as well as the South, sometimes misbehave themselves. We sometimes have mobs and riots, but there is no one thing that has caused as many in the North, as the attempts to break up abolition meetings, and to put down Abolitionists. But the northern mobs are seldom composed of the public authorities, as was the one in South Carolina, which drove a respectable citizen of Massachusetts out of that State, because he desired simply to appeal to their own courts in behalf of an imprisoned citizen of the latter State, which the former had confined. There is doubtless some cause of complaint on both sides. A few in the North refuse to aid in the surrender of southern slaves, while some in the South refuse to surrender northern freemen. Persons in the North publish abolition papers, and persons in the South rob the mails in search of them. Slave negroes, having *brains* as well as legs, run away from the South; and southern men kidnap the free negroes of the North. These are all evils incident to society, which laws may punish, but cannot prevent, and which will remain, to some extent, until man everywhere becomes perfect.

But where, I ask, do these complaints about runaway slaves come from? The gentleman from North Carolina [Mr. Clingman] told us that the little State of Delaware had lost $100,000 worth of slaves in the space of a year. I am bound to suppose that the gentleman had good authority for this marvelous story; but it seems to me that, if it were true, Delaware would be found complaining; but she says not one word. Perhaps she thinks, like other slave States *should* think, that the more she loses, the better she is off. Maryland, Virginia, Kentucky, and Missouri, are the only other States that can well lose slaves in this way—they being frontier States; and yet, with the exception of Virginia, we hear but little complaint from them on this subject. But it is North and South Carolina, Georgia, Alabama, and Mississippi, that have never at any time lost a slave in this way, that are making all the noise on this subject. But where are the slaves all gone to? They are not to be found in Canada—that great supposed gathering place—nor are they to be found in the free States, nor anywhere else. The conclusion must be, that they have not run away; yet why should they, if they are so exceedingly happy at home, as gentlemen tell us they are? And let me ask again, why this particular grievance has just been discovered since the acquisition of the Mexican territories? The law of 1793 has remained unaltered on the statute-book to the present time, and has been deemed satisfactory, while no real attempt even has ever been made to alter it.

Mr. Chairman, I fear that I see the cause of all these complaints and charges somewhere else. I heard tell of a shrewd beggar who always asked for several things in the hope of getting one. And is it not true, and is not this the real secret, that our southern friends are determined to have a portion of the free territories obtained from Mexico as an additional *slave market;* and is it not true that they have been trumping up this long list of imaginary grievances against us, with a view to hammer them over our dull and stupid brains, until, to escape from the severe and incessant infliction, we will finally yield the one point and allow them their market? But, gentlemen of the South, if you have made up your minds to dissolve the Union on this point, you must undertake it; for I again repeat it, that you are asking too much. But, says the gentleman from Mississippi, [Mr. Brown,] we have made up our minds to have our right in those territories. We will get it by our votes here, if we can, but if we cannot, we will take it by "armed occupation." Well, sir, it might be interesting to a man of a martial spirit to see all the warriors that Mississippi can furnish, with all her "militia colors" at their head, sailing around Cape Horn, or taking the overland route, after California shall have been admitted as a State, with a view of taking armed possession of that part of her which lies south of 36° 30'. It might be interesting, I say, to a man of strong nerve, but not to me, to see that army, after it had been pretty well famished by feeding on flour at fifty dollars per barrel, beef at a dollar a pound, and potatoes at two shillings a piece—to see it, sir, under such circumstances, when a hundred thousand armed warriors—such as California can furnish at the tap of the drum, of the bravest and most desperate men in the world—should, with carbines, rifles, bowie-knives, and pistols, make a descent upon it. Sir, I will not pursue this preposterous assumption. California alone, unaided by this Government, can repel and protect herself against any force which the combined efforts of southern disunionists can send against her; and if Mississippi has any extra funds to carry on such a fruitless war, I would respectfully advise her to pay her debts with it, or at least to commence the payment of her long-delayed interest.

Another cause of complaint is, and it is made a ground of resistance to the admission of California, that it will destroy the equilibrium of the Government; that is to say, it is insisted, that there should always be just as many slave States as free ones, which will make them equal, in the Senate at least. But the Constitution contemplates no such thing, for it did not consider that any such division as North and South would ever exist; but this position would forever prevent us from changing the number of States from an even number to an odd one. And this, after all, is a new idea started by the South; for in former days, when the States were nearly all slave States, and when the few northern States that first abolished slavery were in a sad minority as against the South, and that section had everything in its own way, we heard nothing about equilibrium then. But I, for one, care nothing about this question of equilibrium. I do not wish the North to be considered as occupying a position of mastery over the South. We are none of us masters, in this sense. We are all *sovereigns*, to be sure; but then we are all equals, notwithstanding, as *sovereigns* generally are; and when a State presents herself for admission from a slave section of the country, with slavery in her constitution, I see no reason why we should refuse to admit her on this account, if her action be sufficiently regular in other respects. This we have often done heretofore, and ought to do it again, if necessary, for it involves no part of the great principle now at issue.

But the gentleman from North Carolina [Mr. Venable] says that the South parted with its birth-right for a mess of pottage, when Virginia ceded to the Government, for the purposes of freedom, the Northwest territory; and she has been weeping, like Esau, for the last fifty years, over that which she could not reclaim. Great praise is claimed for Virginia for this generous and munificent donation; but allow me, in the first place, to say that Virginia did not make the cession of the country. Virginia did not own it—her charter no more covers it, than it covers California and Oregon. Virginia *claimed* a part of it, to be sure, and so did New York, and Massachusetts, and Connecticut, whose charters gave them about as good a claim to it as Virginia; and it required each of these States to make a release to the General Government of their respective rights therein, before the title of the Government thereto became perfect. Virginia was not the first even to make the cession, for New York was in advance of her, in this thing, just three years. The cession of New York was March 1, 1781; that of Virginia was March 1, 1784.

Again, the cessions on the part of the different States, had no reference whatever to the questions of slavery or freedom at the time they were made. At that time there were other States, beside the four which I have mentioned, having, or claiming to have, wild and waste lands. Georgia and the Carolinas, and they all, agreed to cede, and they did cede, these lands to the General Government, for the purpose (and it is so recited in the instruments of cession) of enabling the Government to pay its debts, entirely regardless of the question of slavery; and it was not until three years after the cession by Virginia, viz., in 1787, that the Congress of the old Confederacy undertook to pass, and did pass, a general ordinance for the government of that territory. In that ordinance is found the section containing the great anti-slavery proviso, now called the Wilmot Proviso, which, in

terms, prohibits the existence of slavery in that great territory, then a howling wilderness. This section was introduced by Mr. Jefferson, a Virginian; and when it passed, in 1787, it received the unanimous vote of every southern man in Congress. There were but two dissenters, and they were from the North. At that time there was no dispute about the blessings of slavery; at that time all men held it to be a great evil and a great wrong, and the only question of trouble was, how they were to get clear of it. The South denounced it with much more bitterness than the North; her clergymen preached against it as a sin; her statesmen spoke against it everywhere; and all united in heaping curses upon our greedy British ancestors for inflicting it upon us. But now it is pronounced a blessing. No one dares speak against it in the South at the peril of his safety; and the southern politicians are now struggling, with the utmost desperation, to inflict upon our possessions beyond the Rocky Mountains the same evil for which they have, with bitterness and anguish, a thousand times cursed their British ancestors for inflicting on them.

Mr. Chairman, the clock admonishes me that I have time to say but little more. It has not been my intention, nor is it now, to bring party politics into these remarks; but our friends on the other side of the House cannot, in their speeches on this subject, avoid assailing the present Administration, and comparing it with its predecessor. Sir, if I, or the party with whom I act, had been instrumental in bringing upon the country the evils which now beset us, and which, although they will not destroy the Union, so greatly disturb and convulse it, I should scarcely venture to raise my voice in this hall. You, who recklessly annexed Texas, and plunged the nation into war, must bear the accumulated curses of a distracted and ruined people, if a dissolution in fact or in feeling shall follow our ill-omened conflict. My hands, and the hands of those with whom I have acted in the matter, are free from the stains of blood. Yours are not. The bones of thousands of our slaughtered countrymen, that lie mouldering in the sands of Mexico, and the sighs and tears of thousands of other bereaved ones, must tell you in startling accents that you are the cause of all. And all the blood, and tears, and woe that shall proceed from fraternal conflict, if ou ridolized country is to be drenched in fraternal gore, must tell you the same thing. Without these territories, we could not have had any difficulty.

The gentleman from Alabama, [Mr. Inge,] who, in his efforts to make the great, the good, and the brave old General, who at present presides over the destinies of this Republic, a fit subject for the lunatic asylum, undertook to tell us that his idol, Mr. Polk, went out of office in a greater blaze of glory than he came in. Perhaps so; but I do not see by what kind of logic he arrives at that conclusion, when Mr. Polk came into office with a majority of about sixty in his favor on this floor, and went out with a positive and clear majority against him, and was the only President we ever had that did not get even the offer of a renomination. But I cannot be tempted into any comments upon Mr. Polk; but with regard to old Rough and Ready, he has often before been placed in circumstances of more appalling difficulties than those which now beset him, and he has not only always extricated himself, but those also who were intrusted to his charge; and he will do it again. He, who has never yet submitted to defeat, in whose vocabulary the word *surrender* is not to be found—he whose very presence could make the thin but daring ranks of raw recruits a perfect wall of fire, over, or around, or through which the dark and dense array of Mexican cavalry, could not ride—he, I say, will yet deliver us, if delivery we shall need. That brave heart, and that strong arm, and that indomitable will, if God shall spare his life, will, for years to come, bear aloft the gorgeous ensign of the Republic, with its stripes untarnished, and its stars undimmed; or if fall it must, while his hand grasps it, it will be but to make his winding-sheet. And when the history of all those who now attempt to traduce the character of General Taylor, shall be forgotten and swept away among the cobwebs of the past, his name will live in memory, in history, and in song, a beacon-light, to guide the American youth up the steps of fame, and conduct him to the gates of glory.

"As some tall cliff that lifts its awful form,
Swells from the vale, and midway leaves the storm,
Though round its breast the rolling clouds are spread,
Eternal sunshine settles on its head."

THE SLAVE QUESTION.

SPEECH OF MR. ISAAC E. MORSE.

OF LOUISIANA,

IN THE HOUSE OF REPRESENTATIVES,

March 14, 1850,

In Committee of the Whole on the state of the Union, on the President's Message transmitting the Constitution of California.

Mr. MORSE said:

Mr. Chairman: The importance of the question under consideration will be the only apology I shall offer for asking a share of the attention of the committee.

The debate which has been going on for some time in this body and the Senate, has left little for those who follow, but the gleanings of a field once as rich as the mines of that California whose admission into our Union is the subject of the Executive message now lying upon your table. May our acquisitions in that quarter not prove like the fabled fruit of the East, beautiful to the eye, but ashes to the taste.

The whole history of this California question has more the appearance of romance than of truth, and it is only from fable or fiction that we can draw any parallel. Where, but in the mythological story of Minerva, springing armed from the head of Jove himself, do we find anything to illustrate her present position?—a sovereign State as large as the old "*thirteen*," with nine hundred miles of seacoast, her two Senators, and two Representatives to this branch, with their constitution in their hands, stepping from the brain of a brigadier-general of the United States army, into this Union of confederated sovereignties.

Had you but provided her with the decent veil of a short territorial government at the last session of Congress, I see nothing that would have prevented her from being admitted under the operation of your "*previous question;*" but when it has been so often and so solemnly announced upon this floor, and by the resolutions of a large number of State Legislatures, as the settled and avowed policy that, henceforth and forever, from now to eternity, no other slave territory shall be incorporated into this Union, the question assumes an air of grave importance, and it becomes every statesman to look narrowly and carefully into it, and to see whether, if that be the settled policy, as avowed by some gentlemen, boldly, manfully, and honestly, and entertained by nearly every Representative from the States North of Mason and Dixon's line, it does not become the duty of the people of the South to see how far their interests are endangered and their principles compromited, under this modern reckless and majority interpretation of the Constitution. I am not of that class of men who desire to put off until to-morrow the business of to-day. I propose, then, sir, briefly to examine the "*signs of the times;*" what is the present feeling North and South; and whether the South are guilty of aggression upon the rights of the North, or whether the North has or has not encroached upon the South—to look upon the remedy proposed by the southern States—to examine coolly and dispassionately the relative advantages of the Union. I am not to be seduced from the even tenor of my way by the siren songs of hosannas to the Union, nor am I to be deterred by the yelpings and howlings of those who choose to call me agitator or disunionist.

When our forefathers framed this Constitution, they declared, that, "We, the people of the United 'States, in order to form a more perfect Union, es-'tablish justice, insure domestic tranquillity, pro-'vide for the common defence, promote the general 'welfare, and secure the blessings of liberty to our-'selves and posterity, do ordain," &c., &c.

Each and all of that posterity have not only the right, but their duty to those who come after them requires that they should see whether this compact is faithfully kept; and a man who cannot speak is a fool, who will not speak is a bigot, and who is afraid to speak is a slave.

I shall come, however, to that portion of my argument (if my time allows) last.

Before I begin, I desire to disembarrass this question from all extraneous matter—to set some gentlemen right upon the subject, by denying once for all, that slavery is an evil, and that anybody has any right to remedy it as such. This most mischievous error has grown up from the sentiments of Mr. Jefferson, and many other southern statesmen, hastily and imprudently expressed at an early period of our country; also from the objections made to slavery by some of the southern States. Whatever might have been the sentiment of the people of the South then, it has undergone a great change. We have seen our country flourish under this system—a tropical climate and soil (where the white man cannot cultivate the earth, without incurring more or less risk of health or life) converted into a terrestrial paradise.

We have seen grow up with this institution a noble, chivalrous, and intelligent people, who have always exercised, and (without meaning to be at all offensive) will continue to exercise, in the affairs of the world and of this country, an influence fully equal to our numerical strength.

Without intending to disparage, in the least degree, our brethren of any portion of this great domain, I do not hesitate to say, that in the peaceful walks of civil life—in the stirring events of war—in everything that can adorn and elevate a man, the people of the South are fully your equals, and being completely satisfied with all our institutions, we do not desire, or intend to allow, any change in any one of them.

I ask you, Mr. Chairman, is it not true that the people of one half of these States have discussed seriously, or are now discussing, the propriety of meeting in Convention at Nashville, to see what steps are necessary to be taken to secure their honor and their constitutional rights, which they say, or think, are both endangered.

I agree with my friend from Georgia, [Mr. Toombs,] that up to 1820 there was no great cause of complaint. The people of the North and South lived like a band of brothers, and the stars and stripes floated over one people.

Is it so now? I will not weaken the argument of the Senator from South Carolina, [Mr. Calhoun,] in regard to the separation of the churches, North and South. When, I ask, was it seen before, that Christians cannot bow before the same altar, and worship together that God, who commands us to love our neighbor as ourself—when before have you heard of the resolutions of one State having been sent back in contempt, because they contained insulting and offensive matter. Our children are not educated, as formerly, in the northern colleges—traveling has greatly diminished—the pulpit, the press, this Hall—ay, the Senate, where grave old men were wont to talk calmly and wisely—now hear constant and continued fulminations of one portion of the American people against the other. These things cannot last and the Union continue. Why, if no legislative enactments of an offensive character were ever passed, the indulgence of their feelings will ultimately estrange these parties. This Union has not unappropriately been compared to that most beautiful and holy union of the sexes, which our Creator instituted; but when mutual love and respect are gone—when that mysterious sentiment, which is not only the spirit, but the substance of the contract, is gone—the rest is a worthless and insulting mockery.

When, Mr. Chairman, in the history of the last thirty years, has it ever been remarked before, that Clay, Calhoun and Webster agreed upon any one question, as we have seen from their late speeches, they do upon the *open violation* of the Constitution, in relation to the rendition of fugitive slaves. Speaking, sir, in legal parlance, they agree entirely upon the facts and the law. It is true, they differ widely about the remedy, as would naturally have been supposed from their respective localities, the temper of the men, and the character of the people they represent; but all three agree that the North, by refusing to surrender up fugitive slaves, violate both the letter and spirit of the Constitution; and all urge, not only the justice, but the absolute necessity, of

8. AFTERWORD

The heart of this study of John Van Dyke is Governor Austin's decision to appoint him to the bench. I have portrayed Austin as consciously weighing competing interests, public and private, while reaching his decision. But he may not have acted this way at all. The vacancy on the Third Judicial District came in the hectic closing days of the Fifteenth Legislature. Bombarded with demands from prominent lawyers and groups in each of the counties, Austin might have reacted with exasperation — a "plague on all three of your houses" — and impulsively offered the post to Van Dyke to quell the distraction.[48] I think, however, that my vision of Austin is more accurate. He was a successful politician, twice elected governor, and a former trial judge. From these experiences, particularly dealing with the legislature, he must have learned the benefits of cold calculation and calm deliberation, not rashness. Nevertheless, we do not know for sure, and that is the larger and more important point: that we must recognize our ignorance of the characters in our narratives, and the incompleteness and uncertainties of the historical record.

Because of these uncertainties, writers fall back on qualifying phrases such as "almost certainly," "likely," "perhaps" or probably," among others, to explain a motive, describe an action, or make some other point. But these words— what I think of as the "language of tentativeness"—do not come easily to lawyers or retired lawyers who attempt to write on the myriad subjects of legal history. From their first days in law school, lawyers are taught to represent their clients zealously, to argue, to persuade. The advocate is definite, bold and opinionated—

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[48] Cf. Andrew R. L. Cayton's description of certain limitations of his fellow historians:

> **In general, we *think* about the past more than we *empathize* with dead people. We argue about economies, politics, and ideologies; we rarely consider irrationality, impulse, or ignorance. Seeking to fit everything into neat interpretative categories, we construct narratives that bring order to the whole in ways that would make no sense to the people whose lives we arrange into patterns,**

Andrew R. L. Cayton, "*In*sufficient Woe: Sense and Sensibility in Writing Nineteenth-Century History," 31 *Reviews in American History* 331 (2003) (emphasis in original).

Why? Because the facts and the law are clear— and there will be all sorts of dire consequences if the opposition's version of those very facts and the law is believed. This is not how professionally trained historians think or write. There is, in other words, a difference between the brief writer who seeks and finds clarity and certainty, and the legal historian who sees ambiguity in a fragmentary trail of evidence. My personal view is that, aside from the occasional biography, practicing lawyers and retired lawyers cannot write legal history that meets professional, scholarly standards, that is anything more than mildly and momentarily interesting.

This article is one of a series about district court judges who served in the late nineteenth and early twentieth centuries in Minnesota that will be posted on the Minnesota Legal History Project. The sources of these studies are public records —newspapers, government publications, compendia of biographical profiles, county and regional histories and the like. Few judges in this period donated their private papers to the Historical Society. They usually did not issue written orders. As a result we know almost nothing about how they viewed "the law," how they reasoned, how they conducted themselves with clients, witnesses, other lawyers, let alone in private. One of the many pleasures of fiction is seeing the author flesh out a character by describing his or her physiognomy, tone of voice, sense of humor, habits and quirks, but we lack this information about these judges. As a consequence, in these studies, they are faceless, colorless, remote, and even absent at times. ■

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