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1827.
SPEECH OF JOHN M. BERRIEN,

DELIVERED

IN THE SENATE OF THE UNITED STATES, MARCH, 1826,

On the following Resolution: "Resolved, That it is not expedient, at this time, for the United States to send any ministers to the Congress of the American Nations assembled at Panama.


I have a hope, Mr. President, perhaps it is a vain one, that I may have strength enough to state to the senate, the views which I entertain on this subject. I cannot consent to give a silent vote, on a question so deeply interesting to this union, and, especially, in some of its aspects, to my immediate constituents. Nor am I willing, pressed as we have been, by the steadily moving phalanx of our opponents, to the final decision of this controversy, to ask from their courtesy an indulgence, which they would be unwilling to accord. No, sir; I prefer, even in my weakness, at once to mingle in the strife, and, struggling with the debility arising from bodily indisposition, and with the difficulties which belong to the subject, I will seek support, and I will find it, in the strength of the feeling which animates me.

I am, moreover, entirely sensible of the disadvantage at which I must necessarily address the senate, at this late stage of the discussion, when the attention has been wearied, not merely by the continued contemplation of the same subject, but by views and illustrations of that subject, for the most part, necessarily similar, and tending to conduct the hearer to the same result. With two exceptions, for which I take this occasion to offer my individual acknowledgments, it has seemed good to those who differ from us, to preserve the dignity of silence. We have conjured them to give to us the benefit of those profound and comprehensive
views, which have trained their minds to a conclusion, in which they repose, alike free from apprehension, and inaccessible to argument. By all those considerations which bind us to each other, we have entreated them to mingle their counsels with ours, on this interesting occasion; to impart to us a portion of that light, by the brightness of which they can tread, fearlessly, a path, that, to our less enlightened view, seems beset with dangers. They have been deaf to our supplications. Our entreaties have passed by them as the idle wind, which they regard not. Walking, themselves, by the light of faith, which is the evidence of things unseen, they will not stretch forth a hand to withdraw us from the ways of the error which they impute to us. Sir, we might imitate this example. We, too, might advance in silence to the destiny which seems to await us, in the consummation of this ill-fated project. For myself, I will not do it. "Whether men will hear, or whether they will not hear, is not strictly my personal concern; but my intention no man taketh from me." Repressing the suggestions of pride, I will remember only that we have a common interest in the result of our common counsels, and even in the little interval, that separates the moment which is, from that which shall mark the registry, to which we are summoned, I will still expostulate with our opponents, in a spirit alike free from arrogance and from servility—in the spirit of truth, and of soberness.

Sir, the measure to which we are called, is distinguished by a novelty, which induces me to pause. So far as the project is disclosed, it is plainly injurious to the best interests of this people, while much of it is veiled from the view of the most scrutinizing inquiry. Clouds and darkness rest upon it. It comes, sir, in such a questionable shape, that I will speak to it. Under the guise of a just sensibility to the interests of the Spanish American republics, it proposes to change the whole system of our foreign relations, by the mere exercise of the appointing power; to involve the interests of this union in a foreign association, composed
of states with whom we have no natural connexion, and over whose councils we can exercise no efficient control.

More distinctly, sir, and in the first place. In a season of unexampled prosperity, which we have attained by a rapidity of march, to which history affords no parallel, which invites to no change in the general system of our foreign relations, "and least of all to such change as this would bring us," we are required to abandon the wise and salutary policy which has hitherto conducted us in safety, to form a political association with the republics of Spanish America.

I should waste the time of the senate, if I were to detain you by the formal proof of the fact, that the United States are, at this moment, in the enjoyment of an unexampled prosperity. I appeal to the message of the President at the opening of the session, for the evidences of our prosperous and happy condition, of the flourishing state of our finances, of the increase of our commerce, our wealth, our population, and the extent of our territory; and for the proof that we are permitted to enjoy these bounties of Providence in peace and tranquillity; in peace with all the nations of the earth, in tranquillity among ourselves.

What are the duties which these considerations inculcate? I propose the question in sober sadness to the majority of this House. Thus situated, what is it that we owe to the republic? Is it to embark in quest of novelty on the ocean of experiment; to yield ourselves to the visionary and fantastic schemes of political projectors; to the splendid, but delusive suggestions of a wild and reckless ambition? Is it not rather to preserve, to cherish, to guard with more than vestal vigilance, that enlarged and liberal, but stable and self-dependent system of policy, which, by the blessing of God, has conducted us to our present happy and prosperous condition? What is that policy? Sir, it is the policy which guided the councils of Washington; which produced the celebrated proclamation of neutrality, a measure which saved us from
the vortex of European contention; to which each successive administration has adhered with fidelity; which Washington himself thus emphatically announced: "The great rule of conduct for us, in regard to foreign nations, is, in extending our commercial relations, to have with them as little political connexion as possible. So far as we have already formed engagements, let them be fulfilled with perfect good faith. Here let us stop."

The proposition which I am endeavoring to illustrate, asserts merely, that the proposed mission to Panama, involves an abandonment of the policy, by which this confederation has hitherto been governed, at a time when, by a steady adherence to that policy, we are prosperous and happy. It is of the character of the measure in this view alone, that I speak at this moment. To the motives which are urged to induce its adoption, it will be my duty hereafter to advert. Here it is sufficient to recognize these facts, that the proposed association of American nations at Panama, is a political one, and that such an association is a departure from the settled policy of this government. That such is the character of the association, is not denied by those who advocate the measure, is proclaimed in every page of the documents before us, and if to the brief remark which I have made, it is necessary to add any thing to prove, that the policy of this government is such as I have represented it, I refer myself to the argument of the gentleman from New York, with whom I concur generally, in the view which he has taken of this distinctive feature, in the political history of this union.

Standing on an elevated position, in an attitude which has secured to us the respect and admiration of the world; having attained this elevation, by preserving an entire freedom of action, and by the rapid development of our own resources, what is it that should tempt us to descend from our high estate, to mingle in diplomatic intrigues, and to make ourselves parties to international confederacies, on this or the oth-
er side of the Atlantic? Especially it is most obvious to inquire, what is the character of that association, of which we are about to become a part, by approving this nomination? Sir, it is not a mere diplomatic council. It is an international assembly, created by treaties, and invested with powers, which are efficient for the purposes of its institution, some, and the principal of which are belligerent. An association with such a Congress, must necessarily commit our neutrality.

The general argument on these propositions, has been pressed with so much perspicuity and force by gentlemen who have preceded me; they have gone into such fulness of detail, that I do not propose to tax the patience of the senate, by a renewed discussion of the whole question. There are two points connected with it, however, on which I desire to be heard.

In the first place, I ask the attention of the senate to this remark.

Whatever declarations may be made to the contrary, however foreign it may be from the intention of the President, it will be the necessary consequence of this mission, that we shall become parties to the Congress of Panama, to the extent of what is denominated the pledge of Mr. Monroe, or we must disappoint the expectations, and excite the resentments of the Spanish American States. This proposition includes these ideas:

That the Spanish American states consider this government as pledged to them, to resist the interference of any European power, in the war which they are waging for their independence, by force of the official declarations of Mr. Monroe, and the subsequent acts of our administration.

That it is one, and a principal and distinctly avowed object of the proposed Congress at Panama, to concert the means by which effect is to be given to this, our system of policy.

That the assent of the senate, the remaining branch of the treaty-making power, is alone wanting to com-
mit the national faith, however the forms of the con-
stitution may require other agencies for its redemption.

That a failure to realize these expectations must be productive of feelings of coldness and ill-will.

Let us examine the two first in connexion. Does any gentleman doubt what is the view taken of this de-
claration, by the republics of Spanish America, or that they consider it to be one of the subjects of the delibe-
rances of the Congress at Panama, in which we are to participate? On both these points, the minister of
the United States of Mexico, is clear and explicit. He expresses himself thus: "The government of the
subscriber never supposed nor desired that the United States of America would take part in the Congress
about to be held, in other matters than those which, from their nature and importance, the late administra-
tion pointed out and characterized as being of general
interest to this continent." This is the strongest mode
of expressing both the expectation and the desire of
the Mexican government, that the United States
would take part in the Congress, in those matters
which had been so characterized and pointed out.
The minister proceeds: "For which reason, (that
is, because the late administration had pointed it out,
as of general interest to the continent,) one of the
subjects which will occupy the attention of the Con-
gress, will be the resistance or opposition to the inter-
fERENCE of any neutral nation, in the question and
war of independence, between the new powers of the
continent and Spain." Here is the idea in bold relief,
a distinct assertion, that resistance to the interference
of any European power, in the war between Spain and
those states, is a question of general interest to the
continent, this government included: that it has been
expressly so characterized by the late administration,
and that it is one of those subjects to be discussed in
that Congress, in which we are expected to partici-
pate. But how participate? By our counsels, mere-
ly? No, sir. Being, as this minister asserts we are,
"of accord, (with them,) as to resistance," we are.
in that Congress, to "discuss the means of giving to that resistance all possible force," which, he adds, is only to be accomplished, "by a previous concert as to the mode in which each shall lend its co-operation." The minister of Colombia is equally decisive on this point. He speaks of this subject as one to be discussed in the Congress, and one of great importance; suggests the propriety of a treaty in relation to it, to remain secret until the casus foederis should happen, and adds, "This is a matter of immediate utility to the American states that are at war with Spain, and is in accordance with the repeated declarations and protests of the cabinet at Washington." To this discussion, and this treaty, he manifestly expects that we are to become parties.

Is it not, then, obvious, that these invitations have been given by the ministers of the Spanish American states, under a perfect conviction, which is plainly and frankly expressed in the very letters of invitation, that we would participate in the deliberations of the Congress at Panama, in the resistance to be made to the interference of any neutral nation, in the question and war of independence between these states and Spain? And that, conceding the principle, that we are bound to such resistance and opposition by our own previous and repeated declarations and protests, we would proceed to concert with them in that Congress, the means of giving to that resistance the greatest possible force?

Shall we realize these expectations? We are, then, to take our seats in an international assembly, composed of deputies from five belligerent states, with instructions, I care not how restricted, to stipulate with them the terms of an eventual alliance, in the prosecution of the very war in which they are now engaged; to arrange the means of giving to our joint efforts the greatest possible force. Are gentlemen prepared to do this? Sir, this wretched bantling must one day breathe the upper air. However darkly nurtured in this political dungeon, to which the sign manual of the President, and our own too easy confidence have
consigned us, it must see the light. It must stand before the majesty of the American people. Do gentlemen believe that they are prepared to do this thing? To stake the fair and goodly heritage, to which they have succeeded, on the issue of a contest with the powers of Europe, in defence of these new republics; in defence of any other rights but their own?

If this inquiry cannot be met, will it be evaded by suggesting that the contingency is remote; that the powers of Europe will not interfere; that our association with the Spanish American States will prevent their interference? What more decisive proof can be offered, that the act proposed to us by these ministers, will be a violation of our neutrality—a wrong done to Spain? We are to deliberate with her enemies; to give them the benefit of our counsels; nay, to play the bravado in their behalf; to threaten the powers of Europe with the vengeance which awaits them, if one of them shall dare to draw a sword for Spain; and this is consistent with our "professed principles of neutrality." Sir, if this be true, what are our principles? Are not our professions without principle?

But is the contingency remote? Will not our interference tend to accelerate it? Will no restlessness be excited in Europe, when we shall avow ourselves to be the champions of the new states? And even England, liberal as her course has been towards these states—who doubts, that it has been regulated by her commercial interests? Will she consider those interests safe, under the direction of a confederation, to the guidance of which, we make pretensions? We are her rivals in the competition for the commerce of these states. Can she deal with them in the same spirit, when we take a seat in their councils?

Give to our adversaries, *argumenti gratia*, the benefit of the suggestion. Be the contingency remote or near, it is still a contingency, on the happening of which, this government is pledged, in the view of those states, to an alliance with them, for hostile purposes. What intelligent statesman would found such a pledge on the
notion of the remoteness of the contingency, which should call for its redemption? Take the instance referred to, by the gentleman from New York; who would have expected, at the time the contract was entered into, that we should have been called to the fulfilment of our guaranty to France?

Pause to consider, for a moment, the question of the remoteness or propinquity of this contingency. Brazil yet bows beneath the imperial sway. The glitter of her diadem is offensive to the Spanish American republics. The Liberator pants to finish the great work, to which he thinks he is called—the emancipation of a continent. Ere long, the arms of the confederacy will press upon Brazil. Will Portugal slumber? Will she not be forced by circumstances to become the ally of Spain? Will not the contingency then have arrived? And Great Britain, always the friend and guardian of Portugal, will she be indifferent to the cries of her ancient and faithful ally? Hitherto, the Spanish American republics have been contending for the right of self-government, and mankind have been forced to feel the justice of their cause. The war against Brazil will have a different character. The object will be to impose their own form of government, on a neighboring people. In this state of things, will the united claims of Spain and of Portugal, find no allowance from the other nations of Europe? If these contingencies should happen, will the people of these states be willing to embark in the contest?

Will it be said, that whatever might have been the character of this "celebrated pledge," it has become inoperative, by the force of intervening circumstances—that Spain is in a state of exhaustion—that the war for Spanish American independence, no longer exists in fact? I answer, in its original terms, it did not contemplate opposition to Spain acting alone, but to Spain acting by the aid of an European ally. Her exhausted condition does not therefore, remove, the pledge. But do the Spanish American States, consider it at an end? Why then have they called upon us, to stipulate the
terms of its redemption, in the Congress of Panama? Does our own government consider it at an end? Why then have they so recently acted upon it, at the call of the United States of Mexico.

If this difficulty can neither be met nor evaded, will gentlemen resort to the universal nostrum, the great political panacea, confidence in the executive? Sir, on this subject of confidence, I am willing to deal justly; nay, as far as I am personally concerned, liberally. But I stand here, as one of the representatives of a sovereign state, charged to watch over her interests, and to the best of my poor ability, to defend them; enjoined to decide according to the rule of evidence, and not the rule of faith. Besides, I protest that the concession of confidence here, is purely gratuitous—absolutely without consideration. There is an entire want of reciprocal confidence. What is the evidence, on which you were called to decide one of the most important questions ever presented to an American senate? Did it consist in a frank disclosure of the facts, necessary to inform your judgment? Was it that evidence, on which your judgment was ultimately founded? And how was that evidence extorted, but by repeated calls of this House? As the constitutional advisers of the President, were we deemed unworthy of his whole confidence? If so, are we prepared to yield ours?

But, sir, this concession of confidence would not only be gratuitous; it would be also against the plainest and most palpable evidence.

We have seen what is the view entertained by the Spanish American ministers, of this "celebrated pledge" of resistance to European interference, in the question and war of their independence. Now, if we are required to confide implicitly in the President, to protect us against these pretensions, we must look to his declarations, not merely to us, but to those ministers; not merely to what he has said, but to what he has omitted to say, when the occasion required him to speak; not to his acts and declarations alone.
but to the acts and declarations of his authorized agents, either expressly or tacitly approved, to ascertain if there is a sufficient basis on which to rest this confidence.

I grant you, sir, the President has told us, that the motive of the attendance of our ministers at the Congress of Panama, is neither to contract alliances, nor to engage in any undertaking, or project, importing hostility to any nation. But is this the plain import of the invitation given to him? Is this the obvious result of his acceptance of that invitation? These ministers, too, tell us, that we are not to be required to do anything which may commit our neutrality, but they tell us, in the same breath, that we are expected to do that, which must commit our neutrality.

We are not to be required to commit our neutrality. No, sir. But we are expected to stipulate a contingent alliance with these states, against Spain, and any other European power, which may interfere in the pending war. Is not this to commit our neutrality? How has the President met this pretension? Has he repelled it? No, sir. The ministers of those states assert, that the stipulation of the terms of this contingent alliance, is a subject of "common interest;" that it is of "immediate utility" to those states; that it is expected our representatives will have "express instructions in their credentials" on this point. These assertions called upon the President to speak out. Did he meet and repel this pretension? Sir, this would have justified our confidence. Was he silent? Then he abandoned us. There is a silence, which is as impressive and as binding as any language. He has been little observant of diplomatic correspondence, who has not perceived with what studied care, pretensions which it is not intended to admit, even although they may relate to subjects entirely collateral, are stated and repelled.

But the President was not silent, and he did not repel this pretension. On the contrary, the secretary of state, acting under his immediate eye, distinctly affirm-
ed it. The ministers of those republics tell him that this question, of the mode of resistance to European interference, will arise before this Congress; that it is a question of common interest to the nations of America; that it is expected, that our ministers will have express instructions, on this point, in their credentials; and, without denying, and thereby admitting, the truth of these assertions, and the reasonableness of this expectation, the secretary answers, that our commissioners "will be fully empowered and instructed, on all questions likely to arise in the Congress, on subjects, in which the nations of America have a common interest. Can it be doubted, then, that the Spanish American states have a right to expect that our ministers will be instructed to act upon the subject of resistance to European interference, and to concert with them, the means of giving to our combined resistance, the utmost possible force?"

When, therefore, I am required to act upon faith, in the spirit of unlimited confidence, I say, the occasion does not authorize it—the evidence forbids it. When I am told, that the President will not commit our neutrality, I answer, that he has already manifested his determination to put it to the hazard of events. I appeal from the President, to the President; from what he has said to us, to what he has said to these ministers, and to what he has omitted to say, when the occasion required him to speak, and to speak plainly. But this is not the whole case.

The declarations of our minister to Mexico, place this subject beyond all controversy. He asserts it, even more broadly than the Spanish American ministers themselves, more strongly than consistently with a just pride, with a proper degree of self-respect, they could have asserted it. According to these declarations, if any European power shall interfere in the pending war between Spain and these states, we are not only to fly to their aid, to make common cause with them, in the struggle, but we are, yes, sir, we are to bear the brunt of the contest. Now, I ask you,
sir, do you, does any man believe, that the American people understand this thing, or that understanding, they will submit to it? If this be true, the blood and treasure of this people, aye, our own blood and treasure are to be freely spent in defence of Spanish American liberty. We are to be their champions, if need be, against Europe in arms.

Under what circumstances is this declaration made? Is it to manifest our "profound sensibility" to the welfare of these new republics? No, sir. It is made in the spirit of a cold and calculating policy, for the advancement of our own interests, with little idea that we should be called to fulfil it—a huckstering bargain, to secure certain advantages in a commercial treaty.

Does any one pretend, I have not heard it suggested here, that these declarations of our minister at Mexico, were unauthorized by the President? The answer is obvious. Such an assertion would itself be unauthorized. Whether we look to the character of the minister, or to the evidence before us, the same conclusion is forced upon us. I deny the title of any man to credit, who shall assert the contrary, on the documents before us. The fact that such a declaration had been made, was distinctly communicated to the secretary of state. Was the minister rebuked for it? Was the pledge disavowed? Was he instructed to recall it? No, sir. His conduct was approved. He remains at this moment in the same important station, enjoying the full confidence of the government.

Will any profound examiner of dates assert, that there is no evidence of this approbation; that the letter of Mr. Clay to Mr. Poinsett, of the 9th of November, 1825, is not an answer to that from Mr. Poinsett, in which he informs the secretary, that he had made this declaration to the Mexican government? Sir, I concede the fact; but how will it avail our opponents? Certainly this letter was answered before the 16th of January, 1826, when the documents referred to were communicated to the senate. If, in that answer, the conduct of Mr. Poinsett was disapproved, why has it
not been produced to us? If the President has not given to it his sanction, why has he not told us so? It would be quite as easy as to make the general declaration, that the proposed mission is not intended to commit our neutrality, in the face of evidence which, in our view, incontestably proves the reverse. But could the conduct of Mr. Poinsett have been disapproved? In the letter from Mr. Clay, of which I have just spoken, after inveighing against the inconsistency of the Mexican government, in a spirit of indignation, he exclaims: "No longer than about three months ago, when an invasion by France, of the island of Cuba, was believed at Mexico, the United Mexican government promptly called upon the government of the United States, through you, to fulfil the memorable pledge of the President of the United States, in his message to Congress, of December, 1823. What they would have done, had the contingency happened, may be inferred from a despatch to the American minister at Paris, a copy of which is herewith sent, which you are authorized to read to the plenipotentiaries of the United Mexican States." Here, then, is a distinct avowal, by the secretary himself, of the existence of a pledge on the part of this government, which authorized the assertion of Mr. Poinsett—not of a mere declaration of policy, which the United States were free to pursue or abandon, but of a pledge, which they were bound to redeem; which the Mexican government had recently, through that very minister, called upon them to redeem, and which they had been willing, if the occasion had required it, to redeem; and, to prove to the Mexican government their willingness to have done so, Mr. Poinsett was furnished with the necessary evidence, which he was authorized to exhibit to the plenipotentiaries of that government. This chronological discovery cannot, therefore, avail.

But perhaps it will be said, this was only an argument made use of by our minister, a mere diplomatic movement, in the progress of the negotiation. Before we yield to this profound suggestion, let us consider.
that the value of the argument, depends on the truth of the fact which it asserts. Let us remark, too, to what a condition our cabinet would be reduced, by the indiscreet zeal of its friends. If, in their view, the fact be untrue, the assertion of it, as the foundation of an argument to induce the Mexican government to do the act required of them, was an imposture, which the executive of the United States has not disavowed, and which he has, therefore, adopted. But he is not liable to this imputation. If there be truth in evidence, he admits the existence of this pledge, so far as a President of the United States is competent to give it.

With what reason, then, do gentlemen call upon us to give our sanction to this nomination, in faith and confidence that the executive will not commit our neutrality, in the face of this manifest determination on his part, to say the least of it, to commit that neutrality to the hazard of events, to chain our destinies to the car of Spanish American fortune; to make the peace and quiet of this people, to depend on the councils of any single cabinet in Europe, whose chief may think fit to draw his sword, in the assertion of the divine right of Spain?

But does this pledge exist? Is this government bound by a contract so disastrous? If it be so, fides servanda est. But, I deny the fact. I deny that this celebrated pledge, as the secretary has denominated it, has any existence but in the imagination of the visionary. Let us, for a moment, examine it. If genuine, it will bear inspection. It is described by the secretary, as the memorable pledge of the President of the United States, in his message to Congress of December, 1823. Now the President had no authority, by his own act alone, to pledge the United States to a foreign power. He did not intend to do so. It was a mere declaration of the policy, which, under given circumstances, he believed it proper for the United States to pursue. It did not bind him. It did not bind Congress. They declined to respond to it. No foreign
power could demand the enforcement of it, because no foreign power was party to it. If, when the crisis arrived, the President and Congress, for the time being, should take the same view of the policy of the United States, the principle of this declaration would be acted upon. If otherwise, it would be abandoned. The notion of a pledge, is visionary. That implies a contract, an agreement, on consideration. Here was a mere gratuitous declaration to Congress, of one of the public functionaries of this government, which never received the sanction of that body.

Last year I was told in the court below, that the United States had given a pledge to the nations of the world, for the suppression of the slave trade. I denied the existence of such a pledge, and the doctrine was not acknowledged by that tribunal. The answer was obvious. That could not be a pledge which the United States might capriciously withdraw. It was a rule prescribed for the conduct of our own citizens, under the solemnity of an act of Congress indeed, but which another act of Congress might repeal, and the pledge was gone. The pledge of which we are now speaking had not even the sanction of an act of Congress, nor of either branch of the legislature. Hitherto, then, we are free to act. We are bound by no pledge. But the President of the United States has proclaimed a principle of policy, on the basis of which the new powers have given us an invitation to this Congress, the chief and avowed object of which is to concert the means of giving effect to this principle, by the combined exertions of the American states, this government included. If the senate advise its acceptance, is not the faith of the United States committed? The power to give effect to the principle, will indeed depend on the ratification of a treaty by two thirds of the senate, and the provisions of that treaty can only be called into active operation by the whole force of the legislative power. But if either be withheld, will not the public faith be violated? If yielded, will not the peace of this union be put in jeopardy, and made
to depend on events, with which it has no natural connection, and over which it can exercise no efficient control? Can you refuse, without disappointing the just expectations of the Spanish American states—expectations which this government has created, and which it has distinctly and expressly recognized in its negotiations with these states? Of such a conduct, the inevitable result must be feelings of resentment and indignation, which will not be the less strong, because, peradventure, in obedience to the suggestions of policy, they may for a time be suppressed.

Sir, this is not the only belligerent question which we must discuss in the Congress of Panama. The second remark which I have to make on this branch of the subject, is this: if we do go there, our own interests will imperiously demand, that we should share in those deliberations which are to determine the fate of Cuba and Puerto Rico; and this is a question which we cannot safely commit to negotiation.

The original message of the President, which called us to the exercise of our advisory duties, left us wholly without information on this subject. When the additional documents, for which we had asked, were furnished, it became obvious, that the fate of these islands was to be decided in the Congress of Panama, so far as the Spanish American states had power to decide it. This state of things at once demanded our most earnest and serious attention.

When we look to the situation of those islands; to the commanding position which they occupy, with reference to the commerce of the West Indies; we cannot be indifferent to the change of their condition. But when we reflect that they are in juxtaposition, to a portion of this union, where slavery exists; that the proposed change is to be effected by a people, whose fundamental maxim it is, that he who would tolerate slavery is unworthy to be free; that the principle of universal emancipation must march in the van of the invading force; and that all the horrors of a servile war will too surely follow in its train; these merely commer-
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cical considerations, sink into insignificance; they are swallowed up, in the magnitude of the danger with which we are menaced.

Sir, under such circumstances, the question to be determined is this: with a due regard to the safety of the southern states, can you suffer these islands to pass into the hands of buccaneers, drunk with their new born liberty?

I repeat the question—can you suffer this thing, consistently with the duty which you owe to Maryland, to Virginia, to Kentucky, to Missouri, to Tennessee, to North and South Carolina, to Georgia, to Alabama, to Mississippi, to Louisiana, and to Florida? Nay, sir, New England, securely as she feels on this subject, is not without interest in the result. A numerous colony of her sons, are, at this moment, toiling in temporary exile, beneath the fervid sun of Cuba. If the horrors of St. Domingo are to be reacted in that beautiful island, they will be its first victims.

What then is our obvious policy? Cuba and Puerto Rico, must remain as they are. To Europe, the President has distinctly said, "we cannot allow a transfer of Cuba to any European power." We must hold a language equally decisive to the Spanish American States. We cannot allow their principle of universal emancipation to be called into activity, in a situation where its contagion, "from our neighborhood, would be dangerous to our quiet and safety." The President would brave the power of England, to prevent her acquisition of Cuba; and why, sir? To keep the receipts of our custom-house at their maximum; to preserve our commerce and navigation. Will he quail before the new republics of the south, when a dearer interest is at stake?

I know, sir, the documents before us prove it; that we have been exhibiting the character of a political busybody, in the cabinets of Europe and America. I know, sir, the documents before us prove it; that in the progress of this splendid diplomatic campaign, certain declarations have been made to the different
powers, cis-atlantic and trans-atlantic, which it may be difficult to reconcile. But, so far as they conflict with the duty which we owe to ourselves, they must be reconciled. The safety of the southern portion of this union, must not be sacrificed to a passion for diplomacy. The United States are yet free from these diplomatic fetters. They are not pledged. We have entered into no bonds. If it shall consist with our interest that Cuba should pass into the hands of England or of France, rather than to see another Haytien republic erected there, we are free to permit it. If our interests, and our safety, shall require us to say to these new republics; Cuba and Puerto Rico must remain as they are, we are free to say it. Yes, sir, and by the blessing of God, and the strength of our own arms, to enforce the declaration. And let me say to gentlemen, these high considerations do require it. The vital interests of the south demand it; and the United States will be recreant from its duty, faithless to the protection which it owes to the fairest portion of this union, if it does not make this declaration, and enforce it.

Shall we go to Panama to do this? It is one of the thick-coming fancies which bewilder the minds of the advocates of this measure, that it will tend to protect the interests of the southern states; that their interests require that we should send ministers to Panama to discuss this question concerning Cuba and Puerto Rico—yes, sir, unfettered as our cabinet is by its pledges and declarations, that we should commit to the hazard of negotiation, a question of vital interest to us, in relation to which we have nothing to yield.

The deputies of the Spanish American republics go to Panama with the settled conviction, that they have the right to strike at Spain, by inciting and aiding Cuba and Puerto Rico to revolt; and, although they will not ask us to join in the operation, they will expect us to consult with them as to the relations to be maintained with this new power. Unless we are faithless to ourselves, our deputies must be instructed that no
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change in the condition of these islands can be permitted. What benefit can you expect from such negotiations?

Our deputies will be told—the cabinet at Washington have recognized our right to strike our enemy wherever we can reach him. They have expressly disclaimed their right to interfere to prevent us from attacking Cuba. At their instance, we have suspended this movement until the result of their mediation with Russia was ascertained. In requesting a mere suspension, they have reiterated the admission of our right. We have performed an act of courtesy in yielding to this request, but the period of suspension has passed. We return to our original purpose, and you cannot consistently interfere with its execution.

Sir, we must cut this Gordian knot. We must relieve ourselves from these diplomatic fetters. We must pledge ourselves, not to foreign nations, but to that portion of our own citizens, who have a deep and vital interest in this question, that the condition of Cuba and Puerto Rico shall remain unchanged. To the Spanish American states we must notify our determination, in terms of perfect respect and good-will, but still as our fixed determination. Shall we go to Panama to do this? To expose our deputies to their reproaches for our imputed inconsistency? Or to insult them by a studied mockery in opening a negotiation, with a fixed determination to dictate the terms, with an entire conviction that we have nothing to yield to them? Sir, on such a subject, the will of the people of the United States should be expressed, through their representatives in both Houses of Congress, by an act to invest the President with the powers which will be adequate to the crisis.

These, sir, are the reflections which occur to me on this branch of the subject. To my mind, it is obvious, however we may protest against any intention to violate our neutrality, that, as a necessary consequence of this mission, we must become parties to the Congress of Panama, to the extent of what is denomi-
nated the pledge given by Mr. Monroe—a pledge which the people of the United States are not prepared to admit, and to redeem—a pledge, the redemption of which would most distinctly commit our neutrality; or, refusing to do so, that we shall disappoint the expectations which we ourselves will have created, and feelings of ill-will, and of eventual hostility, must be the necessary result.

And that, even if we do go to Panama, we must share in their deliberations concerning Cuba and Puerto Rico—deliberations involving interests which we cannot commit to negotiation—in relation to which we have nothing to yield—concerning which, the obvious course of our policy is simply to notify the determination, which a just regard to our own vital interests has compelled us to adopt, and having notified it, if need be, to prepare to enforce it.

Sir, these considerations press upon me, with a force which is not to be resisted. But they are not the only objections to this measure. The character of the proposed Congress is undefined. Before we commit our destinies to its influence, we ought to understand it. Its objects are understood differently by those who have given and by those who have accepted this invitation. Instructions which will conform to the views of the former, will be dangerous to the best interests of this republic. Restricted within the limits suggested by the latter, they will be deficient in good faith—will disappoint the just expectations of those with whom we are about to associate, and cannot fail to substitute feelings of coldness and ill-will, tending to hostility, for those which now connect us with the republics of Spanish America. Thus, even in its peaceful aspect, this Congress tends to controversy rather than to conciliation.

It is not my purpose to dwell in detail on these latter suggestions. Unquestionably it is our duty to understand the character of this Congress, with which we are about to associate. From the chaos of discordant ideas presented to us, it is necessary to extract some
definite conceptions on which the mind can repose, not with the assurance of certainty, for that is hopeless, (the President and secretary have vainly endeavored to obtain it,) but in the belief that we have reached a reasonable probability. Before we become parties to this Congress, it is manifestly proper that we should understand—

Its constituents and the principle of its organization.

Its forms of proceeding and modes of action.

The effect and obligation of its decisions, and the process of enforcing them.

The objects of its power.

Its deviations and the means of dissolving it, or those by which any member may retire from the confederacy.

I do not intend to discuss these various subjects. They would furnish materials for a volume, and cannot be examined within the limits necessarily prescribed to this debate. I propose merely to touch them—briefly to explain the difficulties which oppress me, in the hope, perhaps it is a vain one, that gentlemen, who see their way clearly, will deign to assist us in their solution. Will they allow me to ask these questions?

Are the ministers to this Congress to negotiate separately and successively with each other, or collectively, and contemporaneously in one general assembly?

If, in one general assembly, what will be the principle of its organization? Are all the members to deliberate on a footing of exact equality, or under the presidency of one or more, and of whom?

Are the ministers of the United States to become members of this general assembly, or is it to be composed exclusively of the Spanish American states, and are our ministers to go, not as members, but merely as delegates to this Congress?

If they are not members, will they be allowed to take part in the deliberations of the Congress? If they are members, will they be bound by its decisions
to the extent that other states; to the extent that the Spanish American states, are bound? Is each member to be allowed to originate subjects for deliberation, or are they to be fixed by treaty, or to grow out of events? Will any one of these subjects have precedence? Or will this depend on the will of the whole Congress, or of a majority, and of what majority? Is the sense of the Congress to be expressed by resolutions or compacts? In either case, is unanimity required, or is a majority, and what majority, to govern?

It is a more fearful inquiry to ascertain the effect and obligation of the decisions of this Congress, and the process of enforcing them. Are these decisions to be recommendatory merely, or are they to have any other, and what force and effect? Do they become obligatory by the mere act of this assembly, \textit{proprio vigore}, or are they to be transmitted to the several powers, by their agents, for the assent and ratification of such powers? If the former, whence do we derive the right to commit the interests of the people of the United States to such guardianship? If the latter, if they are to be considered a body of diplomatists, whose acts are inefficient, until they have received the sanction of their respective cabinets, in what, but to our disadvantage, will the Congress of Panama differ from the Congress of diplomatists here, who negotiate separately, but immediately with our cabinet? What are those questions affecting our interests, which can be more conveniently adjusted at Panama, than at Washington?

If there is a middle term; if the decisions of this Congress, though not binding, are yet to come, as they must come, with the high authority imparted to them by this assembly of nations; with the special sanction of our own ministers, will no danger result from the refusal to ratify them by the senate of the United States? Shall we be considered as fit members of an association, whose views are so dissimilar from our own? Sir, I ask gentlemen to consider how extremely probable it is, that this diversity will occur, when
they advert to the condition and character of these states, and compare it with our own. I ask them to look a little further.

When the pacts or resolutions of this Congress, establishing, for example, any principle of international law, shall have received the sanction of the respective powers, how are they to be enforced? If one of the members of the confederacy shall fall off from the rule, is the force of the remaining members to be employed to coerce the return of the delinquent? Is this force to be moral or physical? Is it to be moral—is the delinquent to be put under the ban of the confederacy—to lose caste—to be excommunicated—to be the object of a political anathema? Is it to be physical, supported by fleets and armies, and all the pomp and circumstance of glorious war?

Or, (it is the only remaining alternative,) is the confederacy to acknowledge the impotency of its stipulations, by passively witnessing this delinquency?

But what are the objects on which the powers of this Congress are to be exercised; in the exercise of which we are expected to participate? I have spoken of the great and chief object; that which the ministers of those states have placed in the front rank, the redemption of what our own cabinet has denominated the celebrated pledge of Mr. Monroe. I have spoken also of Cuba. I pass over the proposed resistance to colonization. The absurdity of going to Panama for the purpose of entering into stipulations on this subject, has, I think, been sufficiently exposed. But this Congress is to be a council in great conflicts, a rallying point in common dangers, a faithful interpreter of public treaties, an umpire, an arbitrator, a conciliator, in all disputes and differences.

Is the exercise of those high powers to be confined to the Spanish American states? It is provided for, by treaties to which we are not parties. But can we become parties to the Congress, without, in effect, submitting to the jurisdiction which it asserts over the
other members of the confederacy? Let us consider this question briefly, but with care.

The minister of Colombia tells us, the subjects for discussion in the Congress, "constitute two classes: First. Matters peculiarly and exclusively concerning the belligerents.

Second. Matters between the belligerents and neutrals."

An expectation that we should join in the last, is distinctly expressed. Among the matters which belong to the second class, are enumerated, those of which I have already spoken, and some others. The minister from Mexico adds, that after these subjects shall have been disposed of, our representatives are to "be occupied upon others to which the existence of the new states will give rise," by which is to be understood those principles of international law adverted to by the President of the United States.

Now let us suppose that on any one of these subjects, the Congress shall come to a determination which shall receive the sanction of the respective states who are represented there. The result will be a treaty made in the Congress of Panama, and ratified by the respective cabinets. If, then, in consequence of any stipulation in that treaty, a controversy should arise between the confederated states and any foreign power, is not the United States necessarily a party to such controversy? The Congress is to be a council in great conflicts. Has not the casus fæderis occurred? It is to be a rallying point in common dangers. Is not this a common danger?

Suppose the confederated states to differ as to the interpretation of the treaty, is not the jurisdiction of the Congress undeniable? It is the faithful interpreter of treaties. If Mexico and Colombia are the disputants, will it not decide between them? Who will decide? The Congress. We are parties to the Congress, parties to the treaty; shall we not partake in the decision? Will the case be varied by changing the parties? If the dispute be between the United
States of America and the United States of Mexico, will not the jurisdiction of the Congress be equally clear? We are both members of the Congress, both parties to the treaty; what shall exempt us from its authority? I do not speak of the obligation of its decision, but of its right to interpret.

Say that we are nominally exempt. Can we be substantially so? Admit, for the purpose of the argument, that, not being parties to the conventions by which this Congress was called into existence, we can successfully plead to its jurisdiction, as an interpreter of treaties, made by its agency, so far as we are parties. What then? The Spanish American states are parties to the treaty, concerning the interpretation of which we differ. They are entitled, under their conventions, to resort to the Congress in which it was made, as its faithful interpreter. They claim the decision, and it is rendered. Shall we respect the decision of our associates, although not bound to do so by treaty? Shall we yield to it? The authority of the Congress is acknowledged; shall we resist it? Shall we insist on a different rule of interpretation? And what then is the attitude in which we stand to this confederacy of nations? Can we continue to be represented in a Congress whose authority we have spurned? Will we, ought we, to be permitted to be parties in negotiations resulting in treaties, which we reserve to ourselves an independent right to interpret, while our associates submit to them the decision of a common tribunal?

Sir, we too must submit to the decisions of this Congress, if we are represented there. Can this arrangement be advantageous to us? Will it be tolerated by the people of the United States? What is there common to us, and to those new republics, but the mere form of our governments? For the rest, do they not differ from us in every particular, in language, religion, laws, manners, customs, habits, as a mass and as individuals? Are not their interests, in many respects, different from ours?
As between the several Spanish American states, all these things are in common. They have, moreover, a common origin. They have escaped from a common oppression. They are struggling against a common danger, and have, necessarily, in many respects, a common interest. By negotiating with them jointly, we increase their comparative strength, and diminish our own. In submitting any dispute, which we may have with one of these states, to the arbitrament of the remainder, are we tried by our peers? Have we even the benefit of a jury, de mediate linguae?

I would advert, only for a moment, to the power proposed to be exercised, in this Congress, for the suppression of the slave trade, in reference to which I make this remark: if the deliberate opinion expressed by a very large majority of the senate at the last session of Congress, in the rejection of a treaty with Colombia, having for its object the inhibition of this traffic, by the joint exertions of the two republics—a treaty, too, that had been negotiated in precise conformity with the instructions of our own cabinet, could have availed aught with the President of the United States; he would, so far as we are concerned, have distinctly excluded this from the subjects of consideration by the Congress of Panama. I know not how gentlemen, who voted against that treaty, can recommend the unqualified acceptance of this invitation, when one of its avowed objects is the suppression of the slave trade, by the energetic, general and uniform co-operation of all the American States. That, however, is a subject for their consideration. For myself I abhor the slave trade. It is abhorred by my constituents. Even at the moment when it was tolerated by our laws, it was not in the southern portion of this union that its practical advocates were found. But I cannot admit, so far as I have the power to avert it, the interference of any foreign nation in the action of this government, or its own citizens.

The proposal to submit to the determination of
this Congress the question on what bases the relations of Hayti, and other parts of our hemisphere, that shall hereafter be in like circumstances, are to be placed, is one of the most odious features in the invitation which we are considering. It assumes the fact, I beg you to remark it, sir, that these relations are to exist. The Congress to which we are invited, is only to determine their bases, to define their character.

The revolted slaves of St. Domingo, who, although years have passed away since they broke their fetters, have recently afforded the most decisive evidence of their incapacity for freedom, in the servility of the tenure by which they have agreed to hold, from their ancient taskmasters; the slaves of Cuba and Puerto Rico, who are to be stimulated to revolt, by our Spanish American brethren, in the prosecution of their war against Spain; aye, and the slaves of the British West India islands, if, with the aid of their own abolition society, they can be tempted to successful insurrection, (sir, the idea is no creature of my imagination,) and "other parts of our hemisphere that may be in like circumstances;" that is, under the government of revolted slaves, are to hold certain relations to us, the people of the United States, especially to us, the people of the southern United States, the basis of which is to be determined, the character of which is to be defined, by the Congress of Panama. Yes, sir, and so far from repudiating from this project, this odious and alarming feature, our own cabinet has accepted this invitation, in the spirit of diplomatic courtesy, "to manifest the sensibility of the United States to whatever concerns the prosperity of the American hemisphere," but in utter recklessness of the condition of a portion of the people of this union. To that people, sir, I speak in the sadness of my heart, indeed, but in the calm and deliberate exercise of my judgment. The intercourse which would result from such relations, would be productive of the most awful calamity, would introduce a moral contagion, compared with which,
physical pestilence, in the utmost imaginable degree of its horrors, would be light and insignificant. I will not trust myself on this subject. It is too intimately associated with feelings which I cannot, which I do not desire to control.

Shall we go to Panama to avert these evils? The affirmative of this proposition, asserted on this floor, is entitled to grave consideration, because of the source from which it emanates. It may, however, be briefly disposed of. Why go to Panama for this purpose? Is the policy, which duty and interest prescribe to us, of a doubtful character, and do we invoke the counsels of the Congress to enable us to discover it? Is it beyond the scope of our unassisted resources—and do we ask the aid of the new republics to sustain us in our efforts to accomplish it? Sir, it is a mere question of intercourse, which, as it regards Hayti and the Spanish American States, we are free to allow or to refuse; but in relation to which, unless we are faithless to our own brethren—to the people of the south, we have no option. Their interests, their safety, demand its unqualified rejection.

Do our brethren of the north differ from us as to the danger of this intercourse? Do they abstain from sympathizing with us because they cannot enter into our feelings of apprehension? Sir, ours is the post of danger. They are in comparative safety. Who, then, should decide this question? Consistently with their own safety, can the people of the south permit the intercourse which would result from establishing relations of any sort with Hayti, or other portions of our hemisphere, in like circumstances? Is the emancipated slave, his hands yet reeking in the blood of his murdered master, to be admitted into their ports, to spread the doctrines of insurrection, and to strengthen and invigorate them, by exhibiting in his own person an example of successful revolt? Gentlemen must be sensible that this cannot be. The great principle of self-preservation will be arrayed against it. I have been educated in sentiments of habitual reverence for
the constitution of the United States. I have been
taught to consider the union of these states as essen-
tial to their safety. The feeling is nowhere more
universal or more strong than among the people of the
south. But they have a stronger feeling. Need I
name it? Is there any one who hears and does not
understand me? Let me implore gentlemen not to
call that feeling into action by this disastrous policy.

If the mission, as its objects are stated to us by the
Spanish American ministers, is thus liable to objec-
tion, the charm of the picture is not heightened by the
additional touches, which it has received from the
message before us. I will not detain the senate, by a
detailed examination of the several subjects, which are
there suggested, as proper for the consideration of the
Congress at Panama. If it is to be resorted to, for
the purpose of establishing principles of maritime neu-
trality, and principles favorable to the navigation of
peace, and to commerce in time of war, it has been
already shown that, so far as we have thought proper
to propose these principles, they have been readily
acquiesced in, by the states, with whom we have sepa-
rately negotiated, or are in such a train, as to promise
a successful issue. It cannot then be necessary to re-
sort to the Congress of Panama, for the establish-
ment of these principles; and if the motive of being repre-
sented there, is to devise means for their enforcement
—if, borrowing the example of the armed association
of 1780, it is intended to proclaim to the world a new
code of international law, which is to be enforced by
the power of the confederacy, I am not willing to enter
into these bonds. Such an association might put two
continents in a blaze.

Nor am I willing to send ministers to Panama, as
the apostles of religious toleration; to intermeddle
with the principles of their faith, or the fundamental
laws, which they have deemed it wise to ordain for the
preservation of the Roman Catholic church. What-
ever interpretation may be given to it, this is the sub-
stance of the proposition before us. You abjure the
idea of interfering to instruct the men of other countries how to govern themselves. Will you consider less absurd the attempt to teach them in what manner to worship their God?

The establishment of the Roman Catholic religion, as exclusive in those states, is essential to their safety. Look to the character of the population; to the influence of the priests; to the noble part which they have performed in the struggle for independence. Above all, consider that this is the only remaining link, which connects these new states to continental Europe. Against the doctrines of legitimacy, and the divine right of kings, they have committed the inexpiable crime. They have been guilty of the sin of republicanism. One only tie still connects them. It is the Roman Catholic religion. It is their acknowledgment, in the person of the sovereign pontiff, of the common head of the visible Church. Outcasts from the courts of kings, they are still within the pale of his protection. Who will say that his authority, or his counsels, may not avail, to control the obstinacy of Ferdinand, and thus to give repose to Spanish America? Is this, then, a subject on which the moral influence of our example can be justly exerted? Will it, ought it to be tolerated?

But what is to be the duration of this confederacy? It is indefinite in its terms, and its objects would render it coexistent with the states which compose it. Admit the right of any one nation to retire at will from the Congress; what will be the situation of the nation so retiring? New relations must be formed with the other states of the confederacy. Will the season be propitious to their formation? We are well with these people now. Affection may be chilled by indifference; but it is destroyed in the conflict of opposing interests. We cannot realize the expectations of the Spanish American states, in the Congress of Panama. Why should we go there merely to disappoint them?

Sir, the manner in which this mission has been got up is very liable to objection. To me it appears, that
we ourselves have invited this invitation. Having obtained it, we were a little prudish in the outset. We asked, from our intended associates, a few plain questions; to the answers to which we were certainly entitled. We did not get them, however, and, in our anxiety for the connexion, we determined to waive them. Now we were wrong, (which we certainly were not,) in making this demand originally, or we were wrong in its subsequent abandonment. Whence arose this overweening anxiety?

Sir, it is the last, certainly not the least of the objections, which I have to this measure, that it is in my view an attempt to change the foreign relations of this government, in a mode not contemplated by the constitution—by the mere exercise of the ordinary appointing power. The same authority which is exerted to create a collector of the customs, or a register of the land office, is considered sufficient to change the whole system of our foreign relations. Nay, a higher extent of prerogative is asserted. The President claims it to be exclusively within his "constitutional competency," to send deputies to the Congress of Panama; and it is merely in consequence of an act of grace and courtesy on his part, that we are consulted in this matter. Sir, this is a lofty pretension. I am no advocate of changes in the fundamental law, but, if this claim be well founded, it behoves us to look to our charter.

By the constitution, the President is authorized to nominate, and, by and with the advice and consent of the senate, to appoint ambassadors, and other public ministers and consuls, judges of the supreme court, and all other officers of the United States, whose appointments are not therein otherwise provided for, and which shall be established by law. Now, it is plain, that the appointing power does, not include the power to create the office; in other words, that the office, to which the appointee is nominated, must be previously created by law. If an appointment be to an office, to be exercised within the limits of the United
States or its territories, it must be to one which exists, and has been created by the municipal laws of the United States. If to an office which is to be exercised without the limits of the United States, within the dominions of a foreign sovereign, it must be to one which exists, and is recognized by the general principles of international law, or which is specially created by positive and particular pacts and conventions. The limitation, in the latter case, results not only from the fundamental law of this government, but from the exclusive dominion, within his own territories, of the sovereign within whose territories this minister is to exercise his functions. That sovereign is bound, as a member of the great family of nations, to recognize as legitimate an appointment which is consonant to the code of international law; and, of course, to acknowledge one which, by express convention, he has stipulated; but this is the extent of his obligation, and consequently, the limit of the appointing power, under our constitution.

Let us look to the first of these propositions. Is it within the "constitutional competency" of the President to appoint to an office, the functions of which are to be exercised within the limits of the United States, which office has not been created by the laws of the United States? Take an example. The President deems it expedient to establish a home department. Is there any one sufficiently absurd to assert, that he has a right ex nemo motu, or even with the assent of a majority of the senate, to appoint a secretary for that department—to assign to him certain specific duties, and then to call on Congress for the requisite appropriation, to compensate his services; to imagine that the acts of such an officer would be valid, or that his attestations would be respected by our judicial tribunals?

Before the passing of an act of Congress, for the organization of a newly acquired territory, and the creation by that act of the legislative, executive and judicial officers deemed necessary for its government, is it
within the "constitutional competency" of the President, aided even as before by a majority of the senate, to appoint an officer, or officers, to exercise all or either of these functions? The proposition is believed to be too clear for argument.

Within the United States, the office must be created by law, before the appointing power can be called into action. Why should a different rule prevail without? The law of nations operates on this government in its intercourse with other sovereignties, as the municipal law does in its action on its own citizens. In this case, then, the law of nations, as in the other, the municipal law, must have created the office, before the power of appointment can exist. Now the law of nations does recognize ambassadors and other ministers, in the intercourse between sovereigns. But this law does nowhere recognize the right of a Congress of ministers to receive an embassy. The right to receive, and the right to send a minister, are correlative. The one does not exist without the other. A Congress of ministers is not authorized to receive an ambassador, unless it is authorized to send one. Who will assert for the Congress of Panama, the right to exercise the latter power?

A sovereign cannot, then, be represented in a Congress of ministers, otherwise than by a deputy, who becomes a member of that Congress. He is not an ambassador to that Congress, but is himself a constituent part of it. He is not accredited to any particular power, but is commissioned as one of a number of deputies, who are collectively to compose the Congress. How are these deputies created? The answer is obvious. From the necessity of the thing, it must be, by conventions of treaties between the respective powers who are to be represented by those deputies. In this manner, the Congress at Verona was created by the treaty of Paris. The deputies who appeared there, were called into existence by the express stipulations of that treaty. So, too, in the Congress of Panama, the office of deputy to that Con-
gress, is created by the special provisions of the treaties, between the several powers who are to be represented there.

The result of what has been said is this: the office of a deputy to an international Congress, does not exist permanently under the law of nations, but is the offspring of particular convention; and this, of necessity, because the Congress itself is not pre-existing, but is the creature of treaty; and the treaty which creates the Congress, stipulates also for the appointment of the deputies of whom it is to be composed. Then the clause of the constitution, which authorizes the appointment of ambassadors, or other ministers, cannot be invoked to sustain this nomination, because a deputy to a Congress, is not a minister existing by force of the law of nations, but created by particular conventions between the powers represented in that Congress; and we have no such conventions with the powers represented in the Congress of Panama. Consequently, as to us, the office of minister or deputy to that Congress does not exist, not being derived from the law of nations, nor provided for by any convention. A very simple view of the subject seems to be decisive. Could the President have sent ministers to the Congress of Panama, uninvited by the powers represented there? Could he, without such invitation, have required such ministers to be accredited by that Congress? Would a refusal to receive them have furnished just ground of complaint? If these questions are answered in the negative, as I presume they must be, the conclusion is obvious, the office exists only by force of the invitation.

Unless, then, the mere invitation of a foreign nation is competent to create an office, and thus to call into action the appointing power of the President, or unless this appointing power includes the power to create the office which we have seen that it does not, the appointment by the President of ministers to the Congress of Panama cannot be valid, nor can it be rendered so by the advice and consent of a majority of
the senate, nor by any power short of that, which is competent to create the office, and that we have seen is the treaty-making power. The President can appoint a minister to the republic of Colombia, because such an office exists under the law of nations, and is, therefore, a legitimate object of the appointing power; and he may instruct such minister to communicate with the Congress of Panama; but he cannot appoint a minister to take a seat in that Congress, because we have no conventions with the powers represented there, by which, as to us, the office is created; nor can he send a minister as an ambassador or legate to that Congress, because the Congress, as such, has not the rights of embassy. If it be said that this is mere form, the answer is obvious; form becomes substance in this case, by force of the constitutional provision which requires the assent of two thirds of the senate to the ratification of a treaty, while a bare majority is sufficient to give effect to an exercise of the appointing power.

Let us consider this question for a moment, freed from the prejudices which operate in favor of the Spanish American republics. If the states represented in the Congress of Vienna, or Verona, or the holy alliance, had given us an invitation to be represented there, apart from the expediency of the measure, would it have been within the "constitutional competency" of the President to have sent ministers to take their seats in either of those assemblies? If the nations of Europe should, by treaties, provide for a Congress to devise the means of abolishing the slave trade, of resisting the extortions of the Barbary powers, or of suppressing the piracies of the West Indian seas, would the President, the United States not being parties to those treaties, of his own mere will, make us members of that Congress, by sending deputies to represent us there? The question is proposed in this form, because our ministers would, of necessity, if received at all, be members, and not ambassadors, since
such a Congress is neither competent to send or to receive an embassy.

Why, then, in the creation of this office of deputy or minister to the Congress of Panama, was not the constitutional organ, the treaty-making power resorted to? What would have been the result of such a course, is obvious, I think, in the recorded votes of the senate, on the preliminary questions which have arisen. The object could not have been effected. The office would not have had existence, or the senate, in the exercise of their legitimate powers, would have so modified the treaty, as to have limited the functions of the ministers to those objects of which they would have approved.

Such, sir, are some of the views which I have taken of this very interesting question. I will not fatigue the senate by a recapitulation of them. They are, perhaps, erroneous. If this measure is to be adopted, I sincerely hope they may be so. Such as they are, however, they are respectfully submitted to the senate, as the result of patient inquiry, and a sincere disposition to arrive at truth. It has not been my purpose to arraign the motives which have produced this nomination; but of the measure itself, I have spoken with the freedom which I thought became me. All that remains is, that I should record my vote, and that duty I am now ready to perform.