



Class / HD 197
1854f
Book Copy 1

Author

.....
.....

Title

.....
.....

Imprint

.....



PRESIDENT'S VETO MESSAGE.

SPEECH

OF

MR. C. C. CLAY, JR., OF ALABAMA,

ON THE

PRESIDENT'S VETO MESSAGE,

REJECTING THE

INDIGENT INSANE BILL,

AND

AGAINST GIVING AWAY THE PUBLIC LANDS.

DELIVERED IN THE SENATE OF THE UNITED STATES, JUNE 20, 1854.

WASHINGTON:

PRINTED BY JOHN T. & LEM. TOWERS.

1854.

In Exchange
Duke University
AUG 19 1936

HD 197
1854 f

SPEECH

OF

MR. C. C. CLAY, JR., OF ALABAMA,

ON THE

PRESIDENT'S VETO MESSAGE.

DELIVERED IN THE SENATE OF THE UNITED STATES, JUNE 20, 1854.

The Senate having under consideration the Veto Message of the President, rejecting the Bill which had passed Congress, for the benefit of the Indigent Insane, Mr. CLAY said:

Mr. PRESIDENT: I venture with proper diffidence to express my views upon a grave constitutional question, which has elicited the thorough and elaborate discussion of Senators of greater age and experience and of distinguished ability. I do so rather with the desire to justify my vote to my constituents than from any expectation of adding to the force of the arguments already adduced against this bill. The refusal of the President to sign it, and its return to the Senate with his objections, magnifies its importance in the public mind and excites universal inquiry as to its merits. This, together with the fact that some of my colleagues in the House of Representatives, belonging to the Democratic party, supported the bill, (which has been adverted to in the Senate,) urges me to explain the grounds of my opposition.

Besides, Alabama is at this time, perhaps, more deeply interested than any other State in the subject-matter of the donation and objects of the bounty contemplated in the bill. A few years since her legislature, moved by the eloquent and touching appeals of the lady who is regarded as patroness of this measure, made provision for the erection of an insane asylum. The fund provided proved insufficient to complete the necessary buildings, which still remain unfinished and unprepared to receive patients. To discharge a heavy foreign and domestic debt, the people of Alabama have been for many years, and are still enduring onerous taxes, with noble patriotism and public virtue, and are ill able to contribute more towards the completion of a work commenced under circumstances that would have excused them from embarking in any costly enterprise, however humane and praiseworthy. An erroneous impression has prevailed that the aid afforded by the passage of this bill might suffice to complete that work, when, in fact, the principal of the fund cannot be appropriated or diminished, and even the interest (according to my interpretation of the bill)

could not be applied to the erection of the asylum. Hence its progress has no doubt been regarded with more than ordinary anxiety by many of my constituents, whose sympathies have been deeply enlisted in behalf of a scheme for ameliorating the condition of that most unfortunate and pitiable of all classes of men, who, bereft of reason, sit in moral darkness more appalling than death.

Again: the disposition of the public lands is, of all subjects of federal legislation, most interesting to Alabama. Near half of all the lands within her limits are still waste and unappropriated, and will probably remain so for many years unless there is a change of governmental policy. Inaccessible and remote from market, sterile and unfit for cultivation, the lands are desirable only for timber or supposed mineral wealth, and will not, in my opinion, be settled during this century unless greatly reduced in price or enhanced in value by their intersection with railroads to the Gulf of Mexico or the Atlantic seaboard. Any policy which would divest the Federal Government of title to those lands, subject them to the laws of the State, and render them, as they should be, tributary to her support and advancement, would be regarded with favorable consideration by her people, if consistent with her constitutional rights. A proposition to grant those lands, or any large portion of them to the State, is perhaps the most enticing that could be offered.

After mature consideration of all these suggestions of apparent State interest and of philanthropy, it was with sincere regret that I found myself constrained to vote against the bill. Yet I trust and believe that few, if any, of those constituents with whom I have acted in political association, desire or expect me to vote for it. I owe my seat here to my uniform maintenance of a strict construction of the Constitution and unflinching opposition to every encroachment on the rights or assumption of the duties of the States by the General Government. In common with the Democratic party of Alabama, I have ever been opposed to a distribution of the proceeds of the public lands among the States; and I can discover no difference in principle or effect between distributing the land and distributing the money arising from the land. The only points of dissimilitude, in my opinion, between this and the distribution scheme of 1842 are, that that gave unconditionally, this upon condition; that did not, this does prescribe the manner in which the fund distributed is to be used; that treated the States as free and independent co-ordinate powers, this treats them as subordinate and dependant agencies; that was a bold and shameless tribute to avarice, this an ostensible offering to charity; that appealed to the baser, this to the nobler passions of humanity. I regard this more dangerous than that, because more insidious; it invokes, in support of a bad principle, the best feelings of the heart. I regard it more objectionable than that, because it treats the States not merely as beneficiaries of Federal bounty, but as creatures of Federal will.

The bill under consideration proposes to distribute ten millions of acres of public lands among the States, of which one hundred thousand are first granted to each, and the remainder to be distributed upon the compound ratio of geographical area and representation in the House of Representatives: those States in which there are public lands subject to sale at one dollar and a quarter per acre are to be confined to them in selecting their proportion; land scrip is to be issued to those States in which there are no public lands to the amount of their shares, which shall not be entered by them, but shall be sold at not less than one dollar per acre, and subject to

entry by their assignees; each State is to pay all the expenses attending the management of its share of granted land out of its own treasury; the gross proceeds of the sales of such lands or scrip are to be invested in safe stocks, the principal of which shall never be diminished, and the interest appropriated to the maintenance of the indigent insane within the several States; the States are to account annually to the Secretary of the Interior for all lands or scrip sold; and the fund is to be applied only to the treatment of those insane who are placed in certain prescribed institutions, managed after certain prescribed forms.

I am opposed to the bill because I regard it both unconstitutional and inexpedient. All its advocates derive the power to pass it from one and the same clause of the Constitution, found in the third section and fourth article, as follows:

"The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory, or other property, belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular State."

This, they say, confers on Congress power to dispose of the public land in any manner not prohibited by the *express* terms of the Constitution, not only for purposes named, but for others not named in that instrument. In other words, they claim for Congress all the rights of an absolute owner or tenant in fee simple, who may do anything with his land not positively forbidden by the laws of his country. And they make this claim by virtue of the term *dispose of*, which they interpret, according to the definition of lexicographers, to mean "to sell or to give, to apply to any purpose or employ, for any end."

It may be safely conceded that the term *dispose of* is sometimes used in each of those senses, without admitting that it is used to express all of them in the Constitution. It would be most illogical to conclude from the definitions of a word, given in dictionaries, that it is intended to convey each and every signification when and wherever used. Such a conclusion would be most fallacious in regard to this very word *dispose*. Indeed, the primary and radical meaning of the word *dispose* is, to put or place apart or away, not to give or to sell. Its primary sense has been deflected and ramified into the various and opposing senses of to give and to sell by usage. Hence, its meaning is to be deduced from the circumstances under which it is used, and the context of the sentence where found. When we say a father has disposed of his son, we do not mean that he has sold or given him away. When we speak of the power of an absolute owner to dispose of his property, we are understood to mean that he may give or sell it, apply it to any purpose, or employ it for any end. But we never intend to impute such absolute power or unrestrained discretion to a trustee or agent, when we speak of the power of the one to dispose of the property of his principal, or of the others to dispose of the property of his *cestui qui trust*. If an Alabama planter should send a crop of cotton to a factor or other person in Mobile or New Orleans, with a general direction to dispose of it, he would scarcely assume the right to give it away. If a company in New York, owning a large body of wild land in Mississippi, should appoint an agent there, and confer on him by their sealed instrument power to dispose of it, not defining for what purpose or in what manner, he would never venture to convey it without a valuable consideration; or if he did, no court would exonerate him from liability to his principals for the value of the property conveyed. The reason why the agent or trustee in the cases suggested could not in-

terpret the term *dispose of* as conferring power to give away, is obvious. He holds the property not as his own or for himself but in trust for the benefit of another, whose rights would be prejudiced by giving it away. Fiduciary powers are never absolute or unlimited, but subordinate and limited—limited not only by the express terms of the trust but by the *intention* with which it was created; subordinate to the rights of the maker, any abuse of which is no less a breach of the trust than exceeding its terms. Hence, I have been surprised to hear any Senator, more especially one professing to belong to the straightest sect of strict constructionists, maintain, that the power of Congress over the public land was discretionary, absolute, and unlimited, save by the positive prohibitions of the Constitution. No one, I believe, asserts or believes that the public land belongs to Congress or the Federal Government. It owns no property. It is but the agent or trustee of the United States; it holds the territory or public land in trust for their common use and benefit, and can make no disposition of it not warranted by the letter or spirit of its charter, or prejudicial to the interest of the United States, or either of them. To give away property is to transfer it to another without equivalent or compensation. Such power over property is absolute, not limited, the power of the owner and not of his servant. Such power is irreconcilable with the general character of a trust estate, because adverse to the interest of the beneficiary. Such power is not conferred on trustees in any other than precise and positive language, and never inferred from doubtful or ambiguous terms.

Hence, if there were no other words in the clause to explain or qualify the term *dispose of*, I should not understand it as intended to confer power to give away the territory of the United States. But there are other words that negative this construction. The clause runs thus: "Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property of the United States." If by *dispose of* was intended to give away, what rule or regulation could be needful? These words imply *value*. They show that some system was to be adopted, some plan established in the disposition of the territory. But, surely, it was never contemplated by the framers of the Constitution to invest Congress with power to make rules and regulations for giving away the public lands. If they had designed to confer such absolute power over the territory, they would not have deemed rules and regulations respecting it necessary.

Again: following territory we find the words "or other property." Territory is uniformly understood to signify land, and I presume all will concede that the words "or other property," were used in contra-distinction to territory, and intended to embrace other species of property than land. Otherwise, the words "or other property" are not merely tautologous, but senseless and absurd. The framers of the Constitution certainly knew what every one knows, that property embraces money as well as land; in short every kind of estate, real, personal, or mixed. Such is not only its technical, but its popular import also. If so, then over everything which may be called property, and may belong to the United States, Congress has the same power, conferred in the same clause, and in the same language; which is to dispose of and make all needful rules and regulations respecting it. We have the same power to dispose of land, whether wild or improved, navy-yards, dock-yards, arsenals, and forts, the navy, arms and munitions of war, and the money of the United States. If our power over the public domain is plenary, so it is over the public money, if we can make

gratuitous donations of one kind of property, so we may of all others. If we can distribute land, we may money. The Constitution was framed, with no purpose of giving greater power over the public land than over the public money. Why should such discrimination or distinction have been made? Why should we make it? What is the difference between distributing ten millions of dollars among the States, and dividing among them ten millions of acres of land, worth one dollar per acre? Why not distribute money if you can purchase land for distribution with the money? The land was bought with money raised by taxation; it will sell for money and diminish taxation. The land is as much a common federal fund as the money. It will serve the same purpose to pay the debts and provide for the common defense and general welfare. There is no substantial difference between taxing the people to raise money for distribution, and taxing them to buy land for division among the States, or between dividing land bought with their money, and money for which their land was sold. The principle and effect of both policies is identical. I could vote to give away the public money to the States, or to individuals, with as little scruple as I could vote to give them the public land.

If the words "dispose of," can be fairly interpreted to *give away*, then it seems to me undeniable that the framers of the Constitution conferred on Congress the power to give away every species of public property the United States might ever acquire, unless it can be shown that the words "or other property," were used as synonymous with territory, or as not embracing money. No one asserts they were used to express the same thing with territory; all admit that both *or* and *other* denote something different from territory or land. But some Senators maintain that the word *property* was not intended to mean *money*; in other words, that it means every sort of estate that may be held by the United States, except money. If so, then the word *property* was used in a sense neither technical nor popular; in a different sense from that of law-makers and law expounders, lexicographers and the masses who speak the English language. *Credat Judæus Apella!*

How, then, can any Senator conclude that Congress has power to dispose of money only for those purposes named in the Constitution, but may dispose of land for other purposes not named in that instrument—that is, in gratuitous donations to States or individuals. If because the Constitution, in conferring power over territory, does not specify the purpose to which it shall be applied, Congress may dispose of it at discretion, what other limitation is there on its power over the navy and army? The Constitution gives Congress power to provide and maintain a navy, and to raise and support armies, without annexing to either grant, the end to which it shall be employed. Can it, therefore, be maintained that Congress may give the public ships to the several States, or the material of the army, the forts, barracks, and arsenals, to individuals for private alms-houses or hospitals?

Again, the section and sentence of the Constitution to which reference has been made, as defining the purposes to which money shall be applied, is rather a limitation on the power of taxation, than of disbursement, and might be transposed without altering its meaning, so as to read, "Congress shall have power, in order to pay the debts and provide for the common defence and general welfare, to lay and collect taxes," &c. The purpose of taxation, no less than of money raised by taxation, is thus clearly defined.

But taxation was not the only mode of raising money contemplated by the framers of the Constitution. In the same article and section, is another clause, conferring power to borrow money on the credit of the United

States, which is as clear, distinct, substantive and broad, as the power to dispose of territory. Yet who will pretend that Congress has power to borrow money to distribute among the States for the indigent insane, or for any other purpose not named in the Constitution.

Nor was this the only other source whence public money was expected to be raised. The territory was looked to for revenue in aid and mitigation of taxation. The acts of cession of the several States to the United States, express very clearly that idea; they all signify that it was to be a common fund, for the use and benefit of the United States, in proportion to the tax paid by them to the Federal Government; or in other words, it was to be sold, and the money proceeds, applied so as to relieve each State of its proportion of taxation. All concede that this was one of the purposes for which the territory was to be appropriated. If it was intended to raise any revenue from the sale of lands, why should the Constitution have conferred the power to give away lands rather than money, since, giving either would produce the same effect in diminishing the money fund and increasing taxation? Why empower Congress to give the *means of revenue*, but not the revenue? It is impeaching the wisdom of the framers of the Constitution, to suppose them guilty of any thing so paradoxical.

Independent of the Constitution and deeds of cession, there is in the condition of the country at the time those instruments were executed, sufficient to satisfy my mind that the territory was regarded as a common fund, to the amount of its money value, transferred to the United States. We were just out of an eight years war, in which had been expended all we could obtain at home or abroad, either by borrowing or taxation. Federal and State treasuries were exhausted; the Government was bankrupt; our resources were narrow and precarious, and we were oppressed by a great and growing debt. Under such circumstances it would have been contrary to the instincts of ordinary interest and the teachings of enlightened conscience, to have empowered Congress to grant at discretion the land fund, the only present and most promising prospective source of revenue. The far-famed wisdom and high-souled virtue of the framers of the Federal Constitution, forbid my believing that they would thus have imperiled the public honor and the public interests.

The condition of our country, the language of the deeds of cession, and of the Constitution, all impress me with the opinion that the power conferred on Congress over the public lands, is that of an ordinary trustee or agent, to dispose of it for its money value, which value should be used for the common benefit of all the States, in relieving them to that extent from taxation. I do not find any thing to warrant the belief that the Constitution confers greater power in the disposition of the public lands than the public money, the navy, or other property of the United States.

The dissimilar nature and uses of the several kinds of property, render it necessary to adopt different rules and regulations in disposing of them. Money being the common medium of exchange and measure of value, is disposed of in paying debts of the Government, supporting the military and civil list, constructing navies, and erecting buildings necessary for the public service. Land being useless to the Government for the purposes of cultivation, and only valuable to it so far as it can be converted into money, is disposed of by sale. In order to effect its sale it is proper to encourage settlements. With a view to its speedy settlement and the realization of its money value, it becomes necessary to grant portions of it to local objects, just as an individual proprietor of a large tract of wild land, who had not

power to cultivate and wished to sell it, would give a portion upon assurance of indemnity in the sale of the remainder. If the effect of the grant be to hasten the sale and settlement of the country, and enhance its value to the full extent of the grant, and such be the intention with which it is made, it is in accordance with the spirit of the Constitution; it is disposing of the lands for its money value.

Upon this principle I have voted, and can vote, to grant alternate sections to the States within which they lie for railroads, in consideration of doubling the price of the remaining sections. Upon the same principle I can approve the grants which have been systematically made to the new States on their admission into the Union of 16 sections for common schools, and of other sections for colleges and seats of government. They were made upon ample consideration; the disclaimer by those States of right or title to the waste and unappropriated lands within their limits; the surrender of the disposition of them to the United States; and their exemption from taxation by the State, so long as they remained the property of the United States, and for five years after they should be sold.

The object and effect of all such grants is to protect and preserve the common land fund; to enhance the value of circumjacent lands, and to attract and secure purchasers at prices which could not be obtained unless such inducements were offered. Such grants are properly characterized in the language of the President as *apparent* donations; for they are not gratuitous, but bestowed for a valuable consideration. They do not impair the land fund, diminish the aggregate money proceeds of the public domain, reduce the revenue of the Government, impose any additional tax upon the people, or injure the interests of the United States, or of either of the States. On the contrary, such grants make valuable and saleable lands, which, without them, would be valueless and unsaleable, increase the aggregate proceeds of the public lands, add to the federal revenue, moderate the demands for taxation, and result in the common benefit of all the States of the Union.

Upon the same principle on which those grants are made, Congress might dispose of the other property of the United States. If a government fleet, laden with public stores or the public money, should be stranded or sunk, Congress might give a ship or its contents in consideration of bringing the remainder into port, whereby the value of the property might be realized. If a gold mine should be found on public land, Congress might give a portion of its yield to any company that would work and develop its resources. In either case, as in granting alternate sections to build railroads, Congress achieves the purpose of its trust by making the best disposition of the trust-property for the benefit of its principals.

Congress might, I presume, consistently with its power over the Territory, and other property of the United States, have expended the public money in draining and reclaiming the swamp lands, and rendering them valuable. But as they were not only valueless to the United States, but impaired the value of their adjoining and cultivable lands, and as experience in other Government works warranted the belief that it would cost the United States more than they would be worth after reclamation, it was a better discharge of its duties as trustee to give them to the States on condition of their reclamation. In all those grants to the new States, the intention of Congress, I apprehend, was not to foster their internal local interests—not to construct roads or establish schools, but to promote the settlement and sale of the lands, realize their money value, and thereby

effect the purpose for which power to dispose of the public lands was conferred. They were grants necessary to carry out its power to dispose of the public lands for their money value.

Now, the supporters of this bill do not intend or expect to promote the settlement and sale of the public domain, or enhance its value, or increase the federal treasury by its passage. On the contrary, it will divert from the treasury the proceeds of ten millions of acres of land, equivalent to ten millions of dollars, for an object purely local within the States—the care of the insane.

It must be conceded that if Congress may provide for this class, it may for every other class of the unfortunate and afflicted, and may assume, in aid or behalf of the States, the supervision and care of all their internal and domestic interests. If Congress have such power, coupled with the ample means of unlimited discretion in disposing of the public property, I know of no government of any civilized and christian nation endowed with more sovereign, unlimited, and irresponsible power than that of the United States. Invested with untold and boundless wealth, a treasury overflowing and perpetually refilling, a domain broader and richer than that of any government, past or present, with resources unmeasured and undeveloped, there is no end it may not achieve, however sectional or unjust, anti-republican or tyrannous. It may assume the patronage of States, counties or cities, of corporations, professions or trades, of agriculture, manufactures, or internal improvements. It may give the lands in Alabama to New York to be invested in banking, building railroads, or manufacturing broadcloth within that State; and if it be objected that the Constitution does not confer on Congress power to establish banks, build roads, or engage in manufactures, it will be enough to answer, in the language of the advocates of this bill, that its power to dispose of the property of the United States is absolute and unlimited, save by the positive prohibitions of that instrument, and these are not among them. By virtue of this discretionary power over the public lands, and the absence of any express prohibition in the Constitution, we might violate that principle of non-intervention in the territories just established in the Kansas and Nebraska bill, by granting alternate sections or townships of their lands to abolition societies, upon condition of colonizing them with free blacks, or applying the proceeds of the sale of the lands to the cause of emancipation. Or, on the other hand, we might make them slave territories by granting the lands to settlers upon condition of cultivating them with slave labor. Thus, under this clause of the Constitution, every power possessed by the States over persons or property within them, may be absorbed by the General Government, and its character wholly transformed from one strictly federal into one purely national. And by a strained and latitudinous construction of a single clause, we may defeat all the labored precautions of the framers of the Federal Constitution, and convert it from a panoply of defence into a weapon of destruction to State rights and popular sovereignty.

Such I think is the inevitable consequence of the doctrines contended for by the advocates of this bill.

They admit that Congress has no express authority or warrant to make provision for an eleemosynary purpose within the States, and do not pretend it is necessary to make such provision in order to carry out any express power, or to attain any purpose named in the Constitution; but maintain, that we may dispose of the territory for any purpose not named

and not prohibited. If this be true, we have the strangest, most unique, and anomalous government ever fashioned by men: one of limited powers, but an unlimited choice and use of means for their execution; of defined purposes, but indefinite discretion; of good professions, but evil policy. The framers of the Constitution were incapable of the folly of executing a charter containing principles so irreconcilable, and conferring powers so anti-parallel. Such is the method of madness, not of enlightened reason. They did not intend to create a government possessed of means to defeat the end of its institution. They did not convey the property of the Union, or any portion of it, to trustees, without expressing the purpose of the trust. That purpose is declared in the end for which the Government is created; which is exhibited not only in the whole face, but in every feature of the Constitution, and, likewise, in the articles of confederation and the history of our Revolution. That war was waged to defend and establish the right of the colonists to legislate for their internal and local interests—as we have heard so often repeated in the discussion of another measure during this Congress. The colonists conceded the right of England to legislate for their external interests, such as war, peace, and commerce. The English Parliament maintained that the powers conceded implied the right of using all the means it deemed necessary and proper to execute those powers, and among those means was the enactment of several internal laws. The colonists contended that it was absurd to limit powers, and give unlimited means for their execution. The Parliament concluded the discussion by asserting the right to legislate for the colonies in all cases, and in the exercise of that right levied some trifling internal taxes. And to seduce the colonies from the faithful maintenance of their rights, Parliament, while taxing their tea, reduced its price in their favor. A like temptation of pecuniary favor is offered the States in this bill; but I trust they will prove as incorruptible and faithful as the old thirteen in repelling every attempt at usurpation of their right of internal legislation.

One Union was formed pending the Revolution, and another after its close; both constructed with a most jealous care of the principle on which that war was fought, as evinced in the nature of the powers conferred, and the positive reservation to the States of all powers not delegated. On the confederation was bestowed most of the important powers granted to the second union, the main difference consisting in an enlargement of the means of the latter for executing granted powers, especially by giving to Congress a limited right of taxation.

But, notwithstanding the few well-defined and limited powers set forth in the Constitution, because of the means of executing them given to Congress, especially that of internal taxation, the second union incurred the bitterest opposition. The common objection to the proposed changes in the Federal Government was, that they would render it too powerful, and enable it to absorb all those residuary authorities which should be left to the States for local purposes. To this objection those able defenders of the Constitution, the authors of the *Federalist*, replied that there could be no temptation in the mere domestic police of a State sufficiently strong to allure those entrusted with the federal administration; that their subjects of superintendence, embracing commerce, finance, negotiation, war, comprised all that ambition could covet, while those things proper to be provided for by local legislation were conceded to the States. It was further urged, that the Federal Government would be confined to things mainly external to the States, and not immediately affecting persons or things within them,

and hence would not appeal to personal interest, or excite personal attachment; but on the contrary, the State governments, having the care of the domestic concerns of their citizens, and constantly impressing their minds with a sense of obligation, would inspire an habitual and strong attachment. And it was earnestly and sedulously repeated, in different forms of expression, that the Federal Government was invested with powers and designed for purposes wholly different from those of the State governments; and for objects which could not be attained by the separate legislation of the latter. In proof of the construction of the Constitution, imputed by me to its framers, I will read some brief extracts from the numbers composed by Mr. Madison and General Hamilton, to be found in the "Federalist."

Mr. Madison says :

"We have seen that in the new government as in the old, that the States in all unenumerated cases, are left in the enjoyment of their sovereign and independent jurisdiction. * * * * *

"Its jurisdiction is limited to certain enumerated objects, which concern all the members of the Republic, but are not to be attained by the separate provisions of any. The Federal and State governments are in fact but different agents and trustees of the people, intrusted with different powers, and designed for different purposes. * * * * *

"The powers delegated by the proposed constitution are few and definite. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce, with which last the power of taxation will for the most part be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State."

Gen. Hamilton says :

"The principal purposes to be answered by the Union are these: the common defence of the members; the preservation of the public peace as well against internal convulsions as external attacks; the regulation of commerce with other nations and between the States; the superintendance of our intercourse, political and commercial, with foreign countries. * * * * *

"The regulation of the mere domestice police of a State, appears to me, to hold out slender allurements to ambition. Commerce, finance, negotiation, war, seem to comprehend all the objects which have charms for minds governed by that passion; and all the powers necessary to those objects ought in the first instance, to be lodged in the national depository. The regulation of private justice between citizens of the State; the supervision of agriculture and of other concerns of a similar nature; all those things, in short, proper to be provided for by local legislation, can never be desirable cases of a general jurisdiction. It is, therefore, improbable that there should exist a disposition in the Federal councils to usurp the powers with which they are connected."

These extracts present but glimpses of the views of the Constitution, expressed by two of its illustrious framers, which are more clearly and strongly developed by the entire numbers from which they are taken. But these are sufficient to show that the principle on which the Revolution was fought was thought to be vindicated in the Constitution; that the right asserted and defended by the colonies against England, to legislate about all matters of mere domestic police, and proper to be provided for by local legislation, was intended to be reserved by the States in the Constitution, no less than in the articles of confederation; that the new Union, as well as the old, was framed by the States for objects which they could not separately and singly attain, and invested only with such powers as were deemed necessary to attain those objects.

The framers of our Charter of Government should be its best expounders,

for they certainly knew for what end they labored. *Their* construction will always be authoritative with me upon all clauses of doubtful import, if any such can be found.

But, without the aid of expositions of its meaning, or the light of history, I think a mere comparison of the Constitution of the Union with that of any of the States, will prove that the State and Federal Governments were designed for different purposes and clothed with different powers. I can find but few instances where they are invested with the same power, to act in like manner, for a common object, upon the same subject; as in the cases of taxing the same property and suppressing the same insurrection. Those few instances of concurrent power show that the State and Federal Governments were planned to move in different orbits, and never to be in conjunction save in the appointed cases.

The Federal Constitution, from its preamble to the article of ratification, shows that it was framed by the several *States*, as political individuals, and not by the unassociated people of all the *States*; and was designed to manage *common* interests of a community of *States*, and not *various* interests of *men*, or *classes* of men, composing *States*. The Executive power is vested in a President of the *United States*; the Legislative power in a Congress of the *United States*. One legislative branch is styled the Senate of the *United States*, the other the House of Representatives of the *United States*. In the beginning of the first decretal section of the Constitution, (the eighth section of the first article,) the end of congressional action is defined to be "to provide for the *common* defense and *general* welfare of the *United States*." All the prohibitory clauses of the Constitution are addressed to the separate individuals, called *States*, or their representatives, the Congress of the *United States*, or to the associated individuals called *United States*. Excepting the last amendment of the Constitution, (which directs the mode of choosing the President and Vice President,) each amendment is a bastion erected to defend the wall of the Constitution against the assaults of Federal power, and to secure from its grasp the personal rights of the private individuals composing the personages called *States*. The Federal Government is expressly inhibited from taking any foothold within the limits of a State against its assent. Congress is not allowed to exercise authority over any place within a State, except when "purchased by the *consent of the Legislature of the State* in which the same shall be," and, then, only for specific purposes, "the erection of forts, magazines, arsenals, dock-yards, and other needful buildings." Yea, it holds and controls the public lands in the States by their consent. No powers reserved by the States are represented in Congress, and no powers delegated to the Federal Government are represented in the State Legislatures. In short, the entire Constitution, and each part of it, whether in granting or prohibiting the exercise of power, shows that the *States* are the constituents of Congress, and *their common* interests the objects of legislation; and that *local* and *personal* interests were reserved by the States for their exclusive care and superintendence.

An analysis of the constitution of any State of the Union would establish its claim to the exclusive management of its domestic affairs, and strengthen the contrast between the rights and duties of the local and general governments.

The wisdom of the policy of our fathers has been fully attested by time and experience. Never has the Federal Government undertaken the building of a road, the digging of a canal, or any other work, for a State,

without proving, in the end, incompetent for the office assumed. Never has the peace of the country been disturbed, or the integrity of the Union threatened, save by a departure from the true theory of the Federal Government in the exercise of unconstitutional or doubtful powers by Congress to foster domestic interests, or control persons or property within the States or Territories. And, sir, if we would preserve the true Federal spirit of the Constitution, which will forever bind together the States in the same hushing spell of compromise and tranquility, we will never intervene in the management of the domestic affairs of the local authorities. In the language of the President, which conveys a moral that cannot be too deeply impressed upon the public mind, or too fondly cherished in the public heart, "a strict adherence to the terms and purposes of the Federal compact offers the best, if not the only security for the preservation of our blessed inheritance of representative liberty."

Is the care of the insane one of the "*certain enumerated objects*" of federal jurisdiction mentioned in the Constitution?—"not to be attained by the separate provisions of any" of the States—and not "*proper to be provided for by local legislation?*" Is it one of the specified cases of a concurrence of Federal and State powers? Is it necessary to provide for the insane in order to execute any express power? If these interrogatories, suggested by the commentaries on the Constitution of two of its immortal framers, can be answered affirmatively, then we have the power to pass this bill. But, if they cannot, then, in passing it, we abuse our trust, usurp the powers of the local authorities, and transgress the sacred boundary of separation between the State and Federal jurisdictions.

I have thus endeavored briefly to portray my constitutional objections to disposing of the public lands in gratuitous donations; more especially in providing for objects of exclusive local superintendence. I might prefer many objections of mere expediency, but they have been clearly and forcibly presented by the President in his veto message—a production scarcely less admirable for its purity of language than its soundness of principle. I will only add, by way of satisfaction to such of my constituents as may feel disappointed of the expected Federal bounty, that the share of Alabama would be far less than she would be entitled to if the apportionment had been proportionate to her share of Federal taxation; and that in order to restore to the Federal treasury ten millions of dollars, diverted from it by this bill, she would be compelled to endure double the taxation of other States that would get more public land. And to magnify this gross injustice, she would be confined, by this bill, in her selection, to those barren rocky mountains, and sterile sandy plains, which compose the public lands yet unsold within her limits, which would not command one dollar, or perhaps fifty cents, per acre; while other States holding no public lands within their limits, would be able to dispose of their scrip at one or more dollars per acre, as purchasers would have choice of the best lands in the Union. And, in yet further violation of her rights she would be constrained to surrender the five per cent. of the net proceeds of the granted lands, although solemnly dedicated, by compact between her and the General Government, to internal improvement within her limits. Hence, had I no constitutional scruples, I would be unwilling to surrender her rights and abuse her interests by consenting to a bargain so iniquitous and unjust. She is already too heavily taxed for Federal bounties she does not enjoy. I will not add to her burdens to increase those bounties. I will not con-

cede the choice of the public domain to other States, and accept for my own the refuse.

I thank the President for exerting his constitutional prerogative to defeat a scheme whereby Alabama would have been first defrauded of her just share of that common fund, the public domain, and afterwards despoiled by taxation of the poor portion assigned her. But I thank him more for vindicating the true principles of the Constitution and upholding and maintaining the rights of the States, which are the surest bulwarks against centralism, and the safest guarantees of popular liberty.



LIBRARY OF CONGRESS



0 021 048 345 7