SPEECH

OF

MR. McKINLEY, OF ALABAMA,

ON THE

BILL TO GRADUATE THE PRICE

OF

PUBLIC LANDS.

DELIVERED IN THE SENATE OF THE UNITED STATES,

MARCH 26, 1828.

WASHINGTON:
PRINTED BY GREEN & JARVIS.
1828.

WASHINGTON, *April* 15, 1828.

SIR: The annexed speech is respectfully submitted to your perusal and consideration; not for any peculiar merit in the argument, but that it may lead to a full and fair investigation of the constitutional powers of the General and State Governments, there suggested.

The great danger to which our free institutions are most subject, are those arising from the slow and silent operation of unconstitutional laws. Whether their enactment be the result of accident or design, the consequences to the people, and the difficulties of changing or repealing them, will be the same. The force of precedent, whether legislative, executive, or judicial, is felt in the whole action of the government, and acknowledged by all concerned in the management of its affairs. And, although legislative precedent ought to have but little influence upon subsequent legislatures, it is too often successfully resorted to, to carry a doubtful measure. If the power exercised by the United States over the peculiar interests of the new States treated of in this speech, be unconstitutional, and dangerous in its tendencies and consequences, it is interesting to inquire whether the same power may not be extended, by the same means, to all the States of the Union, and the whole system of our government be materially endangered. If such may be the consequences, the subject demands the serious consideration of every American. That it may receive that consideration, is the object of the author in giving it this mode of publicity.

Very respectfully,

Your obedient servant,

J. McKINLEY.

SPEECH.

The bill to graduate the price of the Public Lands, and Mr. Hendricks' amendment thereto, being under consideration—

Mr. McKINLEY rose, and spoke, in substance, as follows:

Mr. President: The great interest felt by the people of Alabama in the fate of this subject, makes it my duty to offer, to the consideration of the Senate, my views upon the various provisions of the bill, connected with the amendment offered by the gentleman from Indiana. (Mr. Hendricks.)

The bill contains what I conceive to be a wise and salutary change in the mode of selling the public lands; and it is proposed by the amendment to confine the operation of the bill to the Territories of the United States, and to cede in full property to the States the public lands within their limits.

Sir, I am fully apprized of the difficulties I have to encounter on this subject. The strong partiality of the Senate for the present system has been too often manifested to leave a doubt on that point; but the difficulty and embarrassment is greatly increased in advocating the amendment, as I shall endeavor to show that the United States have no constitutional right or claim to the lands in the new States. Here I have to encounter the long preconceived opinions of many of the Senators, the influence of an established system, long in practice, and the force of precedent. Under these circumstances it will not be surprising, if some of the doctrines, which duty requires me to advocate, should be regarded by some as wild, visionary, and untenable. Let that be as it may, they are the result of the most mature and deliberate reflection I have been able to give to a subject of so much political and pecuniary importance. I have long entertained the opinion that the United States cannot hold land in any State of the Union, except for the purposes enumerated in the constitution; and whatever right they had to the soil while the country remained under territorial governments, passed to the States formed over the same territory on their admission into the Union, on an equal footing with the old States.

A slight attention to the history and character of this government, will satisfy the most sceptical, that the United States did not, as a government, under the articles of confederation, acquire by conquest, from Great Britain, any title to the waste and unappropriated lands (formerly called Crown lands,) lying within the chartered limits of any of the parties to that league or compact. Whatever might have been the opinions or wishes of some of the States upon the subject, it is obvious that it was not the opinion of the Congress of that day, that the United States would (in the event of success attending the war in which they were then engaged,) be entitled to these lands. If such had been the opinion of Congress, why did they pass the resolution of the 13th of September, 1780, asking that as a favor which they might demand as a right? On the contrary, it was then believed that the States would, in virtue of their sovereignty, succeed to all the rights of the crown over these lands, if they succeeded in establishing their independence. And this doctrine has been fully sustained

by the opinions of the Supreme Court of the United States, in the cases of Fletcher and Peck, and Johnson and McIntosh. As the resolution referred to, and the subsequent proceedings under it, form the basis of the right now exercised over the public lands by the United States within the new States, it will be proper to examine the resolution, the cession by Virginia to the United States of her waste and unappropriated lands northwest of the Ohio river, the ordinance of Congress of 1787, and the cession by Georgia to the United States in the year 1802. By this resolution Congress requested the States having waste and unappropriated lands in the western country, to make liberal cessions to the Union; and promised that the lands so ceded should be disposed of for the common benefit of the United States, and settled and formed into distinct republican States, which States should become members of the federal Union, *and have the same rights of sovereignty, freedom, and independence, as the other States.* 1 vol. Laws U. S. p. 475.

Virginia, with that spirit of patriotism and liberality which characterizes all her public acts, granted this request, by conveying to the United States all her waste and unappropriated lands northwest of the Ohio river. But the same patriotism which induced this great sacrifice of interest on the part of Virginia, induced her to secure, as far as practicable, the sovereignty, freedom, and independence of the States thus to be created. And, therefore, in the act of the Virginia Legislature and the deed of cession, the grant is made upon this express condition: "That is to say, upon this condition, that the territory so ceded shall be laid out and formed into States containing a suitable extent of Territory; not less than one hundred, nor more than one hundred and fifty miles square, or as near thereto as circumstances will admit; and that the States so formed shall be distinct republican States, and admitted members of the federal Union, *having the same rights of sovereignty, freedom, and independence, as the other States.*" After the execution of this deed of cession, Congress thought proper, on the 13th of July, 1787, to pass an ordinance for the government of the territory northwest of the Ohio, in which the terms and conditions expressed in the deed of cession are essentially altered, and the following restricted terms for the admission of these new States into the Union, are enacted: "The legislatures of these districts or new States, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the bona fide purchaser. No tax shall be imposed on the land, the property of the United States." "The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways, and for ever free, as well to the inhabitants of said Territory as to the citizens of the United States, and those of any other States that may be admitted into the confederacy, without any tax, impost, or duty therefor." By this article of the ordinance, Congress violated the compact with Virginia. The conditions contained in the act of the legislature and deed of cession, are entirely disregarded; and new, and contradictory conditions imposed upon the people of the territory. Sir, Congress had no power to change or alter these conditions: not even with the consent of Virginia; because they were made for the benefit of the people who were to become citizens of these new States. Those who had purchased land from the United States, and settled there under this compact, and for whose government this ordinance was intended, had a vest-

ed right in those conditions; which could not be divested by one, or both of the original parties to the compact. Therefore, that portion of the ordinance was wholly void and inoperative, which changed the conditions of admission.

Sir, I have already shown, that all the States of the Union, at the close of the war, became sovereign and independent; and, in virtue of their sovereignty, were entitled to all the waste and unappropriated lands within their limits. I have shown that this was the opinion of the old Congress: that it is the opinion of the Supreme Court. It follows, then, as a necessary conclusion, that some of the rights of sovereignty to which the old States were entitled, the new States have been deprived of, by extending the restricted conditions of the ordinance of 1787 to their admission.

All the writers on public law, the ablest jurists of ancient and modern times, agree that sovereignty is necessarily and inseparably connected with the territory and right of soil over which it is exercised. So essential is this right, that sovereignty cannot exist without it. Vattel, 165—112—99. By the conditions on which the new States were admitted into the Union, they have been deprived of the right of disposing of, or, in any manner interfering with the disposition of the public land, or any regulations that Congress may choose to make for securing to the purchasers any title it might choose to grant; they have been deprived of the right of taxing the lands belonging to the United States, for any length of time they may choose to withhold it from sale; they have been deprived, for ever, of the right of collecting tolls upon their own navigable waters, although they may improve their navigation at their own expense, and of the right of charging tolls for turnpike roads, which they may make between those [illegible] the new States *have the same rights of sovereignty, freedom, and independence, as the old?*

Sir, the creation of a sovereign State over this territory, with the consent of Congress, was, of itself, a transfer of the whole title to the land, and right of domain of the United States to the new States. If it would not have had that effect, why annex these restrictions upon their sovereignty to the acts of admission? The very necessity which induced the United States to pass the ordinance of 1787, and the subsequent acts extending its conditions to other States admitted into the Union, proves that, without these restrictions the new States would have been entitled to all the land within their limits, and all other rights of eminent domain. I have shown that the ordinance of 1787, was a violation of the compact with Virginia. I will now endeavor to show that the ordinance was repealed and superseded by the Constitution of the United States, even if it had been consistent with the compact with Virginia, and valid under the articles of confederation.

Before any of these new States were organized, or admitted into the Union, a new era in the political history of the United States occurred. The articles of confederation were found to be wholly incompetent to effect the national purposes for which they were designed; and it became necessary to new model the General and State Governments. The Constitution of the United States was formed in 1787, and adopted by the requisite number of States in 1788. By this Constitution, the States conferred upon the Government of the United States all the national, and as much of the municipal sovereignty, as they deemed necessary for the great purposes of foreign intercourse and national defence. The residue

of the municipal sovereignty was, by the 10th article of the amendments to the Constitution, reserved to the States, or to the people. The States, fearing what might be, and now is, called a liberal construction of the new Constitution, might, by the influence of implication, result in a consolidated, instead of a confederated Government, suggested and carried this, among other amendments. By this amendment, it is expressly declared, that "The powers not delegated to the United States, by this Constitution, nor prohibited by it, to the States, are reserved to the States respectively, or to the people." This provision plainly fixes the boundaries of National and State power: where one ends the other begins; and when taken in connexion with the powers granted to the United States, and those prohibited to the States, furnishes an unerring rule of construction of the whole instrument; which, if adhered to, will for ever keep the Federal and State Governments within their proper orbits; and the exercise of power by either, within its legitimate channels. It is impossible to avoid error of construction, if the Constitution of the United States be regarded (as it most frequently is, by American statesmen,) as furnishing the whole fundamental law governing the action of the Federal Government. The Constitutions of the several States form as much a part of the great code of constitutional law, as the Constitution of the United States. The latter is but an emanation of the former, and depends essentially for the character, extent, and exercise of its powers, upon a correct understanding of the powers reserved to the States. The States intended to grant no power to the United States, that they could exercise, separately, themselves. The creation of this Government was the result of necessity, and not of choice. There was no municipal power that the States could not exercise; and therefore it was not necessary to confer upon the United States any such power, except so far as it became absolutely necessary for the exercise of national power. If this view of the subject be correct, we must agree that the United States have no power to hold land in any of the States, to restrain the States from taxing the land, from controlling the navigable waters and public highways within their jurisdictions, unless such power is expressly granted by the Constitution. The only grant of power upon this subject, is to be found in the enumeration of the powers of Congress, in the 8th section of the 1st article, in these words: "Congress shall have power to exercise exclusive legislation, in all cases whatsoever, over such district, (not exceeding ten miles square,) as may, by cession of particular States, and the acceptance of Congress, become the seat of Government of the United States; and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings." So much municipal sovereignty over the soil within the States, and no more, was deemed necessary for national purposes; and, thus far, it has been found amply sufficient. The power to purchase land for the erection of "other needful buildings," than those specified, authorizes the purchase of land for navy yards, custom houses, court houses, jails, &c. Here, the whole power of Congress to hold land within a State of the Union, or to make compacts with a State for land, ends; and here, also, terminates the exclusive legislative power of Congress over land within the States; unless these powers can be derived from the power granted to Congress to admit new States into the Union. That is a simple and unconditional grant, in those words: "New States may be admitted by the Congress, into the

Union." In the same section, Congress is restrained from erecting a new State within the jurisdiction of any other State, or forming a State by the junction of two or more States, without the consent of the Legislatures of the States concerned, as well as Congress. If the Constitution is to be confined in its operation, to its plain and obvious meaning; if to infer powers not granted, from those granted, would be an illegal accretion of power to the United States, and an encroachment upon the reserved rights and municipal sovereignty of the States; then Congress have no right to annex any condition whatever to the admission of the new States into the Union, and such conditions are unconstitutional and void.

Sir, suppose it were within the competency of Congress and the States to enter into compacts, could they enter into such as would abridge the sovereignty of the States, and confer upon the United States the sovereignty thus surrendered? Vattel, in discussing this question, as between nations, says: "A nation ought to preserve itself, it ought to preserve all its members, it cannot abandon them; and it is under an engagement to support them in their rank, as members of the nation. It has not a right, then, to traffic with their rank and liberty, on account of any advantage it may expect to derive from such a negotiation. They have joined the society for the purpose of being members of it; they submit to the authority of the State, for the purpose of promoting, in concert, their common welfare and safety, and not of being at its disposal, like a farm or a herd of cattle."—Page 118. Again, 194, he says: "A treaty pernicious to the State, is null, and not at all obligatory, as no conductor of a nation has the power to enter into engagements to do such things as are capable of destroying the State for whose safety the government is intrusted to him. The nation being necessarily obliged to perform every thing required for its preservation and safety, cannot enter into engagements contrary to its indispensable obligations. In the year 1506, the States General of the kingdom of France assembled at Tours, engaged Louis XII. to break the treaty he had concluded with the emperor Maximilian, and the archduke Philip, his son, because that treaty was pernicious to the kingdom. They also decided that neither the treaty nor the oath that had accompanied it, could be binding on the king, who had no right to alienate the property of the crown." High and respectable as this authority is, I will call the attention of the Senate to one still higher, the obligations of which operate directly upon our legislative power; it is the Constitution itself. By the 10th section of the 1st article of which, the States are expressly prohibited from entering "into any treaty, alliance, or confederation" whatever. Every compact between sovereign States is a treaty. "A treaty, in Latin, *fœdus*, is a compact made with a view to the public welfare, by the superior power, either for perpetuity or for a considerable time."—Vatt. 192. "As a State that has put herself under the protection of another, has not, on that account, forfeited her character of sovereignty, she may make treaties and contract alliances, unless she has, in the treaty of protection, expressly renounced that right. But she continues for ever after bound by this treaty of protection, so that she cannot enter into any engagements contrary to it."

Sir, a just application of these principles of the law of nations, taken in connexion with the prohibition on the States to enter into "*any treaty*," proves that the States of this Union have no power to enter into any compact with the United States, and much less with Congress, for any purpose whatever, except those enumerated in the Constitution. By the law

of nations, just referred to, it appears that a State, binding herself by a treaty of protection, not to enter into treaties or alliances, is for ever precluded from that right. The States of this Union have bound themselves by a much more sacred and obligatory instrument, not to "enter into any treaty, alliance, or confederation." Surely, then, they have no power to enter into compacts to abridge their sovereignty. If the Constitution prohibits the States from making such treaties with the United States, it is equally prohibitory on the United States to enter into such treaties or compacts with the States. If the United States can enter into treaties or compacts with the new States for the acquisition of sovereignty, land, or money, not warranted by the Constitution, she may do the same with the old States; and thereby change, amend, or destroy the fundamental law of the land by compacts with the States. These compacts, if valid at all, are the supreme law of the land, and as obligatory on all the people of the United States, as the Constitution itself. The States cannot, by any act of theirs, release themselves from their operation; they can pass no law violating them, nor can Congress. But, by the concurring consent of both parties, like all other contracts, they may be cancelled. Thus, then, the constitutional law may be changed, by the simple operation of making and cancelling a contract. But, Sir, are the conditions annexed to the admission of the new States, treaties, compacts, or contracts? All the essential qualities necessary to constitute a valid contract between individuals by the common law, are required by the law of nations to constitute a valid treaty or compact between nations or sovereign States. In either case, the parties must be able, that is, they must have legal power; they must be willing; the subject matter of the contract must be authorized or permitted by the law governing it; and the contract must be made according to the forms of that law. Testing the conditions annexed by Congress in the statutes for the admission of the new States into the Union, (which by a singular misnomer are called compacts,) by these simple rules, it will be found that they do not possess one of the legal requisites of a compact. The only compacts that Congress can make with the States on such subjects, are those enumerated in the sections of the Constitution already referred to. By the consent of Congress, and the cession and consent of particular States, the United States may acquire right to the soil within the jurisdiction of any of the States for the seat of Government of the United States, for the purposes of erecting forts, magazines, arsenals, dock yards, and other needful buildings; and, when thus acquired, Congress can exercise exclusive legislation over it. Congress may enter into a compact with a particular State, for the purpose of erecting a new State within its jurisdiction; or, with two or more States, for the purpose of consolidating them into one. The first of these powers authorizes the acquisition of soil and jurisdiction, but the latter authorizes neither. It has been shown, that the States conferred upon the United States these rights of acquiring soil and exercising municipal sovereignty, for national purposes only, and as auxiliary to the national powers. Here, then, the sphere of the municipal action of the United States is limited to specified objects, to be effected by specific modes. It has been shown, that all other municipal sovereignty over the residue of the soil, was expressly retained to the States.

From these propositions the induction is plain, that Congress had no constitutional power to enter into a compact with the new States for the land, and jurisdiction over it, within those States; and, therefore,

Congress was unable to make the compacts. The other party had still less power. The people of the territories had no political power, whatever political rights they may have had. Those territories were not States; the inhabitants were not citizens of States, nor of the United States. They could not vote for a President or Vice-President of the United States; they could not vote by their representatives in Congress. It has been determined by the Supreme Court of the United States, that the inhabitants of the territorial governments are not citizens of States or of the United States. They were, therefore, the mere subjects of the United States, and bound by their laws, in the enacting of which they had no participation, and, of course, could oppose no political resistance to their operation. The people of the territorial governments, standing in this relation to the United States, were politically passive. And, therefore, when Congress passed laws authorizing them to elect members of a Convention, and authorized that Convention to form a Constitution for the government of the State, the people were as much bound by that, as by any other law of the United States. The Convention, when thus organized, had not even the nominal option of accepting or rejecting propositions in relation to the right of soil, taxation of land, and jurisdiction over navigable streams, and certain carrying places between them, (as seems to be generally supposed). No, Sir, these provisions of the ordinance of 1787, were, by these statutes, made the basis of the Constitutions to be formed. After pointing out the mode of electing members and organizing the Conventions, the statutes authorized the Conventions "to form for the people of the said State, a Constitution and State government: *provided the same* was republican, *and not repugnant to the ordinance of the 13th of July*, 1787." L. U. S. 3 vol. 497. Would any lawyer call this a compact? Here, to be sure, are conditions upon which they are permitted to form a Constitution and State government. These conditions were not propositions for a compact, but were the law of the United States prescribing to these people a rule of action, and the only authority by which they were permitted then to act on that subject; and this is called a compact between the United States and the new States!! Upon the same principle, whenever the people obey a statute a compact is thereby formed between them and the Government. It surely cannot be necessary to carry this inquiry further, to prove that there never was a compact between the United States and the new States, by which the latter yielded their right to, and sovereignty over the lands within their limits; and even if there had been, I have shown that all such compacts are unconstitutional and void.

Sir, if this reasoning be correct, the advocates of the right of the United States, to the lands in the new States, and the concomitant rights contended for, are reduced to the necessity of sustaining them upon the statutes of the United States alone, and of maintaining the paradoxical doctrine, that Congress can by statute acquire any right belonging to the States, of property or sovereignty, the constitution to the contrary notwithstanding. And paradoxical as this doctrine may appear, if the right of the United States to these lands, and the right of Congress to exercise exclusive legislation over them, be sustained, the whole power is admitted, and the most dangerous precedent ever yet established will remain in full force.

The compact between Georgia and the United States is not liable to one of the objections taken to those with the new States. Georgia was at

the time of making it an organized and an old State; but she was one of the States that adopted the constitution of the United States, by which she bound herself never to enter into any treaty, alliance, or confederation; therefore so much of that compact as extended the operation of the ordinance of 1787 to Mississippi and Alabama, was void, upon the reasons and authorities applicable to the compacts with the new States. But so far as the compact related merely to the erection of new States within the territory ceded by Georgia, it is valid and binding, because Congress may erect a new State within the jurisdiction of another State, with the consent of the legislature of such State. See 3d sec. 4th art. Const. U. S. The consent of the legislature of Georgia, as well as of Congress being had to the erection of these States, for that purpose, the compact is constitutional and binding. See the articles of agreement and cession between the United States and the State of Georgia, 1 vol. L. U. S. 448. See also act of Congress extending the ordinance of 1787 to the Mississippi Territory, 3d vol. L. U. S. 380.

Sir, I have shown that all compacts between sovereign States are treaties; that Congress had no power to make compacts for land or jurisdiction over it, except for certain specified purposes: I have shown that the land and jurisdiction over it, and all other rights of *eminent domain*, belong to the old States in virtue of their sovereignty, except so far as they have been conferred upon the government of the Union for national purposes; that the new States would have been entitled to all the rights which the old States enjoyed, if these compacts had not been made; and I have shown, by irresistible implication, that Congress believed that the new States were entitled to the land within their limits, and all the other principles of the ordinance of 1787 had not been extended to them in the manner mentioned. If all these propositions be true, these compacts (admitting them to be such,) must be null and void, unless it can be shown that the United States have the constitutional right to hold land in the States, for other purposes than those enumerated in the constitution; and upon proving that proposition, another equally difficult of proof remains to be established, before the title of the United States to these lands can be made out. All compacts between sovereign States being treaties, and Congress having no right to make treaties, it must be shown that the treaty making power of the United States was employed in making these compacts. The treaty making power being vested in the President and Senate of the United States, by the constitution, and these compacts not having been made by them, they are void upon that ground also, even if they would otherwise have been valid.

Sir, there is another view of this subject worthy of consideration. There was nothing in the conditions contained in the deed of cession by Virginia, which rendered that part of the ordinance of 1787 necessary for carrying them into effect. The first condition was, that the land ceded should be disposed of for the common benefit of all the States, Virginia included; and the second, that the ceded territory should be laid out and formed into distinct republican States, and that these States should be admitted into the Union, with all the rights of sovereignty, freedom, and independence, of the old States. There was no limitation of time in the deed of cession, within which the United States was bound to do all these things. The ordinance, fixing the time when these new States should be admitted at the period when they should have sixty thousand free inhabitants, was the

voluntary act of Congress, and not required by the terms of the compact. Before any State, formed out of this territory, was admitted into the Union, Virginia had given an interpretation, and her meaning of the words employed in one of these conditions, by her compact with Kentucky, by which the latter became a sovereign, free, and independent State, and was admitted into the Union. At the time the compact was made between the United States and Virginia, Kentucky formed a part of what was then her waste and unappropriated lands in the western country. She had commenced appropriating and settling them. In 1789, the Virginia Legislature passed an act authorizing the people of Kentucky to form a State Constitution; by which act they gave up all the unappropriated land within Kentucky, to be disposed of as the new State might think proper. This shows what Virginia meant by the condition, "having the same rights of sovereignty, freedom, and independence, as the other States," contained in her deed of cession to the United States. Because, if she had believed it consistent with the sovereignty, freedom, and independence of a republican State, to be deprived of eminent domain—if she had thought it consistent with that equality which ought to subsist between sister States of the same Union, it is not probable that she would have given to Kentucky land worth more than two millions of dollars. But Virginia was not so money-wise as some of the States are at the present day. She was not disposed to deprive a State of its sovereignty, for the sake of money. So far as the course pursued by Virginia towards Kentucky shows her meaning of the conditions contained in her deed of cession to the United States, it is a good rule of construction; for she had then no particular interest in the matter; at least, her interest, if any, was the other way.

Sir, if the United States might have performed all the conditions in the deed of cession, and those might nevertheless, entailed to consequences; and the people of the States are, nevertheless, entailed to all their constitutional rights, even if the United States shall get less by this voluntary cession, made by Virginia, than her avarice seems willing to demand. The same course of reasoning, in a great degree, applies to the cession made by Georgia. The conditions of that cession were, that the land ceded should be disposed of for the common benefit of the United States, Georgia included; and when the territory should have sixty thousand free inhabitants, it was to be formed into a State, and admitted into the Union. The United States had all the time, from the date of the cession until there should be sixty thousand free inhabitants in the territory. If she failed to dispose of the land within the time limited in the compact, the right to it legally and necessarily passed to the sovereign, free, and independent States formed over it; that being the legal effect of the contract. Sir, notwithstanding the people inhabiting these territorial governments had no political powers, they had political rights. They had a right, by the Constitution, to the benefits of self-government. When the Territories were formed into State Governments, they had a right to unconditional admission into the Union upon an equal footing with the other States. These people, with all these rights, were placed under the entire control and government of the United States. Under these circumstances, Congress could no more make a contract with them, than a guardian can with his ward. Suppose A, by his will, were to convey to B, the whole of his estate in trust for his only son, to be conveyed to him when he arrived at full age, and to confer upon him, also, the guardianship of the son. And suppose this testamentary guardian and trustee were to say to

the ward, when arrived at the age of twenty years, (who, like the people of Territorial Governments, would be anxious for self-government,) if you will agree never to interfere with my right to dispose of your manor of C, for my use, I will release you from your wardship, and permit you to do as you please with the rest of your estate; and the ward were to agree to this proposition, and were even to execute a release to the guardian: the law would pronounce this contract to be void. And yet this is not so strong a case as that of the Territories and the United States. For the latter did not even give the former the right to decide upon the proposition of yielding up their patrimony, but told them plainly, you shall not be entitled to self-government, unless you give up to us all right to the land which, but for this act, would have been theirs; and this act having been shown to be utterly void, upon legal and constitutional principles, the land now of right belongs to the States, together with all other rights of sovereignty of which they have been thus unconstitutionally deprived.

Sir, however important may be the question of pecuniary interest involved in the measure under discussion, it sinks into insignificance when compared with the political principle involved. The great political question involved is this: Can the United States, by mere legislation, by treaty, or by any form of contract with the States, acquire rights of sovereignty, or property, not granted to the former by the Constitution, but expressly reserved to the latter? If such power does exist in this Government, liberty and free government cannot be preserved by a written Constitution. All the checks and balances necessary for the preservation of these vital principles were believed to have been carefully and skilfully interwoven into the very texture of this system of government. State rights and State [illegible] it was thought were protected beyond doubt or controversy, all the other guards in the Constitution, may be abandoned, if the principles contended for by the opponents of this measure, shall prevail, and be practised upon. The principle contended for by them, is, that the United States can contract with a State of this Union, for a portion of its sovereignty; for such was the contract with Georgia, and such the contracts with the new States, if contracts at all. If a contract of this character is valid for a portion of the sovereignty of a State, it would be equally valid for the whole. Do the friends of State sovereignty perceive that by supporting this doctrine they are sustaining a principle which may overturn State sovereignty, by the mere operation of money appropriated for the purchase of all the disputed rights between this and the State Governments? If the interest which the United States have, or suppose they have, in these lands, has such an influence in the determination of this question, what may we not apprehend from the influence of interest or money, upon other questions? Sustaining this principle of compacts, establishes a precedent for bartering in sovereignty between the United States and the States; and it establishes a still more dangerous precedent. It is this: that the ownership of land, by the United States, within a State, gives them the right to dispose of it as they please, by the legislation of Congress. Having the possession of the immense revenues derivable from commerce, the United States may purchase land in any of the States of the Union, from the fee simple owners; and when they have obtained it, may grant it in fee simple, fee conditional, or fee tail; or they may lease it out, and improve it in any way they may think proper. They may make

roads and canals over it, build houses or manufactories; in short, they may do every thing that the lord paramount may do with his own domain.

Sir, this is not an idle speculation; this principle was distinctly recognised a few days since by the Senate, and a part, at least, of its ground occupied. A bill passed the Senate authorizing the President of the United States to lease out certain lots of land, lying in the State of Illinois, for a term of years, and authorizing the President, with the advice and consent of the Senate, to appoint an agent or steward, to superintend these leasehold estates of the United States, and to collect the rents. Is this not establishing the principle that the United States, owning the soil within one of the States of the Union, may establish the relation of landlord and tenant between the United States and the citizens of that State? Is it not establishing the principle that the United States may improve or dispose of her lands as she pleases? Is it not establishing the principle that officers, for the superintendence of such affairs, may be appointed by the United States? And what more is necessary to establish the whole of the doctrine?

Sir, suppose a majority of Congress have in view some favorite project of internal improvement within the State of Virginia, for instance, to which Virginia opposes her State sovereignty—may not Congress pass a law appropriating money and authorizing the purchase of the land from the fee simple owners, for the track of a canal or a road, and thereby confer upon Congress the right of legislating over it? And what, then, becomes of the State sovereignty of Virginia?

Or suppose the United States choose to make a contract directly with any of the States for any or all of their sovereignty, as she did with Georgia for a portion of hers, would not such compacts become as sacred as these are? The gentleman from Missouri, (Mr. Barton,) in his speech upon this subject, dwelt much upon the sacredness and inviolability of these compacts. The power has been denied to Congress, by other gentlemen, to pass any law contrary to them. What more reverence and respect could be manifested for the constitution? or what more obligatory force would that instrument have upon the legislation of Congress? By these compacts the new States are reduced to a state of vassalage—they have become the mere feudatories of the United States; may not the old States be reduced to the same condition, by the same means? These compacts operate here as constitutional law; may not other compacts operate in the same way? If they may, then the constitutional law may be changed by compacts. Is the Senate prepared to sacrifice the constitution for money? Shall we establish principles and precedents which may lead to the destruction of the only free government in the world, that the Treasury may be a little richer? If all these lands were given up to the States, they would not be lost to the United States. Whatever adds to the wealth, or prosperity of the States, increases the wealth and prosperity of the United States. Sir, which is most important to the people, these lands or the constitution, money or liberty? The gentleman from Missouri, (Mr. Barton,) stated that this question of sovereignty of the new States, was one of no importance in the consideration of this measure. I have no doubt he thinks so; but, in my opinion, a more important question than the one really involved, could not engage the attention of Congress, however little interest it may excite on the present occasion.

Inquiry, however, has been awakened on this subject, and it will go on, whatever may be the fate of the measure under discussion; and the doc-

trines here advanced will, I trust, gain strength, as the inquiry progresses, not in the new States only, but every where, that the subject is investigated by the friends of the constitution, of State sovereignty, and of civil liberty.

Sir, it has been said that these lands ought to belong to the old States, because they all contributed in conquering them from Great Britain, or contributed otherwise to their acquisition; that the acquisition of the crown lands was one of the inducements to the revolution; that they have been pledged for the payment of the public debt; and therefore the United States cannot in justice to themselves, and good faith to their creditors, relinquish them to the new States. It has been shown that the successful issue of the revolution did not confer upon the United States, as a government, the crown lands in the respective States; but that the States in which they lay, in virtue of their sovereignty, succeeded to all the previous rights of the crown. Such has been the opinions of the old Congress, of the Congress under the present Constitution, and of the Supreme Court of the United States. The crown lands had, it is true, some influence in producing the revolution, if we are to credit the Declaration of Independence; but it was an influence wholly adverse to the arguments urged against this measure. The complaint in the Declaration of Independence against the king, on this subject, is in these words: "He has endeavored to prevent the population of these States; for that purpose obstructing the laws for the naturalization of foreigners; refusing to pass others to encourage emigration hither, and raising the conditions of new appropriations of lands."

Sir, the opponents of this bill are welcome to the full benefits of these complaints against the king of Great Britain; and their just application to the existing state of things here. These very complaints may now be justly urged by the new States against the United States. Is there not, now, an attempt making to discourage or prevent emigration to the new States, by refusing to pass laws for that purpose? And, if not, by raising the conditions of new appropriations of lands, the same effect is intended to be produced, by refusing to reduce the price to their real value. The Secretary of the Treasury, in his annual report on the state of the finances, at the present session of Congress, has entered into a learned and labored argument to show that the price of the public lands ought not to be reduced; because it would give too much encouragement to emigration from the old to the new States; and thereby prevent the great manufacturers from obtaining the labor of the poor class of society at a cheap rate. [See the Report, pp. 24–5–6.] He admits that population may be more rapidly increased, by encouragement to emigration and agricultural pursuits; and he might have admitted, also, that the sum of human happiness, and the preservation of republican principles, and our free institutions, would be better and more certainly promoted, by the same means. But the amount of his argument is, that it is better to increase capital in the hands of manufacturers, by compelling the poor to labor for them, than to permit the poor to become landholders, at a cheap rate, and pursue agriculture; although population would be thereby increased, and the true principles of the government be best preserved.

Sir, is not this a direct attempt, on the part of the President of the United States, through his Secretary, to prevent emigration to the new States? Is it not the direct opposition of the executive department of the government, against the passage of this bill? It has been before the Senate for several preceding sessions: if it passes, its effect will be to encourage the emigration of the poor class of society to the new States; where they

may become landholders, at a cheap rate, and rear their families in freedom and independence. The policy of the President and Secretary is, to deprive the poor of these great benefits; to force them into the service of the wealthy manufacturer; to prevent, as far as possible, the population of the new States; and diminish their political importance in the scale of the Union. Have not the new States good cause to make the same complaint, on the subject of the public land, against the United States, that the colonies did against the king of Great Britain? But, Sir, this attempt to arrest emigration to the West, is vain and useless: the tide of emigration will roll on, in despite of legislation here, or opinions expressed elsewhere. So long as men are free, they will pursue their interest and happiness according to the dictates of their own judgments. So long as the lands are poor and unproductive, and agricultural products at their present depressed prices, on this side of the Alleghany, the poor will—nay, they must—seek, on the other, richer and more fertile land; even if they are destined to be tenants there. It is better to be a tenant on rich land, than a landlord on poor: it is better to be a free man in the West, than a slave to a manufacturer in the East.

The gentleman from Missouri, (Mr. Barton,) says the effect of the graduating principle of the bill will produce a rapid depreciation in the price of the public land, and a monopoly in the hands of speculators. The proposition in the bill is to fix the price of the land according to its quality. Is there any thing in this proposition dangerous to the interests of the United States, or unjustly favorable to the purchaser? There are millions of acres of land that have been offered for sale at public auction, and would not sell at the *minimum* price, that have remained unsold, some for more than twenty years, although it has been subject to entry, by any one choosing to apply for it, at two dollars an acre, until 1821, and since that time at one dollar and twenty-five cents. Is not this sufficient to prove that such land is not worth a dollar and a quarter an acre? If it is not worth a dollar and a quarter, is it wrong, is it doing injustice, to sell it for less? If land that has been in the market for twenty years, had been sold at first at sixty-two and a half cents an acre, it would have produced twenty-five per cent. more to the Treasury, than it would now, if sold at a dollar and a quarter. Calculating the simple interest on the amount at six per cent. it doubles itself every sixteen years. Gentlemen say that these lands are pledged for the payment of the public debt. The debt is more than doubled by the interest, since a great deal of this land has been in the market, and it will be doubled again, before it will sell for a dollar and a quarter an acre. Is this a judicious system of finance and economy? Is this the way to pay the public debt? I cannot perceive how selling land for its value, will produce a rapid depreciation in its price. But if this effect could be produced by the passage of the bill, it seems to me impossible that the lands could be the subject of profitable speculation. Suppose individuals were to purchase up large quantities of these lands, in the expectation of making a profit upon them. If similar lands continued to depreciate in the hands of the government, would not these in the hands of the speculator depreciate in the same ratio? The longer the speculator held the land, the greater must be his loss, if the government lands continue to decline under this system. Therefore there can be no possible danger to the interest of the United States from that quarter.

Sir, the friends of the present land system are the last that ought to say any thing about speculation. Who is the great land speculator in this coun-

try? The United States is the greatest that ever was in this or any other country. She obtained from Virginia all her waste and unappropriated lands north-west of the Ohio river, under a solemn pledge to sell them for the common benefit of all the States, and apply the proceeds to the discharge of their war debts. This was expected to be done speedily, and sovereign, free, and independent States erected over the territory ceded, as soon as there should be sufficient population. All these pledges have been disregarded; the public debt has not been discharged by this fund; the States created there have been deprived of their sovereignty; and now the lands are to be held up for high prices, to the great detriment of these new States. These lands have already produced to the Treasury upwards of twenty-two millions of dollars, and very large bodies of them remain unsold. In violation of the constitution, the United States purchased from Georgia all the country now forming the States of Mississippi and Alabama, which had previously been the subject of the most fraudulent system of legislative speculation. They paid nothing for it, but promised payment to Georgia out of the proceeds of the sales; compromised with the Yazoo company of speculators, promising payment in the same way. They issued stock to the amount of six millions two hundred and fifty thousand dollars, called Mississippi stock, delivered it in payment, and made this stock receivable in payment for the lands when sold; thus creating an immense artificial fund, not based upon the specie capital of the country, for the purpose of ensuring high prices for the lands, and enriching the Treasury at the expense of the citizens. The result was as might have been expected. This Mississippi stock was thrown into the market; and at the sales of these lands was worth just as much as the hard dollars of the planters. The lands sold for unheard of prices; the citizens were many of them ruined by their purchases; *their* money redeemed this stock, and the United States pocketed a clear profit of upwards of eight millions of dollars by the sale of much less than half the lands, without the advance of a dollar of the purchase money. And not content with wholesale and retail speculation, they laid out towns, where nature never designed towns should be, puffed them by their agents, and actually descended to peddling in the lots.

And now we are told, that it is dangerous and immoral to encourage a system of speculation among our citizens. Sir, while the government gives such examples of successful speculation to its citizens, they will not believe that it is demoralizing to speculate in land; and they will follow this illustrious example. If this system of land jobbing and speculation is pernicious to society, let the government abandon it, and set an example of moderation, of justice, and fair dealing, by restoring to the new States their violated sovereignty. The territorial governments, within which the constitution authorizes the legislative action of Congress, afford an ample field for the operation of the land system, without extending it to the States. And there, this graduating plan will be found highly beneficial. The gentleman from Missouri, (Mr. Benton,) read in his place, this morning, a statement showing the beneficial effects of a system like this in the State of Tennessee. There it produced large sums of money to the Treasury, and no speculation among the citizens. None of the evils so much deprecated by the gentleman from Missouri, (Mr. Barton,) resulted from the operation of this system in Tennessee. We may, therefore, fairly conclude, they will not happen to the United States, if we adopt the same system. Another proposition contained in this bill, will effect, par-

tially, what the amendment proposes. After this system of graduating the prices shall have exhausted itself, by disposing of all land worth twenty-five cents and upwards per acre, the residue is to be subject to donations for one year to actual settlers, and whatever may be left after this operation, is to be ceded in full property to the States. Should the amendment be rejected, the operation of the bill would, within some reasonable time, give to the States complete jurisdiction over the lands within their limits. Admitting, for sake of the argument, that the United States have a right to hold these States as vassals and feudatories: Would it be good policy, would it be generous, would it be consistent with our scheme of government to do it? You deprive them of many of the essential attributes of sovereignty: control the internal police and economy of a government *called* free and independent. They are deprived of the right of regulating the settlement and improvement of the country, in that mode which might be best calculated to promote their happiness and prosperity. They are deprived of the revenue derivable from the soil, the most certain and available source of revenue in any country. They are subject to the operation of laws of the United States upon subjects purely municipal, which do not operate in the old States, and which they have a right to pass for themselves, or not, according to their sovereign will and pleasure. A majority of Congress represent the old States, and are, of course, wholly irresponsible to the citizens of the new, for any laws they may choose to pass on these subjects. They are ignorant of the peculiar wants and wishes of the people they are legislating for; and when those who represent those people bring their petitions and wants before Congress, their statements and representations of the actual condition of things, are often, to their great mortification, received here "*with grains of allowance.*" The President of the United States has the discretionary power of bringing as much or as little of the public land into market, annually, as he chooses. In the exercise of this power, he may give a preference to the settlement and population of one State over another, or he may restrain the settlements entirely, for the purpose of carrying into effect the policy of the Secretary of the Treasury. I do not mention these as complaints against the Executive, but against the operation of such principles, because the same result might take place by the exercise of the same power by a majority of Congress, and the people interested be equally without remedy.

Sir, the Legislature of the State I have the honor, in part, to represent, taking into consideration these grievances, addressed to the present Congress a respectful memorial, proposing to purchase all the lands within her limits, that she might, thereby, acquire full sovereignty within her jurisdiction. This memorial, I had the honor of presenting to the Senate, and, upon which, a Committee was raised. A majority of that Committee decided against selling the lands to Alabama, preferring the present, so much eulogized system. If the United States refuse to give, or sell to us, what we believe we are constitutionally entitled to, we certainly have good cause of complaint. and will continue to complain until we obtain our rights.