

LETTER TO A SENATOR

ON THE

OBLIGATION OF THE UNITED STATES,

TO PAY

THE DEBT OF THE REPUBLIC OF TEXAS.

WASHINGTON:
PRINTED BY LEMUEL TOWERS.
1853.

LETTER TO A SENATOR.

SIR: The interest I feel in the payment of the debt due from the Republic of Texas, must be my excuse for submitting to you some of the views I have taken of the obligation of the Government of the United States to pay this debt.

I know your desire to do what justice and good faith demand, and the Constitution permits; and while I know it is your habit to investigate for yourself, every question on which you are required to act; and while your opportunities of obtaining information, and your ability to investigate, are superior to mine, yet I hope, perchance, I may submit some views worthy of your consideration.

Texas commenced her revolutionary war with but limited resources. With a population of twenty thousand, scattered over an extensive territory—without munitions of war—without a navy—without money, she commenced the struggle, relying on the energy and manliness of her citizens. Her only resources were her wild lands, and her credit, based on hopes of success in the war. To expect a regular revenue, adequate even to the maintenance of a civil list, from taxation of her sparse population, harrassed as it was by Indian wars, and oppressed by the contest with Mexico, was chimerical. Her wild lands were of immense extent; but the idea of making them a source of revenue proved, in this case, (as it has proved in all others,) delusive.

The value of wild lands, as an element of payment, for the support of government, (and, indeed, for every practical purpose of life,) depends on the labor and capital that may be employed in producing from them the means of support, and articles of trade. Hence Virginia, in the revolutionary war, with an extent of territory as great, and a population and capital much greater than that of Texas, could procure from her wild lands only a meagre and stinted revenue. In one respect, Virginia and Texas were situated alike—each was unable to incur the expense of surveying her wild lands, before they were brought into market, and therefore driven to adopt a system which threw the location and direction of the

surveys into the hands of the persons seeking the lands; and this gave rise to wild speculations, and brought into the titles an uncertainty and confusion which diminished materially the value of the lands. It was only when Virginia transferred her lands west of the Ohio to the Government of the United States, and a regular system of surveys and sales was adopted by that Government, that any fixed value was given to these lands. And even under that system—with all the aid derived from increased capital and population—the revenue from public lands has formed but a small item in the support of government.

The hopes of Texas deriving a revenue, at all commensurate to her liabilities, from the sale of her wild lands, has so far proved delusive; and sober reflection must compel us to believe that all anticipations of revenue from this source must be postponed to a distant day, if, indeed, they are ever realized. If they should ever be realized, it must be by increasing her capital and population, until they bear a much greater proportion to her wild lands than they now bear. And in this process the quantity of her wild land will be much diminished, and a great part of the mass of public lands will be converted into private property, by a power the State government will be unable to resist. The hardy and intelligent pioneers, who reclaim and settle these lands, will consider them their own, and will set up titles to them, in which the State government must acquiesce.

Such was the uniform history of our colonial lands. All the anticipations of large fortunes and future wealth, indulged by proprietors, proved visionary.

If a different result has, in some measure, been attained as to the public lands of the United States, it is because the power of that Government has been exercised to remove the Indians, protect the land from squatters, and bring them systematically into market.

But even as to these lands, prudent men begin to see that they must ultimately be surrendered to the pioneer population, which will reclaim and settle them.

There could be but little hope, with reflecting men, that the wild lands of Texas would ever be the means of discharging the moneyed obligations of the Republic. Certain it is that

all hopes of the Republic, to raise a considerable revenue from this source, signally failed. Her hopes of revenue from direct taxation, also failed. The only resource left to the republic was her ability to borrow, on hopes of success in her war, and the revenue success might bring. But credit based on these hopes had nothing of a commercial character. Commercial credit is founded on certainty and punctuality of payment. However sanguine might be the hopes of ultimate success, indulged by the Republic of Texas and her friends, they could make no calculations which would give her securities more than a conjectural value. On such securities, money could be advanced only tardily, and at heavy discounts. Even if success was achieved, it must have been foreseen that her lands could be of but little value in paying moneyed obligations—that a revenue from direct taxation, sufficient to meet her debt, could not be raised, until the subjects of taxation were greatly increased, by the increase of wealth and population. Indirect taxation, or imposts on imports and exports, promised a much more speedy revenue; and to this source the creditors chiefly looked.

The Republic of Texas availed herself of her credit, and raised money on the credit of her revenue, which she most solemnly pledged for its payment. With this credit she procured munitions of war, ships, and other means of defence and offence, by which she was enabled to maintain the contest with Mexico, to sustain her independence, and procure its recognition by some of the most powerful nations of the world. But the recognition of independence did not bring peace with Mexico, and the continuance of the war prevented that increase of population and trade which was necessary to produce a revenue sufficient to meet her engagements.

In this state of things it suited the national interests of the United States and Texas to unite the two nations.

This Union was effected by a joint resolution passed by Congress on the 1st of March 1845, and adopted by Texas on the 4th July 1845, and a further resolution admitting Texas as one of the States of this Union on the 29th December, 1845.

The joint resolution of the 1st March, 1845, contains the articles or terms of Union.

The preamble recites "That Congress doth consent that 'the territory properly included within the Republic of Texas 'may be created into a new State, to be called the State of 'Texas, with a republican form of government, to be adopted 'by the people of the said Republic by deputies, in conven- 'tion assembled, with the consent of the existing government, 'in order that the same may be admitted as one of the States 'of this Union."

The resolutions contain several provisions: 1st, The boundaries of said State to be adjusted by the United States with other governments, and the constitution, with evidence of its adoption, to be laid before Congress.

2d. "Said State when admitted into the Union, after ceding 'to the United States all public edifices, fortifications, barracks, 'ports, and harbors, navy and navy-yards, docks, magazines, 'arms, armaments, and all other property and means pertain- 'ing to the public defence belonging to the said Republic of 'Texas, shall retain all the public funds, debts, taxes, and 'dues of every kind which may belong to or be due and 'owing the said Republic; and shall also retain all the va- 'cant and unappropriated lands lying within its limits, to be 'applied to the payment of the debts and liabilities of said 'Republic of Texas; and the residue of said lands after dis- 'charging said debts and liabilities to be disposed of as said 'State may direct, but in no event are said debts and liabili- 'ties to become a charge upon the Government of the United 'States."

3d. New States to be formed, &c.

4th. Provisions for negotiation, &c.

These resolutions having been adopted by the government of the Republic and people of Texas, and carried into effect become a compact between those parties, *i. e.* between the Government of the United States on the one part, and the government of the Republic of Texas and the people of Texas on the other.

The great objects of the compact are to extinguish the Republic of Texas—form on its territory and out of its inhabitants a new and differently organized State; to divide between the United States and the new State the assets and powers of the government of the Republic.

In this compact the existence of the debts of the Republic, and the obligation to pay those debts is thus recognised—“that the State of Texas shall retain all the vacant and unappropriated land within its limits, to be applied to the payment of the debts and liabilities of the said Republic of Texas; and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct; but in no event are said debts and liabilities to become a charge on the Government of the United States.”

This compact not only recognises the existence of the debts, but, by necessary implication, recognises the obligation of the United States and State of Texas both, to see them paid.

The resolutions come from the United States as a proposition to Texas to change her political condition and become one of the United States.

They propose an extinction of the Republic, and the organization of a new State, with such modified powers of government as may enable it to enter the Union, and subject its territory and population to the Constitution and laws of the United States.

They propose a division of the property of the Republic between the United States and the new State of Texas in the following manner: the public property pertaining to land and naval warfare, to be assigned to the United States, the debts, funds, &c., to the State of Texas. The unappropriated lands to be pledged to the debts of the Republic and only the surplus to go to the State of Texas.

But another distribution of the means and powers of the Republic of Texas was well understood by the parties to result from the admission of the State of Texas into the Union.

The chief means of the Republic for paying her debt was her powers of taxation.

Her power of indirect taxation, or the levy of duties on imports, was by the Constitution of the United States, to be transferred to the Government of the United States.

Her powers of direct taxation were to be concurrent between the new State and the United States.

It cannot escape observation that a large part of the public property of the Republic thus transferred to the United States was purchased with the means of creditors whose debts

were still unpaid, and the revenue from duties on imports transferred to the United States was solemnly pledged to her creditors by the Republic.

The United States, by this intromission into the affairs of the Republic of Texas, and by this partition of her property and rights, must have assumed responsibility for the debts of the Republic.

The consciousness of that responsibility produced the stipulations of the contract.

Why should the United States interfere with the debt at all, if she was not responsible for it? Why take the guaranty of the State of Texas that the debts should not be a charge on the Government of the United States? Why interfere with the lands of Texas, and stipulate the debt should be charged on them?

Many of the old thirteen States, when they came into the Union, owned large bodies of wild lands. Some agreed to limit their boundaries, and cede the wild land beyond those boundaries to the United States, but none ceded the lands within their boundaries. By this compact, the State of Texas charges her wild lands with the debts of the Republic, and retains the right to dispose of only the surplus.

This stipulation, made at the instance of the United States, is obviously made for her protection. But does not the stipulation for protection imply responsibility?

The position of the United States in relation to the debts of the Republic of Texas, is clearly different from her position in relation to the debts of one of the States of the Union.

The Republic of Texas was one of the nations of the world, possessing all the powers of government. She had entered into contracts with her creditors, and pledged or mortgaged to them her revenues as a security for the performance of her contracts. This she had unquestionably the right to do.

The United States, by compact with the Republic and people of Texas, extinguished the Republic, takes a part of her property and power and rights, and the residue of her property, powers, and rights, are transferred to the new State of Texas.

What are the relations of the Government of the United States and the State of Texas to the Republic of Texas?

The Republic and State of Texas differ materially in their political organization.

The Republic possessed all the powers of government over her affairs, both foreign and domestic.

The State is, by the Constitution of the United States, stripped of many of the powers which belonged to the Republic.

It cannot declare war or make peace, enter into any treaty, alliance, or confederation, grant letters-of-marque and reprisal, coin money, emit bills of credit, make anything but gold and silver coin a tender in the payment of debts, pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, levy any duty on imports or exports, lay any duty on tonnage, keep troops or ships-of-war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war unless actually invaded, or in such imminent danger as will not admit of delay.

The Government of the United States has extended its Constitution and laws over the territory and citizens of Texas. It alone has power to declare war and make peace for Texas; to regulate the intercourse of the people of Texas with foreign nations, and with the Indians in her territory; to lay duties on her imports, to establish post offices, post roads, &c.

The new political organization of Texas was framed to produce these changes.

The organization of the Republic was to enable it to take its place among the nations of the earth.

The organization of the State of Texas was to enable it to take its place among the States of the Union.

Under this change of organization and powers, the State of Texas is in some respects the same government with the Republic; but in others it cannot be said to be so. A large portion of the powers of the Republic have either been abolished or transferred to the Government of the United States.

As to all the powers of the Republic which remain to the State of Texas, the State is the successor of the Republic, and must be deemed the same government.

As to the powers which have been transferred to the United States, the United States is the successor of the Republic, and should be deemed the same government. I suppose this

would not admit of doubt if treaty obligations with foreign governments existed. As to all such obligations, the Republic has ceased to exist. But the treaty powers having been transferred to the Government of the United States, that Government must as to those powers be deemed her successor, and be bound to fulfil all obligations arising from such treaties.

In like manner all the powers of the Republic to levy duties on imports into the territory of Texas, have been transferred to the United States. So also the powers to declare war, and make peace, regulate commerce with Indians, establish post-offices and post-roads, are exercised by the Government of the United States over the territory of Texas, as successor of the Republic.

As to all these powers the Government of the United States is the successor of the Republic—is the same Government, and is bound to fulfil all obligations charged on the powers transferred to her.

This must be so, because Texas is in no sense a conquered country. The powers exercised over her territory by the Government of the United States, are as much the grant of her people as the powers exercised by the State of Texas. A political community acts through its Government.

It may distribute its powers of Government among several agencies, but these agencies represent the will and authority of the community.

Texas, by compact with the United States, and by the voluntary act of her citizens, abolished the Republic, and adopted the Government of the United States as her Government, in all respects in which she conferred power on it. The United States, having accepted these powers, is bound in good faith to exercise them as the successor of the former Government, on which Texas had conferred these powers. The United States, being bound to exercise these powers in good faith, must discharge all the obligations charged on them by the Republic of Texas.

Unquestionably, the Government of the United States, and the people of Texas, had the right to abolish the Republic of Texas, and distribute its powers between the Government of the United States and State of Texas. The creditors had no

right to object to this. But in making this change, the Government of the United States and Texas were bound to exercise good faith to all third parties holding obligations on the Republic. Good faith forbade the parties to extinguish the debts of the Republic, or injuriously to affect them.

The compact of annexation acknowledges the existence of the debts and the obligation to pay them. But the same considerations of good faith and equity, which required the parties to preserve these debts in existence, required them to be preserved in full force and efficiency. To do this, required that all the liens, pledges, and securities, for payment, should be preserved in full force and effect.

These debts remain unpaid, but the revenues on which they are charged have been transferred to the Government of the United States. Unless the Government of the United States, with the revenue, takes the debts, lawfully and solemnly charged on them by the Republic of Texas, then the rights of the creditors are most seriously and injuriously affected, because, while the debt nominally remains due, the means of payment are taken away.

It was no adequate compensation to the creditors to charge these debts on a mass of unproductive wild lands, or to proffer to them the responsibility of a State stripped of its resources, and unable, from the limited means left it, to make good its engagements.

It is a familiar principle of jurisprudence that a purchaser for valuable consideration of mortgaged property, with notice of the mortgage, takes the property charged with the mortgage. This rule of law is founded on principles of equity and good faith. The debtor has no right to destroy or diminish the securities held by the creditor to insure the payment of his debt. The efforts to part with them to the prejudice of the creditor's rights, is a breach of good faith, and the purchaser concurring in and enabling the debtor to commit this breach of faith, is himself guilty of a breach of faith. In the case under consideration, the parties concurring in the destruction of the Republic of Texas, and the distribution of her powers, were bound in good faith to preserve her debts and the securities on what those debts were charged. Especially was it the duty of the United States, when she took the reve-

nues on which this debt was charged, to assume the payment of the debt.

It cannot be doubted that in the case of individuals, subject to the laws of our country, the property in the hands of the alienee would be subjected to the debt charged on it.

But the Government is bound by the principles and rules of law which regulate the rights of parties.

In every civilized nation, the laws which regulate the rights of property are presumed to be founded on principles of equity and justice; and, indeed, they are the standard exponents of the sense of right and wrong, which prevail in that community.

In every system of laws there are two parts—one, which regulates rights of property and persons, a second which regulates remedies. This latter part merely gives a remedy for the breach of rights secured by the first part of the system.

From the remedial portion of the law, Governments are exempted, because it would be inconvenient to subject the Government to the coercive remedies to which individuals are subjected; and because it would be indecent to suppose that a Government, representing the morality and justice of the community, would, in its transactions, violate the rules of right and wrong which it enforces on all persons under its authority.

This exemption from the ordinary remedies of law, imposes on the Government the highest sanctions of honor and conscience to observe, in its dealings with individuals, those rules of equity and justice, which, by its jurisprudence, it declares to be right. A Government which is bound by no rules of right and wrong is an arbitrary tyranny.

If then, on the principles of law and equity, which govern property, an individual in the situation of the United States would have his debt charged on the property taken by it, the United States ought, in good faith, to hold the revenues acquired by this compact, subject to the debts charged on them by the Republic of Texas.

But the compact of annexation was in violation of the Constitution of the United States, unless the debts of the Republic of Texas are assumed by the United States.

The 3d section of article 4, of the Constitution, provides that new States may be admitted by Congress into this Union.

This provision gives Congress the right to admit Texas, but in her admission other provisions of the constitution are not to be violated. The 10th section of article 1, prohibits a State from passing any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts.

The Republic of Texas had contracted debts, and mortgaged her revenues for the payment of those debts. There was then in her case the general contract to pay these debts, and the special contract by which her revenue from duties on imports was mortgaged to make good the payment. But the effect of annexation was, by force of the Constitution of the United States, to transfer the mortgaged revenues from Texas to the United States.

Does not this impair the obligation of the contract of the Republic?

That this provision does apply to grants and contracts of the States, and restrain the violation of such grants and contracts, has been decided by the Supreme Court of the United States. See *Fletcher vs. Peck*, 9 Cranch 87; *Green vs. Biddle*, 8 Wheat. 1; and many other cases.

This is now a familiar and well settled principle of our legislation.

In *Sturgis vs. Crowningshield*, 4 Wheat. 197, Judge Marshal inquires: "What is the obligation of a contract? And what will impair it?" He answers: "It would seem difficult to substitute words which are more intelligible, or less liable to misconstruction, than those which are to be explained. A contract is an agreement in which a party undertakes to do or not to do a particular thing. The law binds him to perform his undertaking, and this is of course the obligation of his contract. In the case at bar, the defendant has given his promissory note to pay the plaintiff a certain sum of money on or before a certain day. The contract binds him to pay that sum on that day, and this is its obligation. Any law which releases a part of this obligation must in a certain sense of the word impair it. Much more must a law impair it which makes it totally invalid and discharges it."

To apply this to the present case—the Republic of Texas had given her bonds and certificates of debt, and had mortgaged and pledged her revenues as security for the payment

of her debt. Her contract was a contract of mortgage. The annexation resolutions brought Texas into the Union, and by operation of the Constitution, the mortgaged subject was transferred to the United States. If these revenues were transferred to the United States free from the mortgage debt, certainly the contract of Texas was impaired. So much of the contract as pledged the revenues, was rendered totally invalid and entirely discharged.

But the fact that the contract of the Republic with her creditors was entered into before annexation, and was a valid and subsisting contract, does not render the compact of annexation less a violation of the Constitution.

In the case of *Green vs Biddle*, it was ruled that the compact made by Kentucky with Virginia before her admission to the Union, bound her after her admission, and she could not, by her legislation, impair its obligations.

The contract of Texas with her creditors was violated in the very act of her admission. It was the act of admission which transferred to the United States, and by force of the Constitution, the power to levy duties on imports; and it was this transfer which violated the contract with the creditors. So that this compact, the very moment it took effect, and placed Texas under the control of the Constitution, violated so much of that Constitution as forbid her to impair the obligation of her contract. It would not be questioned that the Constitution would forbid Texas to impair her contract by alienating her mortgaged revenues, free from the mortgage, after her admission. Must it not equally do so on the moment of her admission. It was by force of the very Constitution which prohibits her impairing the obligation of her contracts, that her revenues were transferred to the United States. So, on the moment of her admission, she came under the control of a Constitution which forbade her to impair the obligation of her contract, and at the same time transferred her revenues to the United States.

But this transfer was a violation of her contract, unless the debt charged on the revenues still subsists as a charge on them in the hands of the United States.

The fact that the United States concurred with the the Republic and State of Texas in this act, does not prevent its being a violation of the Constitution, because the Government

of the United States cannot, by compact with a State, absolve it from its constitutional obligations, or alter the powers conferred on the State.

The United States, moreover, is fully bound to observe in good faith the obligations of the Constitution, and cannot enter into stipulations with a State which would impair the obligations of its contracts.

I have considered only the original compact of annexation, and its effects on the rights of creditors. I have not entered into the consideration of the boundary bill—because, if by this compact her creditors have obtained a just and fair claim on the United States for their debts, the subsequent dealings of the United States and Texas cannot divest their rights.

The creditors were not parties to any of these proceedings, and are not bound injuriously by them. They must follow their debts in the hands of those who, on fair and just legal principles, are bound to pay them.

Very respectfully, yours, &c.,

S. S. BAXTER.

December 24, 1852.

