

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

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No. 24.]

[SENATE.

REPORT

OF THE

COMMITTEE ON THE SUBJECT OF THE MONIES

APPORTIONED TO MAINE

UNDER THE

LAND DISTRIBUTION ACT.

[WM. R. SMITH & Co....Printers.]



REPORT.

The Joint Select Committee to which was referred the subject of the monies now lying in the Treasury of the United States to the credit of the State of Maine, under an Act of Congress, passed in 1841, providing for a distribution of the proceeds of the lands of the United States among the several States, have considered the same and now submit the following REPORT thereon.

The first question which arises upon a view of this subject, relates to the constitutionality of the Act of Congress above referred to.

The right of Congress to direct a distribution of the proceeds of the public lands, has never been attempted to be sustained, except by one, or the other, of the two following considerations.

1st. That the deeds of cession from Virginia and other States, under which the public domain of the United States was acquired and is now held, authorize, if they do not enjoin, such a distribution.

2d. That the power of Congress over the public lands of the United States and the proceeds thereof, is absolute and unlimited, by virtue of that clause in the Constitution which declares that "*Congress shall have power to dispose of, and make all needful rules and regulations, respecting the territory and other property belonging to the United States.*"

Neither of these considerations, in the opinion of the Committee, will be found capable of bearing a thorough and accurate examination.

It is a matter of doubt whether the United States ever acquired anything under the deeds of cession from Virginia and other States. Those deeds were regarded at the time, rather as a compromise of conflicting claims, than as real and substantial grants. The vacant

and unoccupied lands, stretching westwardly to the Mississippi, and not included within the actual and well known limits of any of the States, were wrested from the British Crown by the common efforts and sacrifices of the Confederacy during the revolutionary struggle, and would seem to have belonged to the Confederacy as common property, by right of conquest. This was the prevailing opinion of our revolutionary statesmen. The claims of Virginia and other States, to any special and exclusive ownership of these lands, although pressed with great ingenuity and pertinacity, was never admitted, and in all probability, never would have been admitted. They were finally abandoned, as a matter of compromise, and among the motives of their abandonment, was undoubtedly the manifest hopelessness of procuring their recognition. At the most, the deeds of cession from Virginia and other States, were mere quitclaim surrenders of a doubtful and disputed title.

But admitting for the purposes of this argument, that the title of the ceding States was as ample and incontrovertible as it was claimed to be ; it did not extend beyond a preemption right in the lands conveyed. The fee of the soil was in the aboriginal tribes, then in its actual occupancy and possession. The United States took nothing beyond the right of being the first purchaser from these tribes, and have in fact exercised no other, or higher right. The cost of the purchases made from those tribes, the charges attendant upon the management of the property obtained from them, and the various burdens incident to our relations with them in peace and war, probably exceed the whole amount realized from the resale of the lands acquired from them.

If, however, anything pecuniarily valuable was acquired under the deeds of Virginia and other States, it was acquired in trust and upon conditions. As to one of those conditions, there has never been any controversy whatever. The ceded lands were pledged as a sacred fund for the payment of the debt of the revolutionary war ; a debt still existing to a large and important extent, upon our revolutionary pension rolls. Those pensions do not stand upon the basis of charity, but of justice. The officers and soldiers of the revolutionary army, were paid off in an enormously depreciated

currency, and what they are now receiving under the name and form of pensions, is in reality only a tardy payment of monies fairly and laboriously earned. Our revolutionary debt is not yet paid, and will not be paid, so long as a single name remains on our revolutionary pension rolls. If any net proceeds of the ceded lands have yet reached the public treasury, which the committee do not believe, they are bound and held by the conditions and trusts set forth in the deeds of cession. They cannot be appropriated to any other use, without a flagrant breach of faith, which no possible exigency can justify.

Although it is certainly not necessary to do so, the Committee will pursue this argument one step further. They will assume, contrary to their own well considered belief, that the deeds of cession from Virginia and other States, conveyed something which has been made pecuniarily valuable in the hands of the United States. They will assume also, contrary to their own well considered belief, that the pecuniary value realized therefrom, exceeds the revolutionary debt admitted to be chargeable thereon. It does not follow, by any means, that this imaginary excess is the proper subject of a distribution among the several States. The conditions of no one of the deeds of cession justify such a distribution. Without going into a detailed examination of their terms, it is sufficient to observe that they all look to the common and general benefit of the Confederacy, and not to the benefit of its several parts. They contemplate the United States as a whole, and convey to the United States as a whole. There is no conceivable mode by which the proceeds of the lands conveyed, can be so certainly applied for the common and general benefit of the whole, as by retaining them in the common treasury, and thereby relieving the common burdens. All other modes of appropriation are merely arbitrary, and it will be found upon examination, that the different schemes of distribution agitated from time to time, have contained different and contradictory rules of apportionment. Sometimes the number of electoral votes has been taken as the basis of distribution ; sometimes federal population has been assumed as the basis ; and the special provisions for the benefit of the new States have been equally destitute of

uniformity. All these variations and changes prove most clearly, that there is no certain mode of assigning the proceeds of the public lands fairly and equitably to the use for which they were intended, except the old and well tried mode of leaving them in the general treasury, relieving the general burdens so far as they go, and where they can be made available for common, mutual and general objects.

Be the construction of these deeds of cession, however, what it may; they can by no possibility justify the Act of Congress under consideration. That Act applies to the entire domain of the United States, while there is no pretence that the deeds of cession cover more than a tenth part of it. All the States and Territories lying west of the Mississippi, the State of Louisiana, the Territory of Florida and all that part of the States of Mississippi and Alabama which lies south of the thirty first parallel of latitude, were purchased from France and Spain, and paid for out of the public treasury. They were never ceded to the United States, or pretended to be ceded, by Virginia, or any other State; and there is no color of justification for the distribution of their proceeds, to be derived from any such cession whatever.

Proceeding to the second consideration which is urged in defence of the Act of Congress in question, the committee observe in the first place, that it is a matter of very modern discovery, and has never been insisted upon with any appearance of confidence.

The obvious construction of that clause of the Constitution, which expressly authorizes Congress to dispose of the Territory and other property of the United States, taken in connection with the context in which it is found, limits the "*Territory*" and other "*property*" referred to therein, to such "*Territory*" and "*property*" as was then "*belonging to the United States.*" Such a provision was probably thought necessary to remove all doubts as to the power of the new government about to be established, to exercise control over the Territory and property belonging to the previously existing government. It could hardly have been thought necessary to enable the new government to control and dispose of such Territory and property as it might itself afterwards acquire, since such a power would be clearly incident to its other functions, and deducible therefrom by a plain and direct implication.

But whether the government of the United States, under the present Constitution, derives the power to dispose of territory and other property, by express grant, or by necessary implication; it is equally true that the power itself must be limited by the general objects for which the government was instituted. Upon any other construction, the power becomes a monstrous excrescence, and nullifies all the safe guards thrown around the rights of the States and of the people. It is in vain that the right of Congress to impose taxes is limited to a few specific purposes, if it may nevertheless make what use it pleases of the proceeds of all acquired property. It may sell our ships of war, our forts, our arsenals, our public arms, libraries and buildings, and appropriate the proceeds to any object suggested by folly, treason, or ambition. Monies raised by taxation can only be appropriated in a particular way and for particular objects. But when converted into property by purchases and then converted back again into their original form by sales; these same monies, according to this construction, are under the absolute and plenary control of Congress, and may be used, or abused, for any purpose whatever.

The true doctrine upon this subject may be stated in a few words, and needs but little argument, or illustration, to vindicate it. Congress can appropriate the monies of the people, only in pursuance of the carefully defined grants of power contained in the Constitution. Under those grants, it may convert the public funds into ships of war, docks, arsenals, light houses and other establishments within the range of its duties. The proceeds of taxation are made to assume the form of property of that description, for the public good and to effectuate the objects of the confederation. When the public good no longer requires their existence in that form, and after they have been reconverted into money; all the limitations of the Constitution re-attach to such money, at once, and with all their original force. It is not the less money drawn from the people, because it has temporarily assumed another form.

Upon the whole, the Committee can see no justification for the Act of Congress in question, in either of the considerations which have been discussed above. If justified at all, it must be by quite other facts and arguments.

That Act might be a wise and constitutional one, if the federal government, within the limits of the Constitution and of a sound discretion, could raise monies at pleasure, for the purposes of distribution. It cannot be wise and constitutional upon any other hypothesis. Whatever masks may be assumed, things must come to this complexion at last. The Act of distribution implies and involves nothing short of the absolute power of Congress to impose taxes for the sake of scattering their proceeds in unlimited gifts and grants to favorite beneficiaries; and it is in that view of the subject, that it eminently concerns the liberties of the country to resist and defeat it. It would be idle to deny that any such overshadowing power exists in Congress, because no such power has ever been claimed. The evil which threatens us, is the actual exercise of such a power, under a disguise artfully selected by dangerous and designing men.

If the Act of distribution be unconstitutional, as it most clearly is, then there is no money under it, constitutionally passed to the credit of this State, in the treasury of the United States. All the proceedings under that Act, are null and void from the beginning, and we can receive no benefit from it, without a violation of the Constitution. The Act can only become operative, so far as we are concerned, by our own consent, and that consent we cannot give, without becoming direct participants in a breach of the fundamental law of the Republic.

If this view of the matter is sound, it is conclusive; since the oaths of office taken by each and every member of the Legislature, bind him to an observance of the Constitution of the United States, be the temptation to violate it ever so great and ever so pressing.

The Committee are satisfied, however, that a regard to the true interests of the State, as well as a reverence for the Constitution, requires a rejection of the money which is now held up as a glittering prize to debauch our integrity.

Its rejection would be an important means of defeating the ruinous and fatal policy of distribution. It would place Maine side by side with Virginia, New Hampshire, South Carolina and the other States which have patriotically spurned the proffered bribe; and by adding to their number, it would add to the moral force of their

example. The practical and conclusive evidence which it would afford of the deep seated hostility of the people to the scheme of distribution, would operate powerfully, to restrain Congress from its repetition hereafter. It was adopted originally, not from any regard to the true interests of the country, but as a means of securing political strength, and of aggrandizing ambitious statesmen. It was adopted because it was believed to be popular, and will be abandoned when it is found to be unpopular. To mark our condemnation of it in the most emphatic manner, is therefore the most obvious and the most effective method, by which we can resist an evil, as deplorable in its mischiefs, as it is palpably repugnant to the Constitution.

The rejection of this money will also operate to defeat the policy of distribution, by deterring all those who now represent, or may hereafter represent this State in either branch of the National Legislature, from lending the aid of their votes to such a policy. Whatever their personal opinions may be, it can hardly be apprehended that any one of them will be recreant enough to sanction a measure, which perpetrates a double robbery upon his own State, because it has too much honest pride to indemnify itself by participating in a corrupt and contaminating division of the public spoils.

Interest dictates therefore, that we should reject this money, because by so doing, we strike the most effectual blow against an odious, condemned and dangerous policy.

It is said, however, that this policy is so manifestly obnoxious to the intelligent and reflecting portion of the community, and in the present state of our national finances, so utterly destitute of any plausible pretext in its favor, that it is not likely to be persisted in by its authors, and that the same vigor of opposition to it, is not now demanded, which would have been necessary under other circumstances. The committee are certainly not disposed to deny, that the Distribution Act is thoroughly repudiated by the great body of those who have examined its features and operation, with any tolerable care and candor. Neither are they disposed to deny that the folly of such an Act, apparent enough at all times, has become especially so at this time, when the United States are embarrassed

with a large and increasing debt, and the people are suffering under an unjust and onerous system of taxation. But they cannot shut their eyes to the madness and obstinacy of party spirit. They cannot conceal from themselves, that a statesman, who is thoroughly identified with the policy of distribution, is at this moment, a prominent and distinguished candidate for the Presidency, and that his supporters, whether against their better judgment or not, are every where the advocates of that policy. Condemned as it is, and abandoned as it ought to be, it is nevertheless in full vigor as one of the political elements of the times. The mischiefs which it threatens, are imminent and urgent, and however good the cause of its opponents may be, they cannot safely relax a single effort of resistance.

It is said also, that the reception of this money might be accompanied with such a protest against the policy under which it is offered to us, as would sufficiently mark our disapprobation of it. The committee are unable to concur in this opinion. The reception of the money would be a substantial act; the protest would be at best an empty declaration, and whatever might be the motives dictating it, could not fail to be regarded as one of very doubtful sincerity. If we denounce the unconstitutionality of the Act of Distribution, and at the same moment become parties to the division of plunder with which it tempts us; enemies at least, and perhaps friends, would esteem the denunciation as little better than a hypocritical paltering with a sense of duty. The rejection of the money would signalize our hostility to the policy of distribution, beyond all possibility of doubt or misunderstanding. No protest against that policy, even if standing alone and by itself, could add anything to the declarations which we have so often and so solemnly made, and if accompanying a practical recognition of that policy, could not hope to escape the suspicion of being a mere subterfuge of irresolute and yielding integrity.

If it is important to Maine in common with other States, to reject this money, as the best and most effective means of resisting the future agitation of schemes of distribution, we have also a special and peculiar motive prompting to its rejection, growing out of our

position as a State having large and important claims upon the government of the United States. These claims are in the aggregate, nearly ten times as great as the amount of money, the reception, or refusal of which, is now under consideration. The Committee believe it to be demonstrable that every one of those claims is clearly just; and has been, or will be, vouched and substantiated by ample evidence. In a view however of the fact that Maine has already received large sums under the Treaty of Washington and under the Act of Congress providing for our military claims, it is manifestly our interest to study and pursue that line of policy, which will most effectually protect us from the injurious suspicion of wishing to swell our claims beyond the limits of equity and right. It is not necessary to contend that the reception of the money offered to us under the Act of Distribution would impair and lessen the just reputation of the State, but it is certain that its continued rejection would confirm and elevate it. The practical proof which it would afford, that no pecuniary bribe can seduce us into a violation of correct principles, would make the position of Maine, a high, enviable, and honorable one. It would silence all suspicions of mercenary motives, or conduct, and by so doing, would remove what may be a formidable obstacle to the reimbursement of the large sums due to us from the government of the Union. In this matter as in all others, honesty is the best policy. Rejecting with firmness what we believe does not belong to us, and what cannot be received without a compromise of principle, we can insist with firmness and effect upon what does belong to us. Refusing to participate in the plunder of the common treasury of the country, we can present the just claims which we have upon it, with clean hands and with honest confidence.

The rejection of this money is also peculiarly important to Maine, considered as an exposed and frontier State, and therefore deeply interested in the military defences of the Union. Bordering upon the North and East, upon the dominions of the most powerful nation on the globe, and with three hundred miles of assailable sea coast, we are most emphatically concerned in recalling the councils of the Confederacy to the great purposes for

which it was formed. Instituted to protect and uphold the Republic, and to give it dignity abroad by giving it strength at home; it is in imminent danger of being converted into a vast machine of taxation, plunder, bribery and injustice. If it can sequester the proceeds of the public lands by a mischievous distribution, it can sequester the public lands themselves, and thereby deprive the government at a single blow, of one of its most solid and reliable resources. If it can sequester the public lands which were acquired by the proceeds of taxation, it can sequester those proceeds in their original and primary form, as monies in the Treasury. The evil once admitted, will hurry on to its consummation with rapid and fatal strides. If one political party can obtain popularity and power by an auction of the public domain; another party, if equally reckless, will step in and outbid competition by offering the whole public treasury as a prize for the cupidity of the States. The defences of the country will be abandoned to ruin, and all the establishments essential to its security, will dwindle into insignificance and finally sink into utter decay. Against a system thus monstrous and suicidal, it especially behooves Maine to speak; and it especially behooves her also, so to conduct as to enable her representatives in Congress to resist it with vigor and effect. In no way can we so effectually strengthen their hands and give weight to their remonstrances, as by rejecting the money offered to us under the Act of Distribution. Pointing to that rejection on the one hand, and to our exposed frontiers on the other, they can proudly say that Maine at least, is true to herself and true to the country, and that while she insists upon her interest in the constitutional benefits of the Union, she will have neither lot nor part in the miserable spoils to be obtained by perverting all the principles on which it was founded.

The Committee forbear to go into an examination of the policy of distribution, as a question of expediency in a general point of view. It could be easily shown that the system of taxation by which the National Treasury is supplied, bears more upon persons than upon property, while the system of taxation by which the State Treasuries are now supplied, bear upon property rather than

upon persons. It could be easily shown therefore, that a policy which throws the States upon the National Treasury, brings relief to property only, while it would increase the burdens which now depress labor. It could easily be shown also, that the Distribution Act of 1841 is unjust to the old States by deducting one tenth from their rateable share in the proceeds of the Public Lands; that if expedient at any time, it cannot possibly be so when the National Government is encumbered with embarrassments; and that it would lead inevitably to corruption and extravagance in the State Governments, by giving them the control of monies for the collection of which they were not responsible to the people.

The Committee forbear to enlarge upon these considerations, which are merely cumulative in their character, and quite unnecessary to strengthen a position already impregnable.

Upon a review of the whole matter, believing that the Act of Distribution is unauthorized by the Constitution; that there is no money under that Act, which Maine can constitutionally receive; that it would be inexpedient as well as unconstitutional to receive it; that the policy of distribution is unwise, dangerous and subversive of the best interests of the country, and that hardly any sacrifice is too great to resist and defeat it; the Committee recommend that the Legislature adhere to the line of conduct adopted by the Executive and Legislative authorities heretofore, and that no Agent be appointed to receive the monies now offered to the State, under color of the Act of Distribution.

GEORGE PARCHER,
HENRY TALLMAN,
CHARLES JARVIS,
GEORGE W. CLARK,
CHARLES A. RUSS,
FREDERIC FRYE,
HIRAM HUBBARD,
WILLIAM NOYES.

STATE OF MAINE.

IN SENATE, February 16, 1844.

Laid on the table, and 300 copies ordered to be printed, for the use of the Legislature.

JERE HASKELL, *Secretary.*

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STATE OF MAINE.

IN SENATE, February 19, 1844.

ORDERED, That 500 additional copies of the Report of the Committee on the reception of the proceeds of the public lands, be printed for the use of the Senate.

JERE HASKELL, *Secretary.*