LAND LEGISLATION IN THE UNITED STATES[1]

Colonial Charters

The royal and proprietary charters of the thirteen American colonies established more or less arbitrary and undemocratic conditions of land tenure, such as restriction of labor, monopoly of trade, and church establishment, that sowed in our soil seeds of evil whose rank growth was either eradicated in later years only by bitter and even bloody contention, or still remains as a menace to free society, requiring constant vigilance to prevent it choking out the fruits of liberty emplanted at the same time.

The view that the individual man has a natural right to be free in mind and body was dawning upon the Englishmen who colonized America, and with it came the realization that free land was a necessary guaranty of this liberty of thought and action. However, just as they could not conceive of religious freedom except as extended to them, so they regarded the right to the use of the earth as a privilege accorded by one of the sovereigns who claimed dominion over the land in question by the factitious act of discovery.[2]

Thus because of the discovery of the region in 1498 by John Cabot sailing under the English flag, James I. in 1606 granted to two companies, the Southern Virginia or London Company, and the Northern Virginia or Plymouth (Eng.) Company, the right to settle and develop the American coast from Maine to the Carolinas.[3]

[1]Adopted from *American Debates*, by the author Marion Mills Miller, Litt. D. G. P. Putman's Sons, New York.

[2]For a philosophical demonstration of the equal right of all men to the use of the earth, see *Social Statics*, by Herbert Spencer, chapter ix, edition of 1850.

[3]The particular English legal view of land sovereignty and tenure will be given later in the article as presented by Representative Galusha A. Grow in the debate on the Homestead Bill.

The two companies were authorized to colonize any subjects of England, and to these and their descendants were secured all civil rights enjoyed in the realm of England or other dominions of the Crown. The patentees were to hold the lands "as of the manor of East Greenwich, in the county of Kent," England, "in free and common *socage*" (civil tenure by fixed and determinate service), and not *in capite* (military tenure by indeterminate service), and they were authorized to grant the same to the settlers in such manner as the council of each colony (a local body appointed and removable by the Crown, and under the direction of a council in England) should direct. Colonists were prohibited from trade with foreign countries even by way of England.

Either from this grant or the original claim of discoverers sprang all the royal and proprietary governments of the colonies. Not only was it held that the Cabot discovery gave right to the seaboard, but to the hinterland of the entire continent extending in the latitude of the coast clear to the Pacific ocean, this claim being expressed in some of the charters. With this sovereignty was implicated the right to transfer the dominions, settled or unsettled, to foreign powers, and to acquire other dominions under the same title.

Virginia, settled by the London Company in 1607, was at first organized under Captain John Smith as a military commune, the land not being divided, but cultivated under direction of the governor. The expropriated Indians were hostile to the colony, and the settlers became greatly discouraged. Accordingly, in 1616, the land was divided in severalty in order to cultivate the spirit of private enterprise and independence. That it so operated in the second respect was indicated by a demand for greater self-government, which was granted in 1619 by the Company in the form of a colonial legislature. In the same year 1200 servants came over from England and negro slaves were introduced by a Dutch slaver. Tobacco began to be exported in large quantities, and thereafter the colony was self-sustaining.

In 1624 James I. assumed sole authority over all the American plantations. The Virginia assembly was no longer convened.

However, in 1641, in response to a firm demand by the colonists, it was re-established by Charles I. under a new governor, Sir William Berkeley. But Berkeley, by refusing new elections, gradually converted the legislature into an oligarchy of owners of great estates in the eastern part of the colony. Against this the great body of the people, small freeholders and dissenters in religion, chiefly located in the western part, bitterly protested, demanding a freer land-grant system, and better protection against the Indians. These being denied, they rose in arms in 1676. Owing to the death by malaria of their leader, Nathaniel Bacon, on the eve of victory, Berkeley triumphed, and punished the "rebels" by wholesale executions and confiscations of property.

The aristocracy of the tide-water region continued to rule the assembly down to 1763, when an investigation of the finances of the colony, forced by the up-country party (which also had advocates, such as Richard Henry Lee, in eastern Virginia), showed wide-spread corruption, and resulted in the downfall of the oligarchy. The new and democratic House of Burgesses set to work to reform the abuses. At the instigation of the dissenters the House reduced the stipends of the established clergy. Patrick Henry established his reputation as the most eloquent speaker in the colony by successfully conducting the test case against the clergy.

Although the Pilgrims had settled Plymouth, New England, in 1620, it was not until 1629 that they received a royal grant of territory and a patent for their Company. The Company made free land grants to groups of colonists, each colony, while preserving title, apportioning the land to its members. This was the rule of all the New England colonies, until, the desirable lands having been taken up, rental value arose, and the present system of land purchase under deed was gradually adopted. The early system of settlement caused the "town" (the township as distinct from the village) to be the political unit of New England.

The Puritans settled Massachusetts Bay under royal charter granted in 1629. "One-fifth part of all ore of gold and silver" discovered was to go to the Crown.

On the accession of James II. in 1684, an arbitrary royal government under Sir Edmond Andros was established over all the northern colonies, including New York, which was called the "Dominion of New England." The old government was restored on the accession of William and Mary, and in 1691 New Plymouth colony was incorporated into Massachusetts Bay colony under a charter granted to the latter. Maine and Acadia (Nova Scotia) were included in the colony.

The charter established a colonial legislature, requiring, however, that representatives be freeholders elected by freeholders—a property qualification. Jurisdiction over fishing rights off the coast was reserved to the Crown. The legislature on its first assembly ordained that it alone could lay taxes, and declared all lands free from escheats and forfeitures except in case of high treason.

In 1692 New Hampshire was established by royal charter. A boundary dispute with Massachusetts followed, which was not settled until 1741, when the present line was fixed by the Crown. Later, the western boundary was fixed at the Connecticut river, the territory of the present State of Vermont being assigned to New York, though it had been settled from New Hampshire. The settlers did not accept the decree and an insurrection ensued, Colonel Ethan Allen leading his "Green Mountain Boys" against the royal authorities. The Revolution then began, and the boundary controversy became one between States. Vermont established an independent government under a constitution, which, however, was not recognized by Congress. In 1782 New Hampshire, and in 1790 New York agreed to the present boundaries of Vermont, and in 1791 the State was admitted into the Union.

In 1639 Sir Ferdinando Gorges obtained a royal grant of the "Province of Maine." He was made "Lord Palatine," with all the powers, royalties, etc., belonging to the bishop of the county palatine of Durham, Eng., which was frequently cited in the debates in Parliament on the "right to tax America" as a county without representation in Parliament, being under the supreme authority of the Crown. The government of the Province was subordinate to the royal Board of Trade.

A controversy over jurisdiction arose with Massachusetts. The privy council of the Crown adjudged the claim of Massachusetts void, and so that colony purchased the title of Gorges to the Province in 1677, and governed it as a dependency until 1691, when it was made a part of Massachusetts. Maine was admitted into the Union as a separate State in 1820.

The Hartford section of Connecticut was settled from New Plymouth in 1634-35, under a similar government. In 1659 a property qualification was required for suffrage. English Puritans, who had sojourned a year in Boston, settled New Haven, purchasing their land from the Indians. They also settled eastern Long Island. For a time they were governed by "the judicial laws of God as they were declared by Moses," the common-law of England being ignored. However, this government did not last long enough to put into operation the land policy of the Hebrew lawgiver.

The Hartford colony secured from Charles II. in 1662 a grant of territory and government for the whole of Connecticut, that complaisant king, always generous in disposing of others' rights and property, not consulting the will of the New Haven theocracy. New Haven resisted, and it was not until 1665 that union with Hartford was effected.

Roger Williams, a preacher at Salem, Mass., came into conflict with the authorities by teaching that the civil power had no proper authority over the consciences of men, and that the patent from the Crown conveyed no just title to land, which should be bought from its rightful owners, the Indians. Forced into exile, he put into practice his doctrines in the colony of Providence, which he founded in 1636. Two years later men of similar opinions settled the island of Aquidneck, which they renamed Rhode Island. In 1644 Williams obtained a royal charter for the combined settlements. Conflicts arising between the settlements and with Connecticut, a new charter settling these was obtained in 1663.

In 1643 a confederacy was formed of "The United Colonies of New England." Rhode Island was excluded, because her territory was claimed by New Plymouth. The confederacy

was a model for the Confederation of the United States, our national government preceding that under the Constitution, having similar powers, among them the settlement of boundary disputes, the great cause of discord between the colonies. It lasted until the Andros government.

Charles I. granted Maryland to Cecelius Calvert, Baron Baltimore, in 1632, for the perpetual payment of two Indian arrows each year. It was settled by Roman Catholic gentlemen and their adherents. Freedom of religion and security of property were guaranteed. Fifty acres of land in fee simple were given to each emigrant. Said George Chalmers, an historian of America, in 1780: The wisdom of this policy, "soon converted a dreary wilderness into a prosperous colony."

New York was settled by the Dutch under claim of discovery, conflicting with that of Cabot, by Henry Hudson in 1609, this English navigator being in the service of the Dutch East India Company. The New Netherland Company, and its successor, the West India Company, were chartered with a monopoly of the fur trade of the Atlantic coast. In 1623 the province of New Netherland was organized under management of the chamber of Amsterdam. Colonists were sent over, and in 1626 Manhattan island was purchased for $24 from the Indians, and settled under Peter Minuit, the first director-general. Trading posts had already been established on the Hudson river at the present Albany, on the Delaware and on the lower Connecticut.

In 1629, the New Netherland Company issued a Charter of Privileges and Exemptions, permitting every founder of a colony of fifty persons to receive in perpetuity a great tract of unoccupied land extending indefinitely backward from sixteen miles of sea-coast or river-shore, or from eight miles of opposing river-shores. Such founders were called "patroons." Though theoretically limited in power of government, practically they were autocrats. All the favorable tracts were taken up by the directors of the Company, and let out to settlers on perpetual leases. This afterwards caused great contention in the colony, and the land titles of the patrons being continued in the hands of a few powerful families under the succeeding English rule, the controversies arising from

them continued down to the Anti-Rent agitation in New York, which was terminated by the adoption in 1846 of a new constitution for the State, abolishing feudal tenures and limiting future leases, and thereby causing the great landowners to divide and sell their estates.[1]

In 1664, Charles II. erected into a province the territory from the Connecticut River to Delaware Bay, and granted it to his brother James, Duke of York and Albany (afterwards James I.). Colonel Richard Nicolls was appointed governor and sent over with an expedition to seize the province. By making favorable terms he caused the prominent citizens of New Amsterdam to induce Peter Stuyvesant, the director-general, to surrender the city without fighting.

The private rights of the Dutch were preserved under English rule, and names of important places only were changed for English names, such as Albany and New York.

New York was made a part of the Dominion of New England under Andros in 1686. On the accession of William and Mary Jacob Leisler seized the rule of the colony. In 1691 he was executed for treason by a new governor, Colonel Henry Sloughter, sent over from England. Sloughter convened an assembly which gradually acquired practical self-government for the colony.

New Jersey, first settled by Dutch and Swedes, was, on the capture of New Amsterdam, erected into an English province, and granted to John Berkeley (Baron of Stratton) and Sir George Carteret. In 1676 it was divided between the two proprietors into East and West Jersey. To William Penn and his Quaker associates, as purchasers of the Berkeley claim, was assigned West Jersey. Penn drew up for the colony a constitution under the title of "Concessions," intended to be as near as convenient "to the primitive, ancient, and fundamental laws of the nation of England." It established freedom of religion, and quasi-democratic government under a governor and representative assembly.

Penn and his associates bought East Jersey in 1679. There

[1]For arguments in favor of the landlords see James Fenimore Cooper's novels, *Satanstoe* (1845), *The Chain Bearer* (1845), and *The Redskins* (1846).

was great dissension between the two Jerseys, which was composed by their union as one royal province in 1702.

Pennsylvania, as New Jersey, had been settled by Dutch and Swedes, and like it, came under English rule in 1664. Charles II. granted it to William Penn in 1681 in payment for debts he owed to Penn's father, the Admiral. Penn drew up a constitution for the colony which contained some of the principles of James Harrington's utopean book on government, *Oceana* (1656). Algernon Sidney probably aided him, also. It embodied the principles of the West Jersey "Concessions." In 1683 Penn made a treaty with the Indians purchasing their lands, and founded Philadelphia as the capital of the province. The next year he returned to England. Dissensions arose in the government of the province during his absence, and King William, already displeased with Penn for his political opinions, placed Pennsylvania under the governor of New York. However, Penn was restored as proprietary, and, in 1699 he returned to Pennsylvania, and changed its governmental policy to suit conditions of the time, compromising with Quaker principles by taking forcible action against piracy, and reforming the abuses of slavery without prohibiting its practice. He revised the charter in 1701. In 1790 the proprietary rights of Penn were purchased by the State by pensions to his heirs, which were commuted in 1884 by a lump sum of $335,000.

A boundary dispute with Maryland which began in Penn's day was settled in 1763-67 by the establishment of Mason and Dixon's line, so-called from its surveyors.

Delaware was at first a part of Pennsylvania. A separation took place in 1703, by which it acquired its own legislature.

In 1662-63 Charles II. made a grant to Edward Hyde, the Earl of Clarendon, and others, of the territory on the Atlantic Ocean between Virginia and Florida extending westward to the South Seas; and erected it into a province named Carolina after himself. The grantees were endowed with palatine powers. There were two distinct groups of settlements, one in present South Carolina, and one in present North Carolina, each with an assembly of its own. This popular rule was superseded in

1669 by a fundamental constitution drafted by the philosopher John Locke, whose declared purpose was to "avoid making too numerous a democracy."

The constitution created two orders of hereditary nobility, endowed "with suitable estates." A provincial legislature, dignified by the name Parliament, was instituted, consisting of the nobility and representatives of the freeholders, the power, however, being safeguarded in the hands of the nobles. The Church of England was established and civil rights were denied to all who did not acknowledge God. To citizens was given absolute power over their slaves.

After a few years' experience of this government the plain people, who did not appreciate its theoretical perfection as designed by the philosophical author, but who realized its cumbersome working and tyrannical effects, demanded a return to the old, simple government with its democratic assemblies. The proprietaries obeyed the will of the people in 1693, too late, however, to preserve their power, for Locke's constitution had introduced a discord into the colony which divided the people sharply into the warring classes of aristocrats and democrats, and eventually led the proprietaries (in 1729) to surrender the province to the Crown.[1]

The province was divided into North and South Carolina in 1710.

In 1732 George II. gave a charter to James Edward Oglethorpe, a philanthropist, and his associates to colonize Georgia, largely with men who otherwise would be imprisoned for debt. Slavery and rum were prohibited. Says Horace Greeley, in his *American Conflict*:

"The spectacle of men, no wiser nor better than themselves, living idly and luxuriously, just across the Savannah River, on the fruits of constrained and unpaid negro labor, doubtless inflamed the discontent and hostility of the Georgia ne'er-do-wells. As if to add to the governor's troubles, war between

[1]Locke was thirty-seven years old when he wrote this constitution. Later in life he adopted more democratic theories, writing at the age of fifty-eight his *Civil Government*, in which he presented Single Tax ideas.

Spain and England broke out in 1739, and Georgia, as the frontier colony, contiguous to the far older and stronger Spanish settlement of East Florida, was peculiarly exposed to its ravages. Oglethorpe returned to England; the trustees finally surrendered their charter to the Crown; and in 1751 Georgia became a royal colony, whereby its inhabitants were enabled to gratify, without restraint, their longing for Slavery and Rum."

The Land Question in the Revolution

That the land question was fundamental in the dispute between America and Great Britain which culminated in the Revolution is indicated by the protest of the Massachusetts house of representatives in 1768 against the taxes imposed by Parliament as violative of the original contract between the Crown and the settlers that "if these adventurers, at their own cost and the hazard of their lives would purchase a new world and thereby enlarge the King's dominions," they should enjoy all the rights of "His Majesty's subjects within the realm" including freedom from taxation in which they had no voice.

In order to bring the colonists to terms the British government restricted the right of the colonists to "the use of the earth" by prohibiting their fishing on the banks of Newfoundland. It also made it difficult to procure grants of the crown lands; this Burke represented in his great speech "On Conciliation with America," as a grievous invasion of the natural and divine right of man to "occupy and replenish the earth." This action of the British government Thomas Jefferson made a chief reason for separation from the mother country, charging that the King had "endeavored to prevent the population of these States" by restricting the laws for naturalization, refusing to pass others to encourage migration hither, "and raising the conditions of new appropriations of lands."

The Land Question in the Confederation

The land question played an important part in the Union of the States under the Articles of Confederation. It was by the advice of Dr. John Witherspoon that the value of landed property was adopted as a standard in apportioning the contributions of

the States to the Federal treasury, and it was only through his error in not excluding therefrom the value of improvements (labor products) that assessment was made difficult, so that the standard was changed to population. Population was also made the standard of representation. After a bitter sectional controversy over the counting of slaves, a compromise was reached by reckoning five slaves as three freemen, which method being continued under the Constitution caused the recognition of slavery in our national charter, and so made its abolition a political issue requiring the arbitrament of war, instead of a merely economic one, capable of settlement by compensation. Pelatiah Webster, called "The Adam Smith of America," in his *Dissertation on the Constitution* (1783), proposed the value of land alone as a natural and just standard of determining contributions to public revenue, in that this value was created by population.

The disposition of the vacant and unpatented western lands was also a leading subject of controversy in Congress during the deliberations over the Articles of Confederation. It was proposed in 1777 that Congress should fix the western bounds of each State, and lay out the lands beyond such bounds into new States. Maryland voted for this; New Jersey was divided on the proposition, and the other States were opposed to it.

In 1779 the Articles of Confederation were ratified by all the States except Maryland, which insisted on an amendment thereto securing the western lands for the benefit of all the States in common. New York, with claims to western lands bordering on Lake Erie, patriotically led the way to a complete federation of the States by empowering her delegates, in 1780, to permit Congress to fix her western boundary, and take over the lands thus excluded "for the use and benefit of the United States..... and for no other use or purpose whatever." Congress recommended similar action to the other States with western lands, and, in compliance, Virginia, on January 2, 1781, agreed to cede to the United States all her claim to lands northwest of the Ohio. On March 1, Maryland ratified the Articles of Confederation, thus completing the Union.

The Northwest Territory

New York formally ceded the lands west of her present boundary to the United States in 1781. Virginia consummated her cession in 1784; Massachusetts ceded her claim to lands west of New York in 1785; Connecticut, her claim to lands in the same region in 1786. Virginia and Connecticut, however, reserved for special purposes, such as pensions to soldiers, certain lands, the former State retaining a considerable area in what is now southern Ohio, which was known as the Virginia Military District, and the latter State retaining 3,250,000 acres in northeastern Ohio known as the Western Reserve.

At the time of Virginia's cession (March 1, 1784), Thomas Jefferson, as chairman of a committee on organization of the territory, reported a temporary plan of government. It provided "neither slavery nor involuntary servitude except as a punishment for crime," should exist in the Territory after 1800. This proposition was negatived by seven States on April 23.

Finally, on July 13, 1787, while the Constitutional Convention was in session, Congress organized the region into the "Northwest Territory." Nathan Dane, an eminent jurist of Connecticut, was chairman of the committee that drafted the ordinance and he caused the insertion in it of Jefferson's prohibition of slavery, making this, however, to take immediate effect.

The ordinance prescribed a Territorial government to be exercised by a governor, with veto power, appointed by Congress; a legislative council selected by Congress from nominees of the popular house; and a House of Representatives elected by the inhabitants. Property qualifications were prescribed for electors and legislators. The legislature, (council and house) were to elect a delegate to Congress, to speak on matters affecting the Territory, but not to vote. The assembly were prohibited from making laws repugnant to specified "republican" principles (which were shortly to be expressed in the Constitution and the first ten amendments thereto). The assembly were enjoined to encourage education, and keep faith with the Indians. They were not to interfere with the disposi-

tion of public lands by the United States, nor tax these, nor interfere with river navigation. Congress had power to transform the Territory into a State when it saw fit.

In August, 1787, South Carolina completed the transfer of western State lands to the United States government by ceding all her claims to territory west of the Appalachian divide. In the subsequent organization of the western lands of the South into Territories, after some controversy, the prohibition of slavery was not applied.

The Land Question in the Constitution

The question of whether the European or American theory of sovereignty was thus incorporated in the government of our Territories (for the Constitution ratified the principle here adopted), was extensively debated in Congress from the controversy over the admission of Missouri (1819-21) down to the Civil War. The true view would seem to be that of Senator Daniel Webster. He opposed the "popular sovereignty" theory of Senator Lewis Cass and Stephen A. Douglas, saying that the Territories were not regarded by the Constitution as a part, but as a dominion of the United States, being under the complete control of Congress, which could regulate them, and even sell them to other powers, regardless of the will of the inhabitants. And the same power, by implication, extends to any colonies, if the constitutionality of their acquisition, which has been denied, is granted. This point is applicable to Porto Rico and the Philippines. When Territories or colonies become States, however, the democratic or American theory of sovereignty supersedes the monarchical or European. The extreme advocates of State rights in the debates on slavery and secession, such as Senators James C. Calhoun and Jefferson Davis, upheld the European view of sovereignty, and repudiated "popular sovereignty," and with it the preamble of the Declaration of Independence.

The Louisiana Purchase

When a vast domain was added to the United States by the Louisiana Purchase in 1803 under Jefferson's administration,

the question of the nature of the title acquired greatly troubled the democratic President, since the territory was taken over without consulting the will of the inhabitants. Jefferson had stated in the Declaration of Independence that "governments derive their just powers from the consent of the governed." Opposed to this was the need of acquiring Louisiana for national defense. The treaty with France, which had acquired title to Louisiana from Spain without consent of the persons affected, could be made only by recognizing the European principle of sovereignty. However, he relied upon the early admission into the Union of the settled portions of the domain by vote of the inhabitants to "cure" the inconsistency.

Sale Of Public Lands

During the Constitutional Convention Dr. Benjamin Rush, of Philadelphia, proposed that only one region at a time of the public domain be thrown open for settlement, in order quickly to develop it into a State—a most unwise suggestion in that, if it had been adopted, it would not only have restricted the right of men to the use of the earth, but also have fomented bitter sectional strife. The natural method, which prevailed, was that emigrants from the original States should cross the mountains in the same latitude, carrying with them the customs and institutions prevailing in their old homes, and thus forming homogeneous communities.

The plan adopted was to sell the lands at auction to the highest bidders, with an arbitrary minimum price. As lands were plentiful at the beginning, and the minimum price was low, the new country quickly filled with inhabitants. Within the next generation, however, the best lands east of the Mississippi were taken, and the late comers, as well as some of the older settlers of the pioneer instinct which impelled them ever westward, sought for homes in the Louisiana Purchase beyond the great river. But the minimum price fixed by government was too high for many of these emigrants, and the method of sale by auction encouraged speculators with capital to buy up the best lands (easily "carried" because of little or no taxation) and hold

them until the increasing demand enabled the monopolists to dispose of them in private sale at great profit. Accordingly there arose in the trans-Mississippi region a great outcry for a change in the method of disposing public lands in order to encourage the sale of land to actual and immediate users. The complaint was most vociferous in Missouri, whither after the close of the Second War with Great Britain there was a great influx of immigrants, causing wild speculation in land, with its inevitable accompaniment, inflation of the currency, the Bank of St. Louis being established in 1816 with power to issue bank-notes. The great demand for land caused the rapid extinguishment of Indian titles, but this only temporarily stayed the earth hunger owing to the rapid monopolization by the speculators of the rich regions thus opened to purchase.

Accordingly, when Thomas Hart Benton, in the prime of life (he was thirty-nine years old), entered the Senate in 1821 as one of the two representativesof the new State in that body, he applied himself to the reform of the public-land policy of the government.

In 1824, 1826 and 1828 he introduced in the Senate bills for the reform of the grants of public lands.

These advocated: (1) a pre-emption right to actual settlers; (2) a periodic reduction according to the time the land had been in the market, in order to make the prices correspond with the quality; and (3) the donation of homesteads to poor but industrious people on condition that they would improve the land, cultivate it for a given number of years.

Although his proposition was generally ignored by the Senate, who had come to look on the public lands merely as a source of national revenue, he so educated the people of the country in the view that the primary purpose of the national domain was to furnish homes for the people, that in response to public sentiment President Jackson (with whom he had become thoroughly reconciled) indorsed his ideas in his annual message of December 4, 1832, and repeated the recommendation in that of December 7,1835,[1] with the result that Congress enacted a law recognizing

[1]See *Messages and Papers of the Presidents*, by James D. Richardson, vol. ii., p. 601; vol. iii., p. 162.

the pre-emption rights of so-called "squatters" upon the public lands.[1]

Debate on the Foot Resolution

Benton was also a leading speaker on the resolution presented in the Senate by Samuel A. Foot (Conn.) on January 19, 1830, inquiring into the expediency of a temporary suspension of the sale of government lands. He spoke in favor of a free grant of the lands to actual settlers, presenting the arguments he had urged in 1828. He was supported by Robert Y. Hayne (S. C.), who desired the free distribution not so much for the sake of the settlers as because it would keep large sums of money out of the Federal treasury, and so remove the danger of corruption and diminish that of "consolidation" of the general government. Said Hayne:

"The true policy may be summed up in the declaration..... that (the lands) should be administered chiefly with a view to the creation.....of great and flourishing communities, to be formed into free and independent States, to be vested in due season with the control of all lands within their respective limits."

This debate developed into a general discussion of the nature of the Union and the sovereignty of the States, with particular reference to "nullification" of the Federal tariff which had been threatened by South Carolina, under the leadership of Calhoun, now presiding over the Senate as Vice-President. Webster was the leading opponent of Hayne.[2] Undoubtedly but for the nullification controversy the most fundamental of our economic problems, the democratic distribution of the public lands and the consequent abolition of poverty and establishment of an impregnable patriotism as our national defence, would have received an early solution.

Senator Benton was at this time instrumental in securing the

[1]For Benton's great speech on "Free Land the Cure of Poverty," delivered in the Senate on April 28, 1828, see *Great Debates in American History*, edited by the present writer, vol. x., page 7.

[2]For the great debate between Webster and Hayne see *American Debates*, vol. i., chapter xi.

enactment of a law throwing open for occupancy the mineral and saline lands of Missouri, which had been reserved from public entry. Despite the reservation of the latter lands, making salt unnaturally dear in the Mississippi valley, this necessary commodity was subject to a tax, at which the people of the region loudly complained. Benton, with unusual persistence even for such a resolute tribune of the people, fought the tax throughout the session of 1829-30, with the result that it was abolished.

Benton gradually became more interested in finance than the land question, and it remained for others to take up his fight to secure "land for the people," especially in the form of his proposition to give them free homesteads, and to push it to a successful conclusion. The leader in this contest was Andrew Johnson, of Tennessee.

The Homestead Law

During the session of 1849-50 Representative Johnson introduced in the House a bill to grant to every head of a family a homestead of 160 acres out of the public domain, conditioned only on its occupancy and cultivation. It was referred to the Committee on Agriculture, who reported it to the House, whereupon it was referred to the Committee of the Whole, where, said one of the later speakers on the bill—Joseph Cable (O.)—"it took the infidel's eternal sleep." Mr. Johnson brought it up again in 1850-51, when it was again smothered. Finally, on March 3, 1852, he succeeded in getting it before the House, where it remained the chief subject of discussion throughout the remainder of the session. Owing to the rising question of slavery in the Territories, the Southern Representatives were in general opposed to a measure which would fill these regions with a free population of laboring men, inflexibly antagonistic through self-interest to slave labor, as was already seen in the unanimous determination of California immigrants, many of whom were slaveless laborers from the South, that the "Golden State" should remain forever rid of the iron shackles of bondmen. A few New England men, with a remainder of the old spirit of Federalism, antipathetic to the preponderance of the West in

political power, and regarding, with Webster, the public lands chiefly as a source of national revenue, joined with the Southern statesmen in opposing the measure. For an extensive report of this debate see *Great Debates in American History*, vol. X, chapter i. There is space here to present only a few extracts from the speeches of the advocates of the bill, who were Mr. Johnson, of Tennessee; John L. Dawson, Galusha A. Grow and Joseph R. Chandler, all of Pennsylvania; Charles Skelton, of New Jersey; and Joseph Cable and Cyrus L. Dunham, of Ohio.

Mr. Dawson opened the debate by presenting statistics showing that, at the existing rate of disposition of the public lands, it would take nine hundred years to get them into the hands of the people.

"It would be justice to the new States, to convert the public lands within their borders into private property, and, by thus subjecting them to taxation, give sorely needed revenue to the young commonwealths."

Referring to the pre-emption system that had been adopted in Jackson's administration, he spoke of the stimulation it had given to emigration and settlement, but that this had passed; the lands, because of the inability of the squatters to pay for them in the time set by the government, having fallen into the clutch of the speculator, the hardy pioneer being driven again into the wilderness.

"Certainty and reliability were necessary elements in a land system. If these were assured, the heart of many an honest poor man would be nerved to secure a home, even on the confines of civilization."

Mr. Cable ascribed to monopoly of the soil the chief evils that affect the world: war, oppression, poverty, vice and crime, and pointed to the unhappy condition of Ireland as proof of his claim.

"The identical year[1] in which we were sending over our vessels loaded with the necessaries of life, there was raised in

[1]The potato famine in Ireland lasted from 1845 to 1847. Its victims were 500,000, and more than 1,000,000 Irishmen emigrated by 1848 to America.

that stricken island and shipped to the landlords in England more than $1,000,000. worth of provisions.....

"Had the boundaries of our beloved country been confined to.....the original thirteen States, this people, too, would have been, ere this, trodden down by the iron heel of usurpation.... The Shylocks—bankers with their paper issues, stock-jobbers, speculators, with their auxiliaries—would have monopolized the entire soil of this country long ago, and put the people under contributions. But.....our widely extended domain has thrown an insurmountable barrier in the way."

Mr. Cable opposed the theory of government sovereignty over land, claiming that the title rested with the people, the source of sovereignty, and not with their agent.

"Congress has the disposition thereof in trust..... The fee simple is in man, not of this nor the other generation, but of the whole people in all time to come."

He showed that man was an animal requiring access to natural opportunities to exist, and therefore with an inalienable right to land. On this right was based all other natural rights. A government which denied this right was therefore guilty of usurpation, fraud, and hypocrisy, and would ultimately be replaced by a righteous one.

"Moses prophetically declares that 'the land shall not always be sold;' and this prophecy will be fulfilled on this continent sooner or later."

The speaker justified the Fathers in selling the public domain for profit, since the government was poor and the national debt was heavy. But the last dollar of the debt was paid off under Jackson.

"The whole system should then have been changed, as the patriot Jackson recommended. But no!—the demon (of land monopoly) held dominion in these halls to stifle justice and insult humanity."

Mr. Cable then applied the Jeffersonian philosophy of natural right to the subject.

"Free government, that by 'consent of the governed,' could not be enjoyed by people dependent on landlords. Every polit-

ical right is based on a natural right. If you destroy man's natural, inalienable right to the soil, you also destroy the virtue and stability of land titles arising therefrom."

He spoke at length of the benefits of the measure:

"It would lift the tenant farmer into a freeholder. The former now realizes only one-fourth of what he earns, half going to the landlord, and a quarter in the way of taxes, tariffs, etc.

"It would relieve the congestion of cities, where men, women, and children are huddled together in poverty, disease, vice and crime.

"It would add millions of acres to the tax list, and so replenish the empty treasuries of States and Territories.

"It would increase the demand for manufactures of all sorts. It would be the true encouragement of industry. While other classes are invoking the power of this government to enable them, under protective tariffs, to abstract still more and more of the reward of labor, the mechanics and farmers ask you only to remove your clogs which hang upon their rights like an incubus."

Mr. Skelton advocated the bill as a relief to the starvation wages paid laborers in the settled States, because of their underbidding each other for the jobs that are too few to go round.

"How can a man getting fifty cents a day support a wife and family and pay a heavy rent? And yet that is the pay that many of the laboring men get in my part of the country. Is it possible for such a man ever to acquire sufficient funds to purchase a farm in the West and take his family out there?

"When a man is compelled to work sixteen hours a day for a mere pittance, how can he pay any attention to the culture of his mind? How can he educate his children?..... This is a question which involves not only the wealth and happiness of the nation, but the physical and moral health of the rising generation..... Why, I saw a statement not long since that twenty thousand women in New York were earning their living by their needles—toiling on, day after day, for a quarter of a dollar *per diem*."

"A MEMBER. Why not give the land to them?

"MR. SKELTON. Had we given the land to their fathers and grandfathers they would not be found there."

The speaker then answered an objection to the bill as an inequitable use of property common to all the people by saying

that the 160 acres proposed to be given to each settler was much less than his per capita share of the public domain and therefore did not impair the right of any citizen who did not take up land.

Mr. Skelton then replied to the argument that revenue from the lands was needed to promote the commerce of the nation.

"If we have no industry, what will be our commerce? The agricultural and manufacturing arts come before exchange of their products. What are we doing for commerce? We spend on our navy some seven or eight millions annually. What are we spending on agriculture? Not one cent.... Let us turn our attention to production, and trade will take care of itself."

Mr. Dunham spoke on the central theme of bringing idle men to idle land and so creating national prosperity.

"There is little difference between hoarding money and hoarding land.

"New England, with the development of manufacturing due to the free-land policy, will fill up with factory workers from other countries."[1]

The speaker then showed that what was lost to the Treasury in land revenue was more than made up in additions to revenue from goods imported by the prosperous settlers. He then replied to the objection that lands would be granted on the same free terms made to American citizens, to foreign immigrants, who were revolutionary in their opinions, and so would disturb our politics.[2]

"They may come here with a little exuberance of republicanism, having just escaped from the shackles of tyranny which have fettered their spirits and restrained their energies; but give them land to cultivate, and labor will soon sober down their judgments, and teach them the important lesson that that only is true liberty which is regulated by law."[3]

He said that the glory of America, as noted by foreign visitors, was, not in magnificent public buildings and splendid armies

[1]A prophecy whose fulfillment proves the prescience of the speaker.

[2]A great number of German and Irish had fled to America since 1848, the Year of Revolution in Europe.

[3]Another prediction which has been remarkably fulfilled.

and navies, but in the homes of its people, "belonging, not to some mercenary landlord, but to the dweller, and therefore improved and beautified by his own honest industry.

"The government derives every dollar of its revenue from the people. It can, therefore, give them nothing. Is it right to withhold from them access to their basic property, mother earth?

"I have often admired that lofty expression of the great Tecumseh—for he was one of Nature's great men, uttering her voice—who, when General Harrison, negotiating a treaty with him ordered a chair to be brought for the chief, and said that 'his father' desired him to take a seat, drew himself up, as only can he who feels the dignity of man, and replied: 'My father? —The Great Spirit is my father; the Earth is my mother, and upon her bosom will I repose;' then he reclined upon the ground that is the common mother of us all."

Mr. Grow began his speech in the same philosophical vein.

"Man being a land animal, every person has a natural right to as much land as is necessary for his support. Land, therefore, is not property in the sense in which are the products of labor applied to land. For the only true foundation of any right to property is man's labor. What right, therefore, has one more than another to land to which not an hour's labor has been applied?

"Blackstone in his *Commentaries* said that 'there is no foundaton in nature or natural law why a set of words upon parchment should convey the dominion of land.' Use and occupancy alone give to man 'an exclusive right to retain, in a permanent manner, that specific land which before belonged generally to everybody, but particularly to nobody.'

"It is said, 'True, such was man's right in a state of nature, but when he entered into society, he gave up part of his natural rights to enjoy the advantages of an organized community.' This I deny. It is a doctrine of despotism. It was not necessary that any of man's natural rights should be yielded to the State in the formation of society. All he needed to yield was the manner of the exercise of these rights. When government encroaches on the rights themselves, then men may rightly appeal from human to divine law, and rise and abolish the government. That government alone is just which defends all of man's natural rights, and protects him against the wrongs of his fellow man."

Mr. Grow here gave a disquisition upon the origin and nature of the claim of Eminent Domain by government.

"This had its origin in the maxim that whatever was capable of ownership must have a legal and determinate owner. Therefore the title of land not appropriated by individuals was vested in the king as the head of the State. It is not necessary to speak here of all the wrongs inflicted on man under this monarchical doctrine. The claim of the United States government to land is based on the right of discovery by the European nations from whom it has derived title. It might be proper that a nation which has sent forth a fleet and discovered land should have jurisdiction of the laws of the community settling the territory, but how can it acquire the right of proprietorship which individuals cannot acquire by the same process?

"Why has this claim to monopolize any of the gifts of God to man been confined, by legal codes, to the soil alone? It is because it originated in feudalism, which regarded man as an appendage to the soil, whose labors were but the means of increasing the pleasures of his liege lord. This regard, having found a place in the books, has been retained by the reverence men pay to custom and precedent. It is twin to the acceptance of the doctrine of the divine right of kings, an equal source of violence and wrong. It is time we wiped out from our statute books the lingering relics of feudalism, ingrafted by the narrow policy of olden times, and adapted the legislation of the country to the spirit of the age—the true ideas of man's relations to the State.

"The present antiquated land policy has opened the door to the wildest monopoly—one of the deadliest curses that ever paralyzed the energies of a nation or palsied the arm of industry."

Here the speaker cited the effect of land monopoly in England where men were dying for want of land to till beside vast manors hedged in as sporting grounds for the nobility.

"Thirty thousand men hold the title deeds to the soil of Great Britain, and two and a half million Irish tenants pay annually $20,000,000. to absentee landlords for the privilege of dying on their soil.

"Our system is subject to like evils, though not as yet of the same magnitude. Let the public domain, therefore, before it is too late, be set apart as the patrimony of labor to prevent its absorption by capital which would transform the blessing of the race into its curse."

Mr. Chandler replied to the charge, made by Richard I. Bowie (Md.), that the bill was a manifestation of "agrarianism," such as was proposed by the Gracchi, and which contributed to the fall of Rome.

"By agrarian laws is understood a legislative attempt forcibly to equalize the possession of lands. No such attempt is made in this bill—none was made by the Gracchi, at whose time every Roman citizen might occupy as much land as he paid for, and three hundred and thirty-three acres beside, if he paid the small rent thereon. To this Tiberius Gracchus limited the operation of his law, and Caius Gracchus only undertook to divide the public lands among the soldiers and others who had aided to conquer them—bounty lands, sir, which the aristocrats were laying their hands on, to any amount they could purchase for their foreign slaves to cultivate. Does my honored friend think that Rome owed her decline and fall to the attempt of patriots to check the civil wars of the country, lessen the corruption of the nobles, and extend the comforts of the great mass of the people? Or was it the failure of the Gracchi to effect their remedial objects that hastened the calamities they foresaw and dreaded. Spare the Gracchi and read Niebuhr!"

Mr. Johnson summed up the arguments against his measure as (1) unconstitutionality; (2) diminution of revenue; (3) demagogism and agrarianism.

"In regard to the first he contended that it was as constitutional to appropriate land as money, in order to 'provide for the common defense and general welfare.' To Congress was given power 'to dispose of, and make all needful rules and regulations respecting the territory.....of the United States.'

"On the second point he said the bill was a measure to increase and not diminish national revenue, since it would enable non-taxpayers to become contributors to the public treasury by buying manufactured dutiable articles, and also would enhance the value of the lands remaining for sale, by building up communities around them.

"It was not agrarianism for a man to take what was his own, much less, what was only a part of his own. If the public lands were distributed *per capita* there would be three-quarters sections for each qualified voter in the country. The bill proposed to give to applicants only one-quarter sections."

Although the Homestead Bill was not enacted at this time, at the close of the next session of Congress (on August 4, 1854), one of the original propositions of Senator Benton's was adopted, that of fixing the price of public lands in accordance with the number of years they had been on the market, with a sliding scale down to twelve and one-half cents an acre.

Mr. Grow then became the chief advocate of the bill, introducing it at each session. It gradually assumed the aspect of a party measure, the Republicans being its advocates, and the Democrats opposing it, ostensibly on the ground that the graduating act of 1854 had settled the land question, but really because the Homestead Act would augment the preponderance of the free States over the slave States.

Andrew Johnson advanced to the Senate, introduced the bill there in 1857. It was passed by the Senate and the House, with the help of the Douglas Democrats, but was vetoed by President Buchanan upon the ground that, by oversight, persons of foreign birth might enter lands without being heads of families, though native citizens might not.

The same bill, with this defect remedied, was introduced in the first Congress of Lincoln's administration, and was passed by overwhelming majorities owing to non-representation of most of the Southern States. It was approved by the President on May 20, 1862.

The discussion of the Homestead Bill largely inspired Edwin Burgess, a retired tailor of Racine, Wis., to propound his *ad valorem* land tax.[1]—M. M. M.

[1]See Forerunners of Henry George.