

## THE LIMITS OF PUBLIC PHILANTHROPY

Even fifty years after ratification of the Constitution, the scope and powers of the federal government remained a subject of intense debate. While the dimensions of this debate which reached the courts are well known, particularly those having to do with the relative powers of federal and state governments over such things as interstate commerce, many significant issues were hashed out in Congress and the public prints. Among these were issues having to do with the role of the federal government in matters involving education, health care, and scientific research.

From the beginning, it was assumed that the federal government had some role in these areas. In 1787, the Northwest Ordinance, which lay out the ground rules for the settlement of lands west of the Appalachians, Congress had ordered land set aside in each township for the support of schools. In the 1790s, a number of leaders had suggested the creation of a publicly-supported national university. And Congress followed these suggestions to the extent of establishing military and naval academies. Federally-sponsored expeditions, such as Lewis and Clark's exploration of the Louisiana Territory, not only sought to map these newly-acquired lands, but also to survey their natural resources. In the 1820s, the advocates of "internal improvements" proposed not only a federal role in the construction of a transportation network and "encouragements" for industry and commerce, but also extensive educational and scientific initiatives which would, their backers believed, aid the process of economic development.

The election of Andrew Jackson brought these efforts to a halt. As champion of the "common man," the new president favored minimizing the role of the federal government and fiercely opposed anything that smacked of privilege -- most especially institutions of higher learning, public or private. Under his leadership, the military

academies were virtually dismantled and such enterprises as the coastal survey brought nearly to a halt.

Despite the aggressively anti-intellectual cast that the federal government assumed under Jackson and his successors, friends of the public tradition of philanthropy continued to push for expanded federal activity. Two events, the first in the 1830s and the second in the 1850s, forced a clarification of the extent to which the national government could be expected to go beyond the minimal role that Jacksonianism had set for it. The first involved the bequest of half a million dollars by an English aristocrat, James Smithson, to the government of the United States for the "establishment, under the name of the Smithsonian Institution, for the increase and diffusion of knowledge among men." This set off a protracted debate not only over the question of whether the government could accept such a trust, but the particular form it should take and the objects it should pursue. The course of this controversy reveals much about the state of the public mind with regard to philanthropy and the organizations deemed best suited to define the Public Good. The second event centered on the efforts of Dorothea Lynde Dix, the advocate for the insane, to secure federal support for asylums. Her proposal received congressional approval, but was vetoed by President Pierce in 185\_. Pierce's veto message set forth in forceful terms what would stand as the limits of the federal role in the eleemosynary domain more decades to come.

#### THE SMITHSON BEQUEST

No novelist could have conceived a more dramatic contrast of characters than those of Andrew Jackson and James Smithson. Jackson, "Old Hickory," the rough-hewn, semi-literate, shrewd frontier entrepreneur and politician, had built his successful career on his outspoken hatred for the privileged classes -- and he reserved particular animus for all things British. Smithson, on the other hand, was a model of aristocratic cultivation.

The bastard son of the Duke of Northumberland and the niece of the Duke of Somerset, he had been educated at Oxford and spent his life on the Continent, where he devoted himself to the study of analytical chemistry and geology. When he died, childless, in 1828, he left his entire estate -- which amounted to more than half a million dollars -- in trust to the government of the United States for the establishment of an institution for the increase and diffusion of knowledge.

Whatever Jackson's personal doubts about the propriety of accept the bequest, as a practical politician he saw the opportunity to expand his already extensive patronage apparatus. Caring little for the particular uses to which the funds might be put, he turned the matter over to Congress -- setting off a decade of contention. True to his principles, Jackson invested the fund in the state bonds of Arkansas and Michigan, rather than in more secure vehicles. When the states defaulted, the fund was lost -- but Congress was persuaded to make an appropriation to restore it. Dozens of proponents of schemes came forward to argue for the use of the fund. These ranged from venerable statesmen like John Quincy Adams (the former president who during the debate had returned to politics as a congressman) and wealthy utopians like Robert Dale Owen (who was serving in Congress as a representative from Ohio), through educational leaders like Francis Wayland and philanthropists like Richard Rush, son of Franklin's friend, Dr. Benjamin Rush. In 1846, it was finally decided to charter a public corporation, with governing board (the Regents) appointed by the President and composed of the President and Vice-President of the United States, members of the Cabinet, the Commissioner of Patents, the Chief Justice of the Supreme Court, the Mayor of Washington, the three Senators, three Representatives, and six citizens.

I, JAMES SMITHSON, son of Hugh, first Duke of Northumberland, and Elizabeth, heiress of the Hungerfords of Audley, and niece of Charles the Proud, Duke of Somerset, now residing in Bentinick street, Cavendish Square, do this 23rd day of October, 1826, make this my last will and testament:

I bequeath the whole of my property of every nature and kind soever to my bankers, Messrs. Drummunds of Charing Cross, in trust, to be disposed of in the following manner, and desire of my said executors to put my property under the management of the court of chancery.

To John Fitall, formerly my servant, but now employed in the London Docks, . . ., in consideration of his attachment and fidelity to me, and the long and great care he has taken of my effects, and my having done but very little for him, I give and bequeath the annuity or annual sum of L100 sterling for his life. . . .

To Henry James Hungerford, my nephew, heretofore called Henry James Dickinson, son of my late brother Lieut. Col. Henry Louis Dickinson, now residing with Mr. Auboin, at Bourg la Reine, near Paris, I give and bequeath for his life the whole of the income arising from my property of every nature and kind whatever, after the payment of the above annuity. . . .

Should the said Henry James Hungerford have a child or children, legitimate or illegitimate, I leave to such child or children, his or their heirs, executors, and assigns, after the death of his, her, or their father, the whole of my property of every kind absolutely and forever, to be divided between them, if there is more than one, in the manner their father shall judge proper, and in case of his omitting to decide this, as the Lord Chancellor shall judge proper.

Should my nephew Henry James Hungerford marry, I empower him to make a jointure.

In case of the death of my said nephew without leaving a child or children, or of the death of the child or children he may have had under the age of 21 years or intestate, I then bequeath the whole of my property, subject to the annuity of £100 to John Fitall, and for the security and payment of which I mean stock to remain in this country, to the United States of America, to found at Washington, under the name of the Smithsonian Institution, an establishment for the increase and diffusion of knowledge among men.

I think it proper here to state, that all the money which will be standing in French five per cents. at my death in the names of the father of my above mentioned nephew, Henry James Hungerford, and all that in my name, is the property of my said nephew, being what he inherited from his father, or what I have laid up for him from the savings upon his income.

JAMES SMITHSON. [L.S.]

In July of 1835, Smithson's executors contacted the American ambassador, communicating the death of the nephew, who had left no survivors. The government

appointed Richard Rush of Philadelphia as its representative in securing the Smithson bequest. Seeing the matter through the Court of Chancery -- and fighting off the spurious claims of Hungerford's mother, a Madame de la Batut --, then selling off the securities in which the estate was invested, took nearly two years. This letter from Rush to John Forsyth, the Secretary of State, summarizes the complexities of getting the funds out of England:

*Richard Rush to John Forsyth.*

LONDON, *May* 12, 1838

SIR: I have great satisfaction in announcing to you, for the President's information, that the case came on to be heard again on the 9th instant, when a decree was solemnly pronounced, adjudging the Smithsonian bequest to the United States. . . .

The result I announce will, I trust, justify in the President's eyes, the determination I took to let the allowance made to Madame la Batut by the master's report stand without attempting to upset it, whatever might have been the prospect or assurance of ultimate success. The longer the suit lasted, the greater were the risks to which it was exposed. A large sum of money, the whole mentioned above, was to go out of the kingdom, unless an heir could be found to a wandering young Englishman, who had died in Italy at eight or nine and twenty, and whose mother, never lawfully married, still lives in France. Here was basis enough for the artful and dishonest to fabricate stories of heirship, on allegations of this young Englishman having been married. That fact assumed, the main stumbling block to their devices would have disappeared. Fabrications to this effect might have been made to wear the semblance of truth by offers in the market of perjury of Italy, France, and England -- incidents like these being familiar to history, whether we take public annals, or those of families; and although the combinations, however craftily set on foot, might have been defeated in the end, it is easy to perceive that time and expense would have been required to defeat them. The possibility of their being formed (never to be regarded as very remote while the suit remained open) made it my first anxiety, as it was

always my first duty, to have it decided as soon as possible, and to take care even that it moved on during its pendency with no more of publicity to its peculiar circumstances than could be avoided. . . .

Need I add, as a further incentive to despatch, had further been wanting, that events bearing unfavorably upon the public affairs of this country, above all upon the harmony or stability of its foreign relations, would not have failed to operate inauspiciously upon the suit, if in nothing else, by causing stocks to fall. They did begin to fall on the first news of the rebellion in Canada, not recovering until the accounts of its suppression arrived. The case is now beyond the reach of accident, whether from political causes, or other inherent in its nature. . . .

On the whole, I ask leave to congratulate the President and yourself on the result. A suit of higher interest and dignity has rarely, perhaps, been before the tribunals of a nation. If the trust created by the testator's will be successfully carried into effect by the enlightened legislation of Congress, benefits may flow to the United States and to the human family not easily to be estimated, because operating silently and gradually through time, yet operating not the less effectually. Not to speak of the inappreciable value of letters to individual and social man, the monuments which they raise to a nation's glory often last when other perish, and seem especially appropriate to the glory of a republic whose foundations are laid in the presumed intelligence of its citizens, and can only be strengthened and perpetuated as that improves. . . .

I have made enquiries from time to time, in the hope of finding out something of the man, personally a stranger to our people, who has sought to benefit distant ages by founding, in the capital of the American Union, an institution (to describe it in his own simple and comprehensive language) FOR THE INCREASE AND DIFFUSION OF KNOWLEDGE AMONG MEN. I have not heard a great deal. What I have heard and may confide amounts to this: That he was, in fact, the natural son of the Duke of Northumberland; that his mother was a Mrs. Macie, of an ancient family in Wiltshire of the name of Hungerford; that he was educated at Oxford, where he took an honorary degree in 1786; that he went

under the name of James Lewis Macie until a few years after he had left the university, when he took that of Smithson, ever after signing only James Smithson, as in his will; that he does not appear to have had any fixed home, living in lodgings when in London, and occasionally staying a year or two at a time in cities on the continent, as Paris, Berlin, Florence, Genoa, at which last he died; and that the ample provision made for him by the Duke of Northumberland, with retired and simple habits, enabled him to accumulate the fortune which now passes to the United States. I have enquired if his political opinions or bias were supposed to be of a nature that led him to select the United States as the great trustee of his enlarged and philanthropic views. The reply has been, that his opinions, as far as known or inferred, were thought to favor monarchical rather than popular institutions; but that he interested himself little in questions of government, being devoted to science, and chiefly chemistry; that this had introduced him to the society of Cavendish, Wollaston, and other advantageously known to the Royal Society in London, of which body he was a member, and to the archives of which he made contributions; and that he also became acquainted, through his visits to the continent, with eminent chemists in France, Italy, and Germany. Finally, that he was a gentleman in feeble health, but always of courteous though reserved manners and conversation.

Such I learn to have been some of the characteristics of the man whom generations to come may see cause to bless, and whole will may enroll his name with the benefactors of mankind.

I have the honor to remain, with great respect, your obedient servant,

RICHARD RUSH.

The Hon. JOHN FORSYTH, *Secretary of State* [58-62]

After some months spent in selling off the estate's investments to best advantage, Rush finally, in July of 1838, set to the task of "obtaining, verifying, arranging, packing, and securing for shipment," 104,960 gold sovereigns, which were sent off on the ship *Mediator*, along with Smithson's personal effects, which he wished to have preserved as part of the legacy. The funds, in fourteen boxes, arrived in New York on August 28 and were finally delivered to the Treasury two days later.

President Jackson has notified Congress of the Smithson bequest on December 17, 1835, in a brief message in which he noted that "the Executive having no authority to take any steps for accepting the trust, and obtaining the funds, the papers are communicated with a view to such measures as Congress may deem necessary" [135].

The message was referred to the Senate Judiciary Committee. On January 5, 1836, the Committee recommended that steps be taken to secure the legacy. Its report noted that "it might be a question of much doubt and difficulty, whether it would be within the competency of the Government of the United States to appropriate any part of the general revenue collected from the nation at large, to the foundation and endowment of a literary or any other charitable institution in the District of Columbia" [139]. But it concluded that the bequest, not being part of the general revenue, could be applied to the purpose set forth by the donor.

When the Senate moved to approve the Judiciary Committee's report, an acrimonious debate broke out. Senator Preston of South Carolina led off the opposition. Preston's statement was a curious mixture of traditional Jeffersonian opposition to private endowments and aggressive nationalism. On the one hand, he questioned both the propriety of the government accepting the legacy and whether its powers extended to executing the purposes of the trust, on the other, he argued that if the bequest were to be accepted, it should be applied to national purposes, not merely to the benefit of the citizens of the District of Columbia.

Senator Leigh of Virginia responded in defense of the Judiciary Committee's report. There was some irony in this. Earlier in his career, Leigh had been one of the most outspoken advocates of the Virginia Doctrine, not only forcefully opposing private endowments in *Attorney General v. Gallegos' Executors* in the courts of his own state, but also before the Supreme Court of the United States. Now he found himself in the position of defending an endowment -- though, as he makes quite clear, on thoroughly conservative grounds. The Judiciary Committee had evidently avoided the knotty constitutional question of whether the federal government was empowered either to

receive the bequest or to establish a cultural institution by deciding that the grant was to the city of Washington, which did possess such powers.

SENATE, SATURDAY, *April 30*, 1836

Mr. PRESTON said, that by this will it was intended that this Government should become the beneficiaries of this legacy, and contended that if they had not the competence to receive it by the Constitution, the act of no individual could confer the power on them to do so. He claimed that they had not the power to receive the money for national objects, and if so, the expanding of it for another object was a still higher power. He controverted the position that if they could not receive it as the beneficiary legatee, they might receive it as the fiduciary agent. If they had not the power conferred on them by a grant, they could not have it with the grant; or what they could not exercise directly, they could not exercise as trustee. He referred to a report made by Mr. Adams in the House of Representatives, in which the genealogy of Mr. Smithson was given and traced through the line of illustrious Percys and Seymours of England. He thought this donation had been partly made with a view to immortalize the donor, and that it was too cheap a way of conferring immortality. There was danger of being run away with by the associations of Chevy Chase ballads, &c., and he had no idea of this District being used as a fulcrum to raise foreigners to immortality by getting Congress as the *parens patriae* of the District of Columbia to accept donations from them.

The committee had misconceived the facts; the bequest was to the United States of America to found an university in the District of Columbia, under the title of the "Smithsonian University," and the execution of the terms of the legacy was to redound to the purposes of the donation, which was for the benefit of all mankind, It was governed in its terms, and not limited to the District of Columbia; it was for the benefit of the United States, and could not be received by Congress.

Mr. LEIGH said, he would thank the gentleman to inform the Senate that the report he had referred to was made in the House of Representatives, and not by a committee of the Senate. The report of the Senate's committee was simply a statement of matters of fact. . . . It now became necessary, Mr. L. said,

for Congress to determine whether it was competent for the United States to receive this money; and if they should receive it, to take measures for carrying the intentions of the testator into effect. The committee to whom this subject had been referred were all of the opinion, with the exception of the gentleman from South Carolina, (Mr. Preston,) that it was proper for the United States to receive the money. They had not considered the question at all, whether it was in the power of Congress to establish a national university; nor was it necessary to do so. They looked upon this bequest as having been made simply for the benefit of one of the cities of the District of Columbia, of which Congress was the constitutional guardian, and could receive and apply the money in that form. Congress was *parens patriae* of the District of Columbia, in the sense laid down by Blackstone; a power which necessarily belonged to every government, and could therefore very properly receive this trust for a charitable purpose in the District of Columbia. Congress had in fact exercised this power of *parens patriae* of the District of Columbia in the establishment of an orphans court, in the erection and support of a penitentiary, and could create an establishment to take care of lunatics; and indeed, if it did not possess this power, in what deplorable condition would this District be. The States of Maryland and Virginia undoubtedly possessed this power, and of course Congress derived it as to the District from their deeds of cession. He did not look upon this legacy to be for the benefit of the United States, but for the benefit of one of the cities of the District, over which Congress was guardian, and he had therefore no difficulty in voting for the bill.

Mr. PRESTON was aware of the decision of the Supreme Court cited by the Senator from Virginia, (Mr. Leigh,) that the people of this District might be taxed without representation, and he had no doubt that these corporations could exercise a trust -- but this was not a trust to the city of Washington. The United States was the *cestui qui trust*, and not the city of Washington. The corporation of the city of Washington could not enforce this claim in a court of chancery in England. If an institution of the kind was desired, he would prefer it to be established out of our own funds, and not have Congress pander to the paltry vanity of an individual. If they accepted this donation, ever whippersnapper vagabond that had been traducing our country might think it proper to have his name distinguished in

the same way. It was not consistent with the dignity of the country to accept even the grant of a man of noble birth or lineage. . . .

Mr. CALHOUN was of the opinion that this donation was made expressly to the United States. By reading the terms in which the bequest was made, it was impossible to conceive otherwise. The bequest was "to the United States of America, for the purpose of establishing, *at the city of Washington*, and institution for the increase of knowledge among men." Now, take out the words the "city of Washington," and the donation was clearly to the United States. The words "city of Washington," were only used to designate the place where the university was to be established, and not by any stretch of the meaning of language to be considered as making the donation to the city. He understood the Senators on all hands, to agree that it was not in the power of Congress to establish a national university, and they all agreed that they could establish an university in the District of Columbia. Now, on this principle, they could not receive the bequest, for the District of Columbia was not even named in it; the city of Washington being only designated as the place where the university was to be established, and the bequest being expressly made to the United States. He thought, that acting under this legacy, would be as much the establishment of a national university, as if they appropriated the money for the purpose; and he would indeed much rather appropriate the money, for he thought it beneath the dignity of the United States to receive presents of this kind from any one. He could never pass through the rotunda of the Capitol, without having his feelings outraged by seeing that the statue of Mr. Jefferson which had been placed there contrary to their consent. . . .

Mr. DAVIS said this man Smithson, it was said, had devised one hundred thousand pounds sterling for the establishment of a university in the city of Washington to diffuse knowledge among men. It seemed taken for granted that it was for the establishment of a university, although he believed the word university was not to be found in the will. He could not infer why it was so construed, as there were other means of diffusing knowledge among men besides doing it through the medium of universities, and he therefore thought the discussion as to the particular design of the gift premature.

He did not regard it as a gift or bequest to the Government. If he did, he would have all the feelings evinced by the Senator from South Carolina, (Mr. Preston.) The testator had not specified what special purpose it was to be applied to, nor when the fund was to be used, and Congress might defer using it until it became large enough to be used advantageously to the purposes of diffusing knowledge among mankind. If they denied the right to establish a university, they denied the right to establish all institution of charity. The same question involved in this, was also involved in the incorporation of institutions which had been incorporated by them in this District. The only question now under consideration was, whether they should receive his money. He would vote for it, and if they could not devise some appropriate disposition of it after it was received, he would be willing to send it back by the first return packet.

Mr. CALHOUN asked the Senator from Massachusetts (Mr. Davis) what construction he would put upon the will if the words "at Washington" had been left out of it.

Mr. DAVIS replied, that he would put the same construction on it then as he did now. His first inquiry would be whether it was for a charitable purpose; and if there was no power to establish the institution in any of the States, he would establish it in the District of Columbia, and if the power to establish it there was doubted, he would establish it in one of the Territories. He deemed the establishment of institutions for the diffusion of knowledge a vital principle of a republican government. They might as well say that delivering lectures in any of the sciences was a national institution, as to call this, one.

Mr. PRESTON said, the declaration of the Senator from New Jersey (Mr. Southward) had satisfied him that this was a national university. There was no difference between a university in the District of Columbia for the benefit of all mankind and a national university. That Senator had not distinguished between the power of erecting buildings and the use to which they were appropriated. They had the power to erect buildings *in loco parentis patriae* for the benefit of the District of

Columbia; they might erect buildings for the maintenance of paupers of the District, but if the people of the District, in this case, were to have any benefit peculiar to the place, it was in the erection of the buildings alone. He asked if the buildings of the Post Office Department were erected by Congress as the *parens patriae* of the District of Columbia? Had they the right to erect this building for the benefit *humani generis* of this District, when it was in fact a general charity to mankind, including the confederacy, and not confined to the District of Columbia? He was against the power, and would be against the policy, if they had the power.

After some further remarks from Messrs. LEIGH and PRESTON, the question was taken on ordering the bill to be engrossed for a third reading, and decided in the affirmative -- yeas 31, nays 7. . . .

The bill authorizing the President to take steps to secure the Smithson bequest was passed by a large majority against the determined opposition of southern senators led by John Calhoun. In the meantime, the House of Representatives had taken up the matter, entrusting it to a select committee chaired by John Quincy Adams. The committee's report, authored by Adams, was an extraordinary meditation on the larger meaning and possibilities of the bequest, as well as on the implications of trusteeship --a concept foreign to most of Adams's colleagues. The conception of trusteeship Adams set forth was, despite the public nature of the body to which the trust was committed, a distinctly Bostonian version, which emphasized not only faithfulness to the intentions of the testator, but the sense of a more profound accountability to a high power. There is much of the spirit of *Harvard College and Massachusetts General Hospital v. Amory* in Adams's words (which is perhaps not surprising, given the fact that he sat as a member

of Harvard's board of Overseers at the time that this landmark decision was handed down).

#### PROCEEDINGS IN THE HOUSE OF REPRESENTATIVES

HOUSE OF REPRESENTATIVES, *December 21, 1835*

. . .Of all the foundations of establishments for pious or charitable uses, which ever signalized the spirit of the age, or the comprehensive beneficence of the founder, none can be named more deserving of approbation of mankind than this. Should it be faithfully carried into effect, with an earnestness and sagacity of application, and a steady perseverance of pursuit, proportioned to the means furnished by the will of the founder, and to the greatness and simplicity of his design as by himself declared, "the increase and diffusion of knowledge among men," it is no extravagance of anticipation to declare, that his name will be hereafter enrolled among the eminent benefactors of mankind.

The attainment of knowledge, is the high an exclusive attribute of man, among the numberless myriads of animated beings inhabitants of the terrestrial globe. On him alone is bestowed, by the bounty of the Creator of the universe,, the power and capacity of acquiring knowledge. Knowledge is the attribute of his nature, which at once enables him to improve his condition upon earth, and to prepare him for the enjoyment of a happier existence hereafter. It is by this attribute that man discovers his own nature as the link between earth and heaven; as the partaker of the immortal spirit; as created for a higher and more durable end, than the countless tribes of beings which people the

earth, the ocean, and the air, alternately instinct with life, and melting into vapour, or mouldering into dust.

To furnish the means of acquiring knowledge is, therefore, the greatest benefit that can be conferred upon mankind. It prolongs life itself, and enlarges the sphere of existence. The earth was given to man for cultivating, to the improvement of his own condition. Whoever increases his knowledge, multiplies the uses to which he is enabled to turn the gift of his Creator to his own benefit, and partakes in some degree of that goodness which is the highest attribute of Omnipotence itself.

If, then, the Smithsonian Institution, under the smile of an approving Providence, and by the faithful and permanent application of the means furnished by its founder, to the purpose for which he has bestowed them, should prove effective to their promotion; if they should contribute essentially to the *increase and diffusion of knowledge among men*, to what higher or nobler object could this generous and splendid donation have been devoted?

The father of the testator, upon forming his alliance with the heiress of the family of Percys, assumed, by an act of the British Parliament, that name, and under it became Duke of Northumberland. But, renowned as is the name of Percy in the historical annals of England, resounding as it does from the summit of the Cheviot Hills, to the ears of our children, in the ballad of Chevy Chase, with the classical commentary of Addison; freshened and renovated in our memory as it has recently been from the purest fountain of poetical inspiration, in the loftier strain of Alnwick Castle, tuned by a bard of our own native land;<sup>298</sup> doubly immortalized as it is in the deathless dramas of Shakespear; "confident against the world in arms," as it may have been in ages long past, and may still be in the virtues of its present possessors by inheritance; let the trust of James Smithson to the United States of America, be faithfully executed by their Representatives in Congress; let the result accomplish his object, "the increase and diffusion of knowledge among men," and a wreath of more unfading verdure shall entwine itself in the lapse of future ages around the name of Smithson, than the united hands of tradition,

history, and poetry, have braided around the name of Percy, through the long perspective in ages past of the thousand years.

It is then a high and solemn trust which the testator has committed to the United States of America, and its execution devolves upon their Representatives in Congress, duties of no ordinary importance. The location of the Institution at Washington, prescribed by the testator, gives to Congress the free exercise of all the powers relating to this subject with which they are, by the Constitution, invested as the local Legislature for the District of Columbia. In adverting to the character of the trustee selected by the testator for the fulfillment of his intentions, your committee deem it no indulgence of unreasonable pride to make it as a signal manifestation of the moral effect of our political institutions, upon the opinions, and upon the consequent action of the wise and good of other regions, and of distant climes; even upon that nation from whom we generally boast of our descent, but whom from the period of our revolution we have had too often reason to consider as a jealous and envious rival. How different are the sensations which would swell in our bosoms with the acceptance of this bequest! James Smithson, an Englishman, in the exercise of his rights as a free-born Briton, desirous of dedicating his ample fortune to the increase and diffusion of knowledge among men, constitutes for his trustees, to accomplish that object, the United States of America, and fixes upon their seat of Government as the spot where the Institution, of which he is the founder, shall be located.

The revolution, which resulted in the independence of the United States, was commenced, conducted, and consummated under a mere union of confederated States. Subsequently to that period, a more perfect union was formed, combining in one system the principle of confederate sovereignties with that of a Government by popular representation, with legislative, executive, and judicial powers, all limited, but co-extensive with the whole confederation.

Under this Government, a new experiment in the history of mankind is now drawing to the close of half a century, during which the territory and number of States in the Union have nearly doubled, while their population, wealth, and power have been multiplied more than fourfold. In the process of

this experiment, they have gone through the vicissitudes of peace and war, amidst bitter and ardent party collisions, and the unceasing changes of popular elections to the legislative and executive offices, both of the general confederacy and of the separate States, without a single execution for treason, or a single proscription for a political offense. The whole Government, under the continual superintendence of the whole people, has been holding a steady course of prosperity, unexampled in the cotemporary history of other nations, not less than in the annals of ages past. During this period, our country has been freely visited by observers from other lands, and often in no friendly spirit by travellers from the native land of Mr. Smithson. Their reports of the prevailing manners, opinions and social intercourse of the people of this Union, have exhibited no flattering or complacent pictures. All the infirmities and vices of our civil and political condition, have been conned and noted, and displayed with no forbearance of severe satirical comment to set them off; yet, after all this, a British subject, of noble birth and ample fortune, desiring to bequeath his whole estate to the purpose of increasing and diffusing knowledge throughout the whole community of civilized man, selects for the depositories of his trust, with confidence unqualified with reserve, the Congress of the United States of America.

In the commission of every trust, there is an implied tribute of the soul to the integrity and intelligence of the trustee; and there is also an implied call for the faithful exercise of those properties to the fulfillment of the purpose of the trust. The tribute and the call acquire additional force and energy, when the trust is committed for performance after the decease of him by whom it is granted, when he no longer exists to witness or to constrain the effective fulfillment of his design. The magnitude of the trust, and the extent of confidence bestowed in the committal of it, do but enlarge and aggravate the pressure of the obligation which it carries with it. The weight of duty imposed is proportioned to the honor conferred by the confidence without reserve. Your committee are fully persuaded, therefore, that, with a grateful sense of the honor conferred by the testator, upon the political institutions of this Union, the Congress of the United States, in accepting the bequest, will feel, in all its power and plenitude, the obligation of responding to the confidence reposed by him, with all the fidelity, disinterestedness, and perseverance of exertion, which may carry into effective

execution the noble purpose of an endowment for the increase and diffusion of knowledge among men. . .

.[148-154]

Adams and his colleagues in the House and like-minded members of the Senate were able to defer debate over the question of how the Smithson bequest was ultimately to be used until two years later, when the funds were actually secured. Once

in hand, however, there unfolded a protracted wrangling in which congressmen and civilians alike (including Adams himself) came forward with their favorite schemes. The most interesting aspect of this debate was the extent to which it entailed a broad-ranging appraisal of the nature and needs of American public culture, an assessment of the role of government in cultural and educational affairs, and an exploration of the available instrumentalities of cultural action. While the poles of the debate involved an opposition of popular models, which would devote the funds to developing and disseminating *applied* knowledge -- in the form of agricultural and mechanical arts --, and elite models, which would emphasize scientific research carried out by trained specialists and the accumulation of collections of books and artifacts. A range of institutional possibilities were offered, including the university and the public lecture series, as well as experimental farms and factories. As it became clear that Congress itself could never settle the question, the argument shifted from substantive to a contextual grounds -- from how the money should be spent to the question of who could most reliably and prudently make such a decision.

Early in 1839, the Senate resolved to incorporate a board of *ex officio* trustees consisting of the Vice-President, Chief Justice, the Secretaries of State and Treasury, the Attorney General, the Mayor of Washington, together with three members of the Senate, four from the House, and two "citizens of the United States." The matter was not settled so quickly or easily in the House, where both congressmen and their constituents continued to offer suggestions about the activities which the Institution should pursue. This tortuous process is perhaps best recounted by John Quincy Adams's *Diary*.

EXTRACTS FROM THE MEMOIRS OF  
JOHN QUINCY ADAMS

January 10, 1836

I called successively upon Mr. Bankhead, Charge d'Affaires from Great Britain, and upon Colonel Aspinwall, who is at Fuller's, to enquire if either of them could give me any further information respecting Mr. James Smithson. . . . I was desirous of obtaining it for the purpose of introducing into the report of the committee upon his bequest some complimentary notice of the donor. But so little are the feelings of others in unison with mine on this occasion, and so strange is this donation of half a million dollars for the noblest of purposes, that no one thinks of attributing it to a benevolent motive. Vail [the American ambassador in London] intimates in his letter that the man was supposed to be insane. Bankhead thinks he me have had republican propensities; which is probable. Colonel Aspinwall conjectures that Mr. Smithson was an antenuptial son of the first Duke and Duchess of Northumberland, and thus an elder brother of the late Duke, but how he came to have a nephew named Hungerford, son of a brother named Dickinson, and why he made this contingent bequest to the United States of

America, no one can tell. The report, if it hazards any reflection upon the subject, must be very guarded. .

..

Certainly in the bequest itself there is a high and honorable sentiment of philanthropy, and a glorious testimonial of confidence in the institution of this Union. A stranger to this country, knowing it only by its history, bearing in his person the blood of the Percys and the Seymours, brother to a nobleman for the highest rank in British heraldry, who fought against the revolution of our independence at Bunker's Hill -- that he should be the man to found, at the city of Washington, for the United States of America, an establishment for the increase and diffusion of knowledge among men, is an event in which I see the finger of Providence, compassing great results by incomprehensible means. May the Congress of the Union be deeply impressed with the solemn duties devolving upon them by this trust, and carry it into effect in the fullness of its spirit, and to the increase and diffusion of knowledge among men!

January 16, 1836

I brought back my report on the Smithson bequest message, to revise and correct the manuscript, feeling no small degree of anxiety concerning it. The occasion is very extraordinary, as an incident in the course of legislation. The reference of the message to a select committee was made not without some murmurings from members of the Committee on the District of Columbia. The report of the committee of the Senate has been very favorably received, and pronounced a very able one, but it does not touch upon any one of the views which occupy nearly the whole of mine. The condition of the testator, the nature of the trust, the character of the trustees, and the practical effect of our political institutions upon the moral feeling of Europe, illustrated by this incident, are not even glanced at in the Senatorial report, written by Benjamin Watkins Leigh. Mine embraces them all. The unanimous acceptance of my report by all the members of the committee who attended the committee meetings gives me some encouragement; but, slandered as I now am by hireling snakes of all parties, and in almost every newspaper, I am sure to be reviled for everything that I do or say, and can foresee nothing but censure.

Whether this bequest will ever come to anything is much doubted by almost every one. A spurious bastard claimant of the estate is anticipated, and seems to be threatened, from Mr. Daniel Brent's communications about the family of La Batut. The delays and iniquities of the English court of chancery are foreseen and foretold; and questions are made in the public journals whether the whole affair is not an imposture. All this may be; but through all this I look at the whole romance as officially presented to us, and, presuming all to be true, prepared my report accordingly. A heavy responsibility, but so be it. . . .

June 22, 1838

Dr. Chapin, President of Columbian College in the District of Columbia, with Dr. Sherwood, one of the professors of that institution, called on me this morning to speak about the Smithsonian bequest. Mr. Rush has recovered the money -- half a million of dollars -- and is expected with it here in the course of the next month. Dr. Chapin represented that if this money should be applied to the foundation of a college or university, it must necessarily effect the total destruction of his college.

I told him that after the passage of the act of Congress for procuring the money, I had not permitted myself to think upon the subject till the money should be in the Treasury; that I hoped, however, no disposal of the fund would be made which would in any manner injure the Columbian College; that I did not think the Smithsonian Institution should be a college, or a university, or a school of education for children, but altogether of a different character; that, as the money would come into the hands of the executive, I hoped the President would in his next annual message propose some plan for the adoption of Congress for the disposal of the fund; and I advised Dr. Chapin to see the President and converse with him on the subject. . . .

June 24, 1838

. . . I went to the President's. . . [and] had a conversation of nearly two hours with him upon the Smithsonian bequest, referring to my report, and entreating him to have a plan prepared to recommend

to Congress for the foundation of the Institution at the commencement of the next session of Congress. I suggested to him the establishment of an astronomical observatory, with a salary for an astronomer and assistant, for nightly observations and periodical publication; then annual courses of lectures upon the natural, moral, and political sciences; and, above all, no jobbing -- no sinecures -- no monkish stalls for lazy idlers.

Mr. Van Buren received all this with complacency and apparent concurrence of opinion; said he would look into my report; wished me at leisure to name any persons who I thought might be usefully consulted. . . .

December 8, 1838

Mr. Poinsett spoke to me of the exploring expedition, which, he rejoiced to say, was departed upon its enterprise. . . . He spoke also of the Smithsonian bequest, and declared himself warmly in favor of appropriations for an observatory. . . . But he gave several intimations from which I could draw no good augury. 1. He said the President had not made up his mind in favor of an observatory; whence I infer that he will ostensibly neither favor it or oppose it, but that he will underhandedly defeat it, taking care to incur no personal responsibility for its failure. 2. He insisted that a salary of eighteen hundred dollars a years would not be near enough for the astronomer; whence I infer that jobbing for favorites is to be the destiny of the Smithsonian fund. And, 3. He said nothing that among the scientific men whom the President has consulted for the disposal of the fund was the English atheist South Carolina professor, Thomas Cooper, a man whose very breath is pestilential to every good purpose. . . .

January 4, 1839

Met at half-past ten this morning, at the chamber of the Committee of Manufactures, the select committee on the Smithsonian bequest. . . . The references to the committee were the two messages of the President with documents. . . ; a memorial from Charles Lewis Fleischmann, a Bavarian, but now a citizen of the United States, and attached to the Patent Office, who proposes the establishment of an

agricultural institution and farm school, at the cost of about three hundred thousand dollars; a memorial of Walter R. Johnson, praying for the establishment of an institution for prosecuting experiments in certain physician sciences; and a petition from Samuel Martin, of Campbell's Station, Tennessee, who, with much other matter, prays that the Smithsonian fund may be applied to the instruction of females. I submitted also to the committee a printed paper, signed "Franklin," proposing the establishment of professorships and various courses of lectures. . . .

January 5, 1839

I rode to the Capitol shortly before the meeting of the House, to make arrangements for keeping minutes of the proceedings of the Smithsonian Bequest Committee -- a work with which I proceed with a heavy heart, from a presentiment that this noble and most munificent donation will be filtered to nothing, and wasted upon hungry and worthless political jackals.

Just after dinner I had a long visit from Dr. Chapin, the President of Columbian College, who came to ascertain if the college could obtain any assistance from the Smithsonian fund. His wish seemed to be that the Government should take the college under its own charge, as an appendage to the Smithsonian Institution. I said that, without knowing what were the views of others, mine were that no part of the Smithsonian fund should be applied to any school, college, university, or seminary of education; but that, equal care should be taken to avoid doing any injury whatever to any such institution. He said the condition of the college at present was such that unless it could receive assistance from some quarter it must go down and its concerns must be closed. They had been several years struggling to raise a subscription from the Baptists throughout the United States to pay the debt of the college; but in accomplishing this they had failed. There had been a project for transferring the whole concern to Richmond, Virginia, where there was already a flourishing Baptist school; but the principal difficulty in the way of that was that it might forfeit the subscriptions which they had obtained for pay the debts here.

I said that if the Faculty thought there was any prospect of their obtaining anything from the Smithsonian fund, they might apply to the President of the United States, or to any other member of the committee; and if there should be any disposition in Congress to aid the college for the fund, I would immediately withdraw from the committee and leave the whole arrangement to be made by others. As I depreciated above all things the application of the funds to purposes for the benefit of individuals, I had determined at least to be disinterested myself, and would in no shape or form receive one dollar from the fund myself. And as the principal debt of the Columbian College was to me, I could be instrumental in no arrangement which would result in the payment of the college debt from the Smithsonian fund.

He said he had conversed with Professor Ruggles on the subject. They were aware that there was some delicacy in my position with regard to the college debt; but they had ample means for the payment of their debt, as preliminary to receiving any assistance from the Government.

I said that, at all event, it was a subject in which I could have no agency, though if they should obtain encouragement to their wishes from the President, or in Congress, I would cheerfully withdraw from the committee. . . .

March 25, 1839

Called on the Secretary of Treasury at his office in the new Treasury building. I spoke to Mr. Woodbury of the Smithsonian fund; told him what had been done with relation to it in Congress, and what had not been done; how the two messages of the President on the subject had been referred to a select committee of nine, of which I had been the chairman; how Asher Robbins, a Senator from Rhode Island, being laid politically on the shelf by his constituents, had taken a fancy to this fund for the comfort and support of his old age, and projected a university, of which he was to be Rector Manificus. So he made an elegant literary speech in the Senate, and moved for a joint committee, seven from the Senate. The House concurred, and the Speaker appointed the same committee of nine that he had

appointed before to join the committee of the Senate. There were several meetings of the joint committee; scarcely ever a quorum of the Senate's committee, but they gave carte blanche to their chairman. He prepared his bill for nine trustees --three chosen by each House, and three by the President -- to sit during the recess, and prepare a plan, to be submitted to Congress at the next session, for a corporation, of which the same trustees were to form a part. I had offered resolutions against all this, which the committee of the House adopted, and I prepared a bill conformably to my own plan. By way of compromise it was agreed that both committees should report both bills; which was done. I never called either of them in the House, for I knew it would be in vain. Robbins attempted to get up his bill in the Senate but could not carry it through. I left copies of both bills, of my resolutions, and of Robbins propositions, with Mr. Woodbury, requesting him to consider them, and inviting his views concerning them -- telling him that I should, if able to take my seat at the next session of Congress, resume the subject, in which I felt an interest more intense than anything else before the body. . . .

October 26, 1839

I have chosen the Smithsonian bequest as my subject for a lecture to the Quincy Lyceum. . . . This subject weighs deeply upon my mind. The private interests and sordid passions into which that fund has already filled me with anxiety and apprehensions that it will be squandered upon cormorants or wasted in electioneering bribery. The apparent total indifference of Mr. Van Buren to the disposal of the money, with his *general* professions of disposition to aid me; the assentation of all the heads of Departments, without a particle of assistance from any one of them, excepting the Attorney General, Grundy, whose favorable opinion [Congressman] Cambreleng, at the last session, contrived to nullify; the opposition, open and disguised, of Calhoun, Preston, and Waddy Thompson, even to the establishment of the Institution in any form; the utter prostration of all public spirit in the Senate, proved by the encouragement which they gave to the mean and selfish project of Asher Robbins to make a university, for him to be placed at the head of it; the investment of the whole fund, more than half a million of dollars, in Arkansas and Michigan State stocks; and the dirty trick of filching the ten thousand dollars from the fund last winter to pay for the charges of procuring it -- are all so utterly

discouraging that I despair of effecting anything for the honor of the country, or even to accomplish the purposes of the bequest -- the increase and diffusion of knowledge among men. It is hard to toil through life for a great purpose with a conviction that it will be in vain; but possibly, seed now sown may bring forth some good fruit hereafter. In my report of January, 1836, I laid down all the general principles upon which the fund should have been accepted and administered. I was then wholly successful; my bill passed without opposition, and under its provisions the money was procured and deposited in the Treasury in gold. If I cannot prevent the disgrace of the country by the failure of the testator's intention, by making it the subject of a lecture, I can leave a record for future time of what I have done, to accomplish the great design, if executed well. And let not the supplication to the Author of all good be wanting.

October 29, 1839

Fine autumnal day. My address on the Smithsonian bequest, in preparation for the Quincy Lyceum, as usual grows upon me as I proceed, and I fear I shall not be able to include the subject, as I propose to discuss it, in one lecture. My main object must be to prepare for action upon it at the approaching session of Congress, and to gather facts and arguments for a last effort to save the fund from misapplication, dilapidation and waste.

January 13, 1840

Mr. Hassler paid me a visit. He is yet employed, under the direction of the Secretary of Treasury, upon the survey of the coast, and upon the construction of weights and measures for use in the different States. But I found him much disposed to take hold of the Smithsonian bequest; to which I gave no encouragement. His plan was for the establishment of an astronomical school before the erection of an observatory. At the head of this astronomical school he would naturally find his place, and would contrive to absorb the whole fund in the management of it. . . .

February 26, 1840

The Smithsonian Bequest Committee met at the chamber of the Committee of Manufactures. . . . I presented my report, of which I briefly stated the contents. The committee authorized me to present it to the House, and move it be printed. . . .

Dixon H. Lewis [Congressman from Alabama] proposed to report a counter project for the establishment of an agricultural school on Fleischman's plan. It was agreed that he should present to the House his counter-project at his leisure, and that it should also be printed. Lewis declared his aversion to the acceptance of the bequest, which he said only gave trouble to Congress, by diverting their attention and consuming their time upon subjects not suitable for legislation. He asked again that a motion might be made to have Fleischmann's memorial at the last session of Congress reprinted; which was agreed to.

April 14, 1841

Mr. Poinsett called upon me, and now fully disclosed his project, which is to place the investment and disposal of the Smithsonian funds under the management of the American [National] Institution for the Promotion of Literature and Science. He concurs entirely in my views of confining the appropriations to the annual interest, leaving the principal unimpaired, and of making the first appropriations for the establishment of an astronomical observatory. But he did not approve of leaving the selection of the spot to the Secretary of the Treasury. . . . He said he had at present no other occupation on hand, and would be willing to devote two years entirely to organizing this establishment and getting it into full operation. I know not that it could be accomplished more effectively, and think I must acquiesce in this arrangement and endeavor to carry it through. The chief obstacle, however, will not be to extricate the funds from the fangs of the State of Arkansas. . . .

January 19, 1842

Meeting of the select Committee on the Smithsonian bequest. . . . I had found in the chamber of the committee of manufactures the book containing the minutes of the proceedings of the former committees

on this subject, the last entry upon which was of 15th January 1840. My report of that committee, with an amended bill to incorporate the trustees of the fund, was made on the 5th of March, 1840, since which nothing has been done by Congress concerning it. The bill No. 1 of the House bills remained on the calendar through the while remainder of the Twenty-Sixth Congress's first and second sessions, and was never reached in the ordinary business of the House. There was no committee appointed at the second session, none at the late special session, first of the Twenty-Seventh Congress, and in the mean time the funds invested in bonds of the State of Arkansas have depreciated at least fifty per cent. I now stated to the committee that I had called upon the Secretary of Treasury for a statement of the present condition of the fund, which he had promised but had not yet furnished me. . . .

Habersham [Congressman from Georgia] presented a letter from James F. Espy, proposing that a portion of the fund should be appropriated for simultaneous meteorological observations all over the Union, with him for central national meteorologist, station at Washington with a comfortable salary. . . .

March 19, 1842

The meeting of the Committee on the Smithsonian bequest. . . . We took up the old bill and debated it from the third to the sixth section inclusive. Every provision of every section was contested, and the only sound principle settled was that the principal sum of the bequest should be preserved unimpaired as a perpetual fund, from which no appropriated shall be made.

Habersham, of Georgia, opposed parts of the bill providing for the establishment of an astronomical observatory. His argument was the danger and difficulty of carrying it through Congress; and he said that only yesterday one of the members from the South had urged, in conversation with him, that Congress had no constitutional power to accept the bequest, and that the money ought to be sent back to England.

I saw the finger of John C. Calhoun and of nullification, and said that the objection against the power of Congress to accept the bequest would not be removed by striking out the observatory; that Mr. Calhoun and his coadjutors has urged it from the beginning, and it had been time after time settled against them; that any application of the fund to the purposes of the testator would be resisted by them, and if anything was to be done it must be carried against their stubborn opposition. . . .

March 21, 1842

Meeting of the Committee on the Smithsonian bequest. . . . We discussed the remainder of the old bill, from the sixth section through. Every one had amendments to propose, and the bill was thoroughly riddled. Many amendments were adopted, and I was directed to prepare an amended bill for the consideration of the committee at the adjournment. . . .

June 11, 1842

The meeting last evening at Mr. Markoe's was for the purpose of conferring upon the project of connecting the organization of the National Institute for the Promotion of Science, with that of the Smithsonian Institution. Mr. Poinsett is president of the former, and presided over the meeting. Mr. Preston has introduced into the Senate a bill for combining together these two institution, and now stated to the meeting his views on the subject, embracing an appropriation of twenty thousand dollars, and the occupation by law of a large portion of the Patent Office building for the preservation and arrangement of objects of curiosity collected by the exploring expedition under Lieutenant Wilkes, now daily expected home; he called on me to say how far my purposes may be concurrent with these suggestions.

I said I had the warmest disposition to favor them, and thought there was but one difficulty in the way, which might perhaps be surmounted. I had believed that the whole burden and the whole honor of the Smithsonian Institution should be exclusively confined to itself, and to entangled or commingled with any national establishment requiring appropriations of public money. I exposed the principles upon which all my movements relating to the Smithsonian bequest have been founded, as well as the bills which at four successive Congresses I have reported -- first for obtaining the money, and then for disposing of the fund.

At the motion of Mr. Walker, of Mississippi, the president, Poinsett, was authorized to appoint a committee of five members of the Institute, to confer with Mr. Preston and me upon the means of connecting the Smithsonian Institution with the National Institute. . . .

March 10, 1843

In the unceasing mill-clapper talk of Mr. Hassler last evening, he asked me to introduce him to the new Secretary of the Treasury, John C. Spencer. . . . I introduced him, and almost immediately left them together; but not without perceiving the seeds of a conflict already germinating between two proud spirits, which bodes no good to the progress of the Coast Survey. The recent act places Hassler under the control of a board of officers, and the whole operation under the superintendence of the Secretary of the Treasury. Hassler, already restive under the yoke fitting to his neck, said that the work, being scientific, must be conducted on scientific principles. The Potentate answered in a subdued tone of voice, but with the trenchant stubbornness of authority, "the laws must be obeyed." The pride of science clashed with the pride of place, and I left them together.

I had observed the same temper in Spencer yesterday in talking with him about the present condition and prospects of the Smithsonian fund. I supplicated him to take an interest in the restoration,

preservation, and application of the fund to the purposes of the testator. He promised to make a full report to Congress on the subject, to recommend the issue of six per cent stock of the United States to the full amount of the dilapidated funds and the investment of it in trustees -- the Chief Justice of the United States, and other officers of Government. But he thought the disposal of the funds should be left entirely to the trustees; and he pronounced the prejudice against my plan of an astronomical observatory insurmountable, because I had once called observatories light-houses *in* the skies. My words were light-houses *of* the skies. But Mr. Spencer sees no difference between the two phrases. Mr. Spencer turned up his eyes at the swindling speculation of the Senator from Arkansas, and shrugged up his shoulders at the prospect of ever recovering the money from that State. . . .

May 16, 1844

I met again the committee on the Smithsonian bequest. . . . The report of the Secretary of the Treasury evades all explanation of the manner how the fund was almost entirely invested in the bonds of the State of Arkansas, upon which no interest has been paid, except in other bonds of the State, and upon which for more than two years no interest has been paid at all. How to make the fund available for any appropriation by Congress to the purposes of the testator was the question first discussed, and upon which the committee came to no result. . . .

May 20, 1844

I had prepared a draft of a bill making an appropriation of seven hundred thousand dollars from the Treasury to assume the annual interest on the Smithsonian fund, invested now in stocks of several States and upon interest, the payment of which is suspended; which draft I proposed to submit to the consideration of the committee on the Smithsonian bequest at their meeting this morning. . . .

June 5, 1844

At the House, immediately after the reading of the journal, I asked leave to present a report and bill from the select committee on the Smithsonian bequest; but McKay, Chairman of the Ways and Means Committee, moved to suspend the rules and go into Committee of the Whole on the state of the Union, and refused to allow me time to present my report and bill. . . .

December 5, 1844

I had a morning visit from Robert Owen, of Lanark, a man with whom I first became acquainted in London, in 1817 -- a speculative, scheming, mischievous man.

December 6, 1844

Mr. Robert Owen came again this morning, and mesmerized me for the space of an hour and a half with his lunacies about a new organization of society under the auspices of the two most powerful nations on the face of the globe -- Great Britain on the Eastern and the United States on the Western Hemisphere. The materials, he says, are abundant, and the arrangements are all of simple and easy execution. He has prepared a plan in which all the details are set forth with the minutest accuracy. It is now in the hands of Mr. Packenham, but he will ask him to return it, and will communicate it to me for my examination. It is a plan for universal education, for which the Smithsonian fund may provide the means without interfering at all with my views. After the establishment of the system, there will be no war, and no such thing as poverty. Universal competency will be the lot of all mankind, and want will be unknown.

All this I had heard twenty-five years ago, and the humbug is too stale.

January 15, 1845

Mr. Woodbury's discourse last evening was of about two hours duration, delivered with great rapidity, replete with various and minute details of modern and especially American improvements in the arts and sciences, physical, moral, political, and intellectual, tinged throughout with the wormwood of Democracy, like ocean brine boiled down to freshen it, with a mawkish tang of the sole remaining in the taste. It was a defence of our national character against the reproach of neglecting the progress of science. He drew from the nature of our Democratic Government the inference that scientific improvement must be the result of individual exertion and private enterprise, and numerated a great multitude of American inventions, from Fulton's steamers and Whitney's cotton-gin to the Western Railroad, the Fairmount Water Works at Philadelphia, and the Croton Aqueduct at New York.

Then he touched lightly upon the promotion of science which the Government has actually patronized -- the survey of the coast, the astronomical observatory, and the exploring expedition. He made out, on the whole, a very good case, and closed with a liberal exhortation to Congress to foster science within the constitutional limitations, and to interweave together the capabilities of the National Institute and the Smithsonian fund. . . .

February 10, 1845

Robert Dale Owen had introduced a substitute for the bill from the Senate to dispose of the Smithsonian bequest. Without reading, it was ordered to be printed, and referred to the Committee of the Whole on the State of the Union.

March 3, 1845

Owen and Burke made desperate attempts to force down the swindling Smithsonian bill, which I barely succeeded in defeating.

April 11, 1845

Mr. George Bancroft, now Secretary of the Navy, called on me this morning, and again in the evening, and I had two long conversations with him, on subjects connected with the Navy Department, the

Observatory, the magnetic apparatus and observations, the Smithsonian bequest, and the National Institute, and finally upon Mr. Lewis' catoptrical light-house lamps and the Patent Office. He asked for advice with regard to the Observatory, and the magnetic observations, which are suspended.

My advice was: 1. To build a dwelling-house adjoining the Observatory. 2. To order immediately the resumption of the magnetic observations. Much, too much, loose and desultory conversations besides, to be very much restricted hereafter. Mr. Bancroft professes great zeal to make something of his Department. I heartily wish he may. He intends to be a hard-working man. Practice should follow and realize theory. Drop the anchor, Hope!

April 30, 1845

Between one and two, afternoon, Mr. McClintock Young, chief clerk of the Treasury Department, sent me word that the Secretary of the Treasury was in his office, and would see me. I went immediately, and found the anteroom and the entry before his door crowded with persons waiting for admission -- four out of five, if not all, place-hunters. The doorkeeper opened the door for me, and Mr. Walker received me with civility. I had about half an hour's conversation with him concerning the Smithsonian bequest, and gave him my reasons for arresting in the House of Representatives, on the last night of the session, the bill which had passed the Senate. I mentioned to him my objection to the organization of the board of managers, qualified as a committee of Congress, but a majority of whom, though elected as members, three from the Senate by their President, and three from the House by their Speaker, would be no longer members when called to act as members of the Institution. I told him of the absurd amendment proposed in the House to the bill from the Senate, by Robert Dale Owen, of Indiana, and the desperate plunges made by him, and by Burke, of New Hampshire, to force the bill upon the House in its last agonies, and the selfish purpose transparent through their motions -- Burke's, made close upon the midnight hour, to take it out of committee in ten minutes.

Mr. Walker, after referring to his agency heretofore as a member of the National Institute, which was unsuccessful, said that his preference for the employment of the fund was, first, for an astronomical observatory on my plan; and, secondly, for a large library, chiefly of such books as are not to be found in other public libraries. He would cheerfully co-operate, as far as he might be able, to carry such a purpose into effect. He agreed with me that a corporation, and not a committee of ex-members of Congress, was the proper organization for the management of the fund, and that measures should be taken for redeeming the principal and interest from the State of Arkansas. I left him with a lingering hope that something might be done for the disposal of the bequest at the next session of Congress.

January 23, 1846

I attended at the Capitol a meeting of the committee on the Smithsonian bequest. . . . The discussion was renewed upon the question of whether the directors of the Institution should be constituted in express terms a corporation; for which purpose the chairman, Owen, moved a reconsideration of the decision made at the last meeting. It was again debated, and again decided to make it a corporation -- the vote now being four to three, Owen, chairman, changing his vote to the negative, and Sims, of South Carolina, still voting for the corporation, with the avowed intention of voting against the whole bill, and declaring his purpose to have the whole money sent back to the English court of chancery.

I told him that I thought that proposition came rather late, after the formal acceptance of the bequest, and the appropriation of the money to other purposes, with a formal pledge of faith of the United States that it should be applied to the objects designated by the donor.

It was, however, the original proposition of John C. Calhoun, and will be persisted in by the South Carolina school of politics and morals to the last, without any idea of returning the money, but with the purpose of defeating any useful application of it. . . .

February 27, 1846

At ten o'clock this morning I attended a meeting of the select committee on the Smithsonian bequest. . . . The chairman . . . had prepared a report to be submitted with the bill to the House. It contained a statement of the embezzlement of the fund by investing it in the stocks of the States of Arkansas, Illinois, and Michigan. I moved to have this statement made and provided for in the bill; but, excepting Mr. Marsh, no other member of the committee would consent to it. They were unwilling to uncover the nakedness of the States. They consented, however, with reluctance, to have it made in the report, which Mr. Owen had rather awkwardly done, with an expression of the opinion of the committee that there would be no ultimate loss to the United States of the funds thus invested.

I moved to strike out of the report this expression of confidence, which I could not honestly avow. it was accordingly struck out, leaving a bare statement of the facts to be made. . . .

April 22, 1846

At the House, the bill to establish the Smithsonian Institution for the increase and diffusion of knowledge among men was taken up in Committee of the Whole on the state of the Union -- Armistead Burt, of South Carolina, in the chair. . . .

George W. Jones, of Tennessee, moved to strike out the first section; that is, to reject the bill.

Robert Dale Owen delivered an hour speech in support of the bill, dwelling chiefly upon the parts of it appropriating funds for the education and training of teachers for normal schools throughout the Union -- in my opinion the worst feature of the bill.

Jones' objection was chiefly to the organization of the trustees of the fund as a corporation, which he contended was not within the constitutional power of Congress to create. After Owen's speech, Jones withdrew his motion to strike out the first section, and moved to amend by a section authorizing the

whole bequest to be returned to the heirs at law, or next of kin, or residuary legatees of Smithson, or their authorized agents, whenever they shall demand the same. That is to say, to deliver to them the State bonds of the State of Arkansas, Illinois, and Michigan, upon which neither interest nor principal is, or is soon likely to be, paid. This is Mr. Jones' favorite mode of disposing of a fund accepted by the Congress of the United States with the pledge of their faith that it should be appropriated to the purposes prescribed by the donor. . . .

April 23, 1846

At the House, Linn Boyd moved a resolution to close the debate in Committee of the Whole upon the state of the Union on the Smithsonian bequest bill in half an hour after taking it up in committee. Joseph R. Ingersoll pleaded for an hour and a half. James Graham, of North Carolina, moved to lay the resolution on the table; which was done, and the House went into committee again, Armistead Burt in the chair, and resumed consideration of the bill.

Charles J. Ingersoll informed the House that the managers of the conference upon the notice of disagreement had unanimously agreed upon a report, but that it should not be communicated to this House until it should have been acted on in the Senate.

George P. Marsh, of Vermont, made an hour speech upon the Smithsonian bequest bill -- one of the best speeches ever delivered in the House, but not much in support of the bill. His desire is to apply a very large portion of the annual interest upon the fund to the establishment of a public library.

Isaac E. Morse, of Louisiana, followed, to whom Owen replied, and was followed by John S. Chipman, of Michigan, against the bill. The committee rose, and Owen moved a resolution to close the debate in Committee of the Whole. Joseph R. Ingersoll moved to amend by inserting three hours; but the resolution itself was laid on the table, ninety-three to forty-four. Owen asked if a resolution allowing an hour and a half would be acceptable.

I requested him not to renew the question in any form, as I wished to offer a substitute for the whole bill. Objection was made to this. I moved a suspension of the rules -- which was carried. I proposed my substitute which I had prepared this morning; it was referred to the Committee of the Whole on the state of the Union, and ordered to be printed. The consideration of the bill was then postponed to next Monday.

April 28, 1846

Committee of the Whole on the state of the Union, Armistead Burt in the chair, on the Smithsonian bequest bill. Sims, of South Carolina, opposed the bill in every shape and form it could assume. He held Congress had no power by the Constitution to accept such a trust, and was for returning the money to the chancery of England.

I made a desultory speech in support of the substitute proposed by me for the bill. They were both debated till the committee rose without coming to a conclusion, and other amendments were proposed. George W. Hopkins, of Virginia, moved a resolution to close the debate in Committee of the Whole in one hour after it should be taken up -- which was carried, by means of the previous question, and the House adjourned.[763-801]

The debates over the establishment of the Smithsonian Institution entered its final and most heated phases during the last week of April 1846. The controversy centered

less around the nature of the trust itself, than around the differing views of the powers and obligations of government. These were issues of no small moment at a time when debate was also raging over the expansion of slavery into newly acquired territories in the South and West. At one point, Congressman Sims of South Carolina asked Adams to cite "the power under the Constitution by which Congress was authorized to accept and administer" the Smithsonian fund (441). Adams's icy reply was to ask Sims to "point me to the power in the Constitution of the United States *to annex Texas.*" Mr. SIMS. If the gentleman finds the power under the same clause, it is certainly a novel clause under which to claim it -- that which, in express terms, permits new States to be admitted to the Union.

Mr. ADAMS. I presume the gentleman considers that a *constructive* power; and if so, it will answer for what it is worth. He (Mr. Adams) could find in the Constitution many clauses authorizing Congress to provide for the common defence and general welfare. What means more efficient to this end than the increase and diffusion of knowledge among men. [441-2]

Eventually, by a narrow vote, Congress voted to restore the Smithsonian fund and to entrust it to a private corporation whose trustees -- or Regents -- would be *ex officio* elected and appointed federal officials. Realizing the futility of trying to set the Institution's purposes in a political forum, Congress was finally persuaded to turn the task over to the Institution and its officers.

This did not mark an end to Congressional debate over the Smithsonian. Every year, questions came up about the terms of appointment to its staff and governing board, controversy and scandal surrounded its acquisition of real estate and its letting of contracts for buildings. In an intensely political age, where virtually everything was

seen as fair game for spoilsmen, it was only natural that the Smithsonian should have been subject to constant efforts to tap into its resources and erode its autonomy.

If nothing else, the debate over the Smithson bequest highlights the reluctance of wealth individuals to view government as a philanthropic vehicle. This was a setting in which extreme democrats of the Jacksonian persuasion took literally the notion that *vox populi, vox dei*: if the people decided to repudiate their financial obligations, as many states did during the 1830s and 40s, so be it; if the government decided to violate its obligations as trustee, that was all right too. It was Jefferson's doctrine that the "world belongs to the living" made flesh. Needless to say, the Federal government would not receive another bequest of this kind for another half-century. And the inclination, so evident in the bequests of late eighteenth century democratic optimists like Franklin, to bequeath money government for public purposes, largely disappeared.

## DOROTHEA DIX AND THE PIERCE VETO

If the privately wealthy were discouraged from giving to government, reformers were not discouraged in their efforts to persuade government to expand its "constructive" powers or deploy its financial resources for worthy purposes. After waging successful campaigns in state after state to obtain legislation to improve the treatment of the insane, in the late 1840s, Dorothea Dix began lobbying Congress for a bill which would provide federal aid for these efforts. In 1850, she was successful in persuading Congress to pass a bill which would have set aside five million acres of public lands, the proceeds of which, when sold, would go to support the indigent insane in the several states. She was assured that President Fillmore would sign the legislation into law. But the act became tangled in technical delays and never reached the President's desk.

Federal support for specific classes of persons was not without precedent: veterans had been supported by pensions; seamen, if ill or injured, were cared for at federal expense; federal funds were used to underwrite the construction of railways, canals, and courthouses; and legislation such as the Northwest Ordinance had provided that lands should be set aside for the support of education. Moreover, Congress had given federal aid to particular eleemosynary institutions, such as the American Asylum for the Deaf and Dumb in Hartford and a home for the blind in Kentucky. Although all of these expenditures could be justified as implied powers under the Constitution, the fact remained that they were not in any sense explicitly granted to the government. And,

on the eve of the Civil War, when passions ran high over the boundaries of federal power and the sovereignty of the states, the humanitarian impulses were bound to collide with this broader set of concerns.

Franklin Pierce (1804-1869), although a New Englander and a Bowdoin College graduate (where his classmates had included noted abolitionist Calvin Stowe, Henry Wadsworth Longfellow, and Nathaniel Hawthorne), was not one of those who participated in the reformist enthusiasms of the Boston and New Haven literati. Like George Bancroft and his fellow New Hampshiremen who had tried to break Dartmouth's charter, Pierce was an anti-institutionalist democrat in the tradition of Jefferson and Jackson. An enthusiastic supporter of the Mexican War, in which he served as a volunteer and was seriously injured in battle, he returned to New Hampshire, where he took the lead in reforming the state's constitution -- eliminating the religious tests and property qualifications which had help sustain the old Calvinist order.

Elected President in 1852, Pierce had entered office as an advocate of Constitutional fundamentalism. "The dangers of a concentration of all power in the general government of a confederacy so vast as ours," he declared in his inaugural address are too obvious to be disregarded. You have a right, therefore, to expect your agents in every department to regard strictly the limits imposed upon them by the Constitution of the United States. The great scheme of our constitutional liberty rests upon a proper distribution of power between the State and the Federal authorities, and experience has shown that the harmony and happiness of our people must depend upon a just discrimination between the separate rights and responsibilities of the States and your common rights and obligations under the General Government; and here, in my opinion, are the considerations

which should form the true basis for future concord in regard to the questions which have most seriously disturbed public tranquility. If the Federal Government will confine itself to the exercise of powers clearly granted by the Constitution, it can hardly happen that its action upon any question should endanger the institutions of the States or interfere with their right to manage matters strictly domestic according to the will of their own people. [201]

Despite this stance, Dix had reason to hope that Pierce would look with favor upon her efforts. In his first State of the Union Address, he had described the erection of the asylum for the insane of the District of Columbia and the Army and Navy -- a product of her agitations -- in highly complimentary terms. Motivated by a "liberal spirit" and its arrangements informed "with the large experience furnished within the last few years in relation to the nature and treatment of the disease," the asylum, Pierce declared, "will prove an asylum indeed to this most helpless and afflicted class of sufferers and stand as a noble monument of wisdom and mercy" (217).

The bill Dorothea Dix was urging on Congress proposed that 10,000,000 acres of land be distributed to each of the states as endowments for the care of the insane. Under this plan each state would receive 100,000 acres, with the remainder to be distributed on a ratio determined by its geographical area and representation in Congress. Having campaigned extensively through the states in the decade previous to her federal crusade (by the mid-1840s, she had travelled some 60,000 miles and personally visited over 9,000 insane, epileptic, and idiotic persons throughout the country), she has a wide and warm acquaintance among the nation's politicians. Her influence with congressional leaders led the body to give her an office in the Capitol from which she could lobby for her bill. President Pierce had personally assured her of his interest in the legislation.

The bill completed its passage through Congress on March 9, 1854. "I have lifted up my eyes," wrote Dix to her friend Ann Heath. "My cup runneth over." [Marshall, 149]. Congratulatory messages poured in from friends and supporters around the country. But the President did not sign the legislation. And soon distressing rumors began to circulate that he would not do so. After months of delay, President Pierce vetoed the bill, justifying his action with an extended argument about the nature and extent of federal power. While most reformers -- including Dix herself -- condemned Pierce's action as typical of "a Northerner with Southern principles (some, indeed, believed that the message had been written by Jefferson Davis), a disinterested reading of the document suggests that there was far more thought and reflection behind it than the kind of reflexive yahooism that so typified the debate over the Smithsonian Institution. The message was an important statement of public policy -- and set forth guidelines for the federal role as a philanthropic agent until well into the twentieth century.

VETO MESSAGES.

WASHINGTON, *May 3, 1854*

*To the Senate of the United States:*

The bill entitled "An act making a grant of public lands to the several States for the benefit of indigent insane persons," which was presented to me on the 27th ultimo, has been maturely considered, and is returned to the Senate, the House in which it originated, with a statement of the objections which have required me to withhold from it my approval.

In the performance of this duty, prescribed by the Constitution, I have been compelled to resist the deep sympathies of my own heart in favor of the humane purpose sought to be accomplished and to overcome the reluctance with which I dissent from the conclusions of the two Houses of Congress, and present my own opinions in opposition to the action of a coordinate branch of the Government which possesses so fully my confidence and respect.

If in presenting my objections to this bill I should say more than strictly belongs to the measure or is required for the discharge of my official obligation, let it be attributed to a sincere desire to justify my act before those whose good opinion I so highly value and to that earnestness which springs from my deliberate conviction that a strict adherence to the terms and purposes of the federal compact offers the best, if not the only, security for the preservation of our blessed inheritance of representative liberty.

The bill provides in substance:

First. That 10,000,000 acres of land be granted to the several States, to be apportioned among them in the compound ratio of the geographical area and representation of said States in the House of Representatives.

Second. That wherever there are public lands in a State subject to sale at the regular price of private entry, the proportion of said 10,000,000 acres falling to such State shall be selected from such lands

within it, and that to the States in which there are no such public lands land scrip shall be issued to the amount of their distributive shares, respectively, said scrip not to be entered by said States, but to be sold by them and subject to entry by their assignees: *Provided*, That none of it shall be sold at less than \$1 per acre, under penalty of forfeiture of the same to the United States.

Third. That the expenses of the management and superintendence of said lands and of the moneys received therefrom shall be paid by the States to which they may belong out of the treasury of said States.

Fourth. That the gross proceeds of the sales of such lands or land scrip so granted shall be invested by the several States in safe stocks, to constitute a perpetual fund, the principal of which shall remain forever undiminished, and the interest to be appropriated to the maintenance of the indigent insane within the several States.

Fifth. That annual returns of lands or scrip sold shall be made by the States to the Secretary of the Interior, and the whole grant be subject to certain conditions and limitations prescribed in the bill, to be assented to by legislative acts of said States.

This bill therefore proposes that the Federal Government shall make provision to the amount of the value of 10,000,000 acres of land for an eleemosynary object within the several States, to be administered by the political authority of the same; and it presents at the threshold the question whether any such act on the part of the Federal Government is warranted and sanctioned by the Constitution, the provisions and principles of which are to be protected and sustained as a first and paramount duty.

It cannot be questioned that if Congress has the power to make provision for the indigent insane without the limits of this District it has the same power to provide for the indigent who are not insane,

and thus to transfer to the Federal Government the charge of all the poor in all the States. It has the same power to provide hospitals and other local establishments for the care and cure of every species of human infirmity, and thus to assume all that duty of either public philanthropy or public necessity to the dependent, the orphan, the sick, or the needy which is now discharged by the States themselves or by corporate institutions or private endowments existing under the legislation of the States. The whole field of public beneficence is thrown open to the care and culture of the Federal Government. Generous impulses no longer encounter the limitations and control of our imperious fundamental law; for however worthy may be the present object in itself, it is only one of a class. It is not exclusively worthy of benevolent regard. Whatever considerations dictate sympathy for this particular object apply in like manner, if not in the same degree, to idiocy, to physical disease, to extreme destitution. If Congress may and ought to provide for any one of these objects, it may and ought to provide for them all. And if it be done in this case, what answer shall be given when Congress shall be called upon, as it doubtless will be, to pursue a similar course of legislation in the others? It will obviously be vain to reply that the object is worthy, but that the application has taken a wrong direction. The power will have been deliberately assumed, the general obligation will by this act have been acknowledged, and the question of means and expediency will alone be left for consideration. The decision upon the principle in any one case determines it for the whole class. The question presented, therefore, clearly is upon the constitutionality and propriety of the Federal Government assuming to enter into a novel and vast field of legislation, namely, that of providing for the care and support of all those among the people of the United States who by any form become fit objects of public philanthropy.

I readily and, I trust, feelingly acknowledge the duty incumbent on us all as men and citizens, and as among the highest and holiest of our duties, to provide for those who, in the mysterious order of Providence, are subject to want and to disease of body or mind; but I can not find any authority in the Constitution for making the Federal Government the great almoner of public charity throughout the United States. To do so would, in my judgement, be contrary to the letter and spirit of the Constitution and subversive of the whole theory upon which the Union of these States is founded. And if it were

admissible to contemplate the exercise of this power for any object whatever, I can not avoid the belief that it would in the end be prejudicial rather than beneficial to the noble offices of charity to have the charge of them transferred from the States to the Federal Government. Are we not too prone to forget that the Federal Union is the creature of the States, not they of the Federal Union? We were the inhabitants of colonies distinct in local government from one another before the Revolution. By the Revolution the colonies each became an independent State. They achieved that independence and secured its recognition by the agency of a consulting body, which, from being an assembly of the ministers of distinct sovereignties instructed to agree to no form of government which did not leave the domestic concerns of each State to itself, was appropriately denominated a Congress. When, having tried the experiment of the Confederation, they resolved to change that for the present Federal Union, and thus to confer on the Federal Government more ample authority, they scrupulously measured such of the functions of their cherished sovereignty as they chose to delegate to the General Government. With the aim and to this end the fathers of the Republic framed the Constitution, in and by which the independent and sovereign States united themselves for certain specified objects and purposes, and for those only, leaving all powers not therein set forth as conferred on one or another of the great departments -- the legislative, the executive, and the judicial -- indubitably within the States. And when the people of the several States had in their State conventions, and thus alone, given effect and force to the Constitution, not content that any doubt should in the future arise as to the scope and character of this act, they ingrafted thereon the explicit declaration that "the powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States respectively or to the people." Can it be controverted that the great mass of the business of Government -- that involved in the social relations, the internal arrangements of the body politic, the mental and moral culture of men, the development of resources of wealth, the punishment of crimes in general, the preservation of order, the relief of the needy or otherwise unfortunate members of society -- did in practice remain with the States; that none of these objects of local concern are by the Constitution expressly or impliedly prohibited to the States, and that none of them are by any express language of the Constitution transferred to the United States? Can it be claimed that any of these functions of local

administration and legislation are vested in the Federal Government by any implication? I have never found anything in the Constitution which is susceptible of such a construction. No one of the enumerated powers touches the subject or has even a remote analogy to it. The powers conferred upon the United States have reference to federal relations, or to the means of accomplishing or executing things of federal relation. So also of the same character are the powers taken away from the States by enumeration. In either case the powers granted and the powers restricted were so granted or so restricted only where it was requisite for the maintenance of peace and harmony between the States or for the purpose of protecting their common interests and defending their common sovereignty against aggression from abroad or insurrection at home.

I shall not discuss at length the question of power sometimes claimed for the General Government under the clause of the eighth section of the Constitution, which gives Congress the power to "lay and collect taxes, duties, imposts, and excises, to pay debts and provide for the common defense and general welfare of the United States," because if it has not already been settled upon sound reason and authority it never will be. I take the received and just construction of that article, as if written to lay and collect taxes, duties, imposes, and excises *in order* to pay the debts and *in order* to provide for the common defense and general welfare. It is not a substantive general power to provide for the welfare of the United States, but is a limitation on the grant of power to raise money by taxes, duties, and imposts. If it were otherwise, all the rest of the Constitution, consisting of carefully enumerated and cautiously guarded grants of specific powers, would have been useless, if not delusive. It would be impossible in that view to escape from the conclusion that these were inserted only to mislead for the present, and, instead of enlightening and defining the pathway of the future, to involve its action in the mazes of doubtful construction. Such a conclusion the character of the men who framed that sacred instrument will never permit us to form. Indeed, to suppose it susceptible of any other construction would be to consign all the rights of the States and of the people of the States to the mere discretion of Congress, and thus to clothe the Federal Government with authority to control the sovereign States, by which they would have been dwarfed into provinces or departments and all sovereignty vested in an absolute

consolidated central power, against which the spirit of liberty has so often and in so many countries struggled in vain. In my judgement you can not by tributes to humanity make any adequate compensation for the wrong you would inflict by removing the sources of power and political action from those who are to be thereby affected. If the time shall ever arrive when, for an object appealing, however strongly, to our sympathies, the dignity of the States shall bow to the dictation of Congress by conforming legislation thereto, when the power and majesty and honor of those who created shall become subordinate to the thing of creation, I but feebly utter my apprehensions when I express my firm conviction that we shall see "the beginning of the end."

Fortunately, we are not left in doubt as to the purpose of the Constitution any more than as to its express language, for although the history of its formation, as recorded in the Madison papers, shows that the Federal Government in its present form emerged from the conflict of opposing influences which have continued to divide statesmen from that day to this, yet the rule of clearly defined powers and of strict construction presided over the actual conclusion and subsequent adoption of the Constitution. President Madison, in the Federalist, says:

The powers delegated to the proposed Constitution are few and defined. Those which are to remain in the State governments are numerous and indefinite. \* \* \* Its [the General Government's] jurisdiction extends to certain enumerated objects only, and leaves to the several States a residuary and inviolable sovereignty over all other objects.

In the same spirit President Jefferson invokes "the support of the State governments in all their rights as the most competent administrations for our domestic concerns and the surest bulwarks against anti-republican tendencies;" and President Jackson said that our true strength and wisdom are not promoted by invasions of the rights and powers of the several States, but that, on the contrary, they consist "not in binding the States more closely to the center, but in leaving each more unobstructed in its proper orbit."

The framers of the Constitution, in refusing to confer on the Federal Government any jurisdiction over these purely local objects, in my judgement manifested a wise forecast and broad comprehension of the true interests of these objects themselves. It is clear that public charities within the States can be efficiently administered only by their authority. The bill before me concedes this, for it does not commit funds it provides to the administration of any other authority.

I can not but repeat what I have before expressed, that if the several States, many of which have already laid the foundation of munificent establishments of local beneficence, and nearly all of which are proceeding to establish them, shall be led to suppose, as, should this bill become a law, they will be, that Congress is to make provision for such objects, the fountains of charity will be dried up at home, and the several States, instead of bestowing their own means on the social wants of their own people, may themselves, through the strong temptation which appeals to the states as to individuals, become humble suppliants for the bounty of the Federal Government, reversing their true relations to this Union.

Having stated my views of the limitation of the powers conferred by the eighth section of the first article of the Constitution, I deem it proper to call attention to the third section of the fourth article and to the provisions of the sixth article bearing directly on the question under consideration, which, instead of aiding the claim to power exercised in this case, tend, it is believed, strongly to illustrate and explain positions which, even without such support, I can not regard as questionable. The third section of the fourth article of the Constitution is in the following terms:

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

The sixth article is as follows, to wit, that --

All debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the United States under this Constitution as under the Confederation.

For a correct understanding of the terms used in the third section of the fourth article, above quoted, reference should be had to the history of the times in which the Constitution was formed and adopted. It was decided upon in convention on the 17th September, 1787, and by it Congress was empowered "to dispose of," etc., "the territory or other property belonging to the United States." The only territory then belonging to the United States was that then recently ceded by the several States, to wit: by New York in 1781, by Virginia in 1784, by Massachusetts in 1785, and by South Carolina in August 1787, only the month before the formation of the Constitution. The cession from Virginia contained the following provision:

That all the lands within the territory so ceded to the United States, and not reserved or appropriated to any of the before-mentioned purposes or disposed of in bounties to the officers and soldiers of the American Army, shall be considered a common fund for the use and benefit of such of the United States as have become or shall become members of the Confederation or Federal Alliance of the said States, Virginia included, according to their respective proportions in the general charge and expenditure, and shall be faithfully and *bona fide disposed of* for that purpose and for no other use or purpose whatever.

Here the object for which these lands are to be disposed of is clearly set forth, and the power to dispose of them granted by the third section of the fourth article of the Constitution clearly contemplates such disposition only. If such be the fact, and in my mind there can be no doubt of it, then you have again not only no implication in favor of the contemplated grant, but the strongest authority against it. Furthermore, this bill is in violation of the faith of the Government pledged in the act of January 28, 1847. The nineteenth section of that act declares:

That for the payment of the stock which may be created under the provisions of this act the sales of the public lands are hereby pledged; and it is hereby made the duty of the Secretary of the Treasury to use and apply all moneys which may be received into the Treasury for the sales of the public lands after the 1st day of January, 1848, first, to pay the interest on all stocks issued by virtue of this act, and, secondly, to use the balance of said receipts, after paying the interest aforesaid, in the purchase of said stocks at their market value, etc.

The debts then contracted have not been liquidated, and the language of this section and the obligations of the United States under it are too plain to need comment.

I have been unable to discover any distinction on constitutional grounds or grounds of expediency between an appropriation of \$10,000,000 directly for the money in the Treasury for the object contemplated and the appropriation of lands presented for my sanction, and yet I can not doubt that if the bill proposed \$10,000,000 from the Treasury of the United States for the support of the indigent insane in the several States that the constitutional question involved in the act would have attracted forcibly the attention of Congress.

I respectfully submit that in a constitutional point of view it is wholly immaterial whether the appropriation be in money or in land.

The public domain is the common property of the Union just as much as the surplus proceeds of that and of duties on imports remaining unexpended in the Treasury. As such it has been pledged, is now pledged, and may need to be so pledged again for public indebtedness.

As property it is distinguished from actual money chiefly in this respect, that its profitable management sometimes requires that portions of it be appropriated to local objects in the States wherein it may happen to lie, as would be done by any prudent proprietor to enhance the sale value of his private domain. All such grants are in fact a disposal for value received, but they afford no precedent or constitutional reason for giving away the public lands. Still less do they give sanction to appropriations for objects which have not been entrusted to the Federal Government, and therefore belong exclusively to the States.

To assume that the public lands are applicable to ordinary State objects, whether of public structures, police, charity, or expenses of State administration, would be to disregard to the amount of the value of

the public lands, all the limitations of the Constitution and confound to that extend all distinctions between the rights and powers of the States and those of the United States; for if the public lands may be applied to the support of the poor, whether sane or insane, if the disposal of them and their proceeds be not subject to the ordinary limitations of the Constitution, then Congress possesses unqualified power to provide for expenditures in the States by means of the public lands, even to the degree of defraying the salaries of governors, judges, and all other expenses of the government and internal administration within the several States.

The conclusion from the general survey of the whole subject is to my mind irresistible, and closes the question both of right and expediency so far as regards the principle of the appropriation proposed in this bill. Would not the admission of such power in Congress to dispose of the public domain work the practical abrogation of some of the most important provisions of the Constitution?

If the systematic reservation of a definite proportion of the public lands (the sixteenth sections) in the States for the purposes of education and occasional grants for similar purposes be cited as contradicting these conclusions, the answer as it appears to be is obvious and satisfactory. Such reservations and grants, besides being a part of the conditions on which the proprietary right of the United States is maintained, along with the eminent domain of a particular State, and by which the public land remains free from taxation in the State in which it lies as long as it remains the property of the United States, are the acts of a mere land-owner disposing of a small share of his property in a way to augment the value of the residue and in this mode to encourage the early occupation of it by the industrious and intelligent pioneer.

The great example of apparent donation of lands to the United States likely to be relied upon as sustaining the principles of this bill is the relinquishment of swamp lands to the States in which they are situated, but this also, like other grants already referred to, was based expressly upon grounds clearly distinguishable in principle from any which can be assumed for the bill herewith returned,

viz., upon the interest and duty of the proprietor. They were charged, and not without reason, to be a nuisance to the inhabitants of the surrounding country. The measure was predicated not only upon the ground of the disease inflicted upon the people of the United States, which the United States could not justify as a just and honest proprietor, but also upon an express limitation of the application of the proceeds in the first instance to purposes of levees and drains, thus protecting the health of the inhabitants and at the same time enhancing the value of the remaining lands belonging to the General Government.

It is not to be denied that Congress, while administering the public land as a proprietor within the principle distinctly announced in my annual message, may sometimes have failed to distinguish accurately between objects which are and which are not within its constitutional powers.

After a most careful examination I find but two examples in the acts of Congress which furnish any precedent for the present bill, and those examples will, in my opinion, serve rather as a warning than as an inducement to tread in the same path.

The first is the act of March 3, 1819, granting a township of land to the Connecticut asylum for the deaf and dumb; the second, that of April 5, 1826, making a similar grant of land to the Kentucky asylum for teaching the deaf and dumb -- the first more than thirty years after the adoption of the Constitution and the second more than a quarter of a century ago. These acts were unimportant as to the amount appropriated, and so far as I can ascertain were passed on two grounds: First, that the object was a charitable one, and secondly, that it was national. To say that it was a charitable object is only to say that it was an object of expenditure proper for the competent authority; but it no more tended to show that it was a proper object of expenditure by the United States than is any other purely local object appealing to the best sympathies of the human heart in any of the States. And the suggestion that a school for the mental culture of the deaf and dumb in Connecticut or Kentucky is a national object only shows how loosely this expression has been used to procure appropriations by Congress. It is not

perceived how a school of this character is otherwise than national than is any establishment of moral or religious instruction. All the pursuits of industry, everything which promotes the material or intellectual well-being of the race, every ear of corn or boll of cotton which grows, is national in the same sense, for each one of these things goes to swell the aggregate of national prosperity and happiness of the United States; but it confounds all meaning of language to say that these things are "national," as equivalent to "Federal," so as to come within any of the classes of appropriation for which Congress is authorized by the Constitution to legislate.

It is a marked point in the history of the Constitution that when it was proposed to empower Congress to establish a university the proposition was confined to the District intended for the future seat of Government of the United States, and that even that proposed clause was omitted in consideration of the exclusive powers conferred on Congress to legislate for that District. Could a mere indication of the true construction and spirit of the Constitution in regard to all matters of this nature have been given? It proves that such objects were considered by the Convention as appertaining to local legislation only; that they were not comprehended, either expressly or by implication, in the grant of general power to Congress, and that consequently they remained within the several States.

The general result at which I have arrived is the necessary consequence of those views of the relative rights, powers, and duties of the States and of the Federal Government which I have long entertained and often expressed and in reference to which my convictions do but increase in force with time and experience.

I have thus discharged the unwelcome duty of respectfully stating my objections to this bill, with which I cheerfully submit the whole subject to the wisdom of Congress.

FRANKLIN PIERCE

Having passed by a substantial plurality, Dix and her friends were confident that Congress could override Pierce's veto. Debate in the Senate was long and bitter. The issue was not finally resolved until July of 1854. Despite the fact that the chief spokesmen in favor of the override were included both Southerners and Northerners, the effort failed.

As Pierce had made so perfectly clear, what was at stake was not the fate of the indigent insane -- for whom he professed, no doubt with genuine sincerity, a genuine concern. The real issue was the nature and limits of federal power itself. Pierce's statement of the case was so thoroughly researched and so persuasive that it not only evidently persuaded a good many of the bill's supporters to either change sides or to absent themselves from the vote, it also effectively set the boundaries for federal intervention in charity and social welfare domains until the Great Depression of the 1930s.

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