

the ratio, not of extent of soil, but of lands actually surveyed or settled and improved. If the subject were here ended, your committee would still think that the territory thus acquired would enure to the benefit of all aiding in its acquisition; and that the rights of States to vacant lands, by virtue of a charter, resting upon the claim of discovery, and not based upon actual occupancy and settlement, were superseded by that more potent right—conquest. That the claims to vacant lands under grants, could only be exclusively asserted by a recognition of the authority whence the grants issued, and that with the fall and prostration of that authority, the virtue of the grants expired. And tracing the history of the public lands to the period at which the independence of the colonies was proclaimed, we should contend that the rights created by the pen, were dissolved by the sword. That the States, in throwing off their allegiance to Great Britain, cast the rights she had conferred into the scale of war, and contending in common—in common won them. Suppose the contest had ended unfavorably—that the Lion of England had crushed, in his strength, the Eagle of America, would it be for one moment contended that she, Great Britain, would have been bound to observe the rights guaranteed by her charters? We were regarded by her as rebels; we deemed ourselves foes; in either aspect, defeat would have placed our persons, our liberties, our property, at her uncontrolled disposition.

The principle is not altered by reversing the case. By the treaty of September 1783, the King of Great Britain, not only acknowledges the independence, sovereignty and freedom of the States, “but for himself, his heirs and successors, relinquishes all claims to the government, proprietary and territorial rights of the same and every part thereof.” This treaty confers no original right upon the United States to the territory, either collectively or individually—it is a relinquishment, a surrender of claim, not a grant, a form necessary to complete the title of conquest. “Lands,” &c. says Vattel, (886,) “become the property of the enemy who makes himself master of them, but it is only by the treaty of peace, or the entire submission and extinction of the State to which they ‘belonged,’ that the acquisition is complete, and the property therein, stable and perfect.”

We contend then at this time, all the unsettled, vacant lands, within the boundaries prescribed in the treaty cited, became the common property of the States that had won them by the sword, unrestrained by grants and charters