

Sec. 10—Powers Denied to the States

Cl. 1—Treaties, Coining Money, Etc.

sale bribery. So when a new legislature took over in the winter of 1795–1796, almost its first act was to revoke the sale made the previous year.

Meantime, however, the land companies had disposed of several millions of acres of their holdings to speculators and prospective settlers, and following the rescinding act some of these took counsel with Alexander Hamilton as to their rights. In an opinion which was undoubtedly known to the Court when it decided *Fletcher v. Peck*, Hamilton characterized the repeal as contravening “the first principles of natural justice and social policy,” especially so far as it was made “to the prejudice . . . of third persons . . . innocent of the alleged fraud or corruption; . . . moreover,” he added, “the Constitution of the United States, article first, section tenth, declares that no State shall pass a law impairing the obligations of contract. This must be equivalent to saying no State shall pass a law revoking, invalidating, or altering a contract. Every grant from one to another, whether the grantor be a State or an individual, is virtually a contract that the grantee shall hold and enjoy the thing granted against the grantor, and his representatives. It, therefore, appears to me that taking the terms of the Constitution in their large sense, and giving them effect according to the general spirit and policy of the provisions, the revocation of the grant by the act of the legislature of Georgia may justly be considered as contrary to the Constitution of the United States, and, therefore null. And that the courts of the United States, in cases within their jurisdiction, will be likely to pronounce it so.”²⁰⁰⁵ Hamilton’s views were quoted frequently in the congressional debate over the “Yazoo Land Frauds,” as they were contemporaneously known.

So far as it invoked the Contract Clause, Marshall’s opinion in *Fletcher v. Peck* performed two creative acts. It recognized that an obligatory contract was one still to be performed—in other words, was an executory contract, also that a grant of land was an executed contract—a conveyance. But, Marshall asserted, every grant is attended by “an implied contract” on the part of the grantor not to claim again the thing granted. Thus, grants are brought within the category of contracts having continuing obligation and so within Article I, § 10. But the question still remained of the nature of this obligation. Marshall’s answer to this can only be inferred from his statement at the end of his opinion. The State of Georgia, he says, “was restrained” from the passing of the rescinding act “either by

²⁰⁰⁵ B. WRIGHT, *THE CONTRACT CLAUSE OF THE CONSTITUTION* 22 (1938). Professor Wright dates Hamilton’s pamphlet as from 1796.