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**Title:** Letter from Roger B. Taney to Samuel Smith

**Date:** February 7, 1786 [1826]

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Addressed by Gen. S. Smith  
1826  
Baltimore Feby 7. 1786

Dear Sir

I use the first moment in my  
power to reply to your very interesting  
letter of the 5<sup>th</sup> inst. - In stating my impres-  
sions upon the subject I am however  
fully aware that your long public life  
and active concern in the affairs of the  
Nation, have given you far better op-  
portunities of forming a correct judgment  
on this question, than my mere profes-  
sional life has afforded to me - and I  
communicate my notions on the com-  
mon-sense rather because you have done  
me the honour to ask them, than from  
any belief that they will aid your deli-  
berations. -

It would seem to me however that rights  
once vested in a third party by treaty con-  
not be taken away without the consent  
of the party so interested. - where the parties  
to the treaty are alone interested, they may  
alter and modify the treaty as they please  
because they are dealing with their own  
rights and not with the rights of others.  
But as soon as a treaty is ratified it  
becomes the Supreme law, and every <sup>particular</sup> right  
which an individual citizen or a state  
has acquired <sup>distinct from the nation at large</sup> under it becomes a vested  
legal right and cannot be taken away  
without their consent. In this view of the  
subject I should think, that the right thus  
acquired could not be derested by the treaty  
making power, - nor indeed by the Legis-  
lative power of Congress, according to the  
principles of moral justice, and sound  
legislation. For the power & the right must  
never be confounded together. -

In relation to the act of 1793, - in that case

no third parties were interested. - There was no actual war which put an end to the treaty. - But it was supposed that the conduct of France had absolved the U.S. from the obligations of the treaty. - If I am right in these facts, a legislative act was supposed necessary to put an end to the obligations of the treaty. - In my judgment it was rightly so deemed, for the President and Senate can act only by means of the treaty making power. - And as no new treaty was to be made in that ~~particular~~ instance, the President & Senate could not act alone, because they could not act by means of the treaty making power. - It required therefore, even when third parties were not concerned, an act of Congress in order to repeal the law of the treaty. - It was believed it seems that a state of things had taken place which justified the measure in relation to France. - But the rights of no third party were affected by this law. - The rights of France only were affected & the conduct of France was supposed to justify it.

justify it.

According to this view of the subject, the President & Senate alone - nor indeed Congress itself could not rightfully repeal a treaty by which certain rights were vested in Georgia unless Georgia consented to relinquish the rights she had acquired. The difficulty in that case must I presume be in the facts. - If the persons who made the first treaty had no right to cede the lands to the extent mentioned in the treaty then it would not bind those who ~~were~~ <sup>did</sup> not assent to it. - The U. S. obtained by the treaty all that the parties to it had a right to cede, but could obtain nothing more. They could not grant beyond what they had. But if the chiefs who signed the first treaty had a right to treat in behalf of the nation it would seem to me to be very clear that no subsequent treaty could derogate the rights of Georgia acquired under the first. Whether or not the chiefs who signed the first treaty had a right to contract in behalf of the nation, is a fact upon which of course I am unable to form an opinion. -

Taney. Jackson Ally Gals  
N Soc Drey

Thus my dear Sir I have hastily put to-  
gether my notions upon the very impor-  
tant question suggested in your letter.  
and I have done so, rather in token of  
my great respect and good will, than from  
any hope that you will find them useful.  
All of these topics of argument have no  
doubt already suggested themselves to  
your own mind.

You will please accept my thanks  
for the interesting report which you  
were so good as to send me. On Monday  
next I hope to be with you -

I am Dear Sir with

great respect & esteem

Yr. M<sup>t</sup>. Oct. 7<sup>th</sup>.

R. B. Taney



PAID

The Honble

J. Smith

Washington