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Title: Letter from Roger B. Taney to Samuel Smith

Date: February 7, 1786 [1826]

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Addressed by Ben 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 5th 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-
monsey 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 ^{person} right
which an individual citizen or a state
has acquired ^{distinct from the nation at large} 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 divested 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 ~~or that~~ 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 was 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~~^{did} 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 denest 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 Alty Gals
N See Tracy

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 we
don't 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^t. Oct. 14.

R. B. Taney



PAID

The Honble

J. Smith

Washington

Baltimore Feby 7, [1826]

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It would seem to me however that rights once vested in a third party by a treaty cannot 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 any peculiar right which an individual citizen or a state has acquired under it, distinct from the nation at large, becomes a vested legal right and cannot be taken away without their consent. In this issue of the subject I should think that the right thus acquired could not be divested by the treaty making power, nor indeed by the Legislative power of Congress, according to the principals of moral justice, and sound Legislation. For the power & the right must never be confounded together.

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[page 5]

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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
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Yr. mst. obt. St.
R. B. Taney

[addressed]
The Honble
S[amuel] Smith
Washington