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Title: Letter from Roger B. Taney to Samuel Smith

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Endneed by Den S. Smit Baltiman Fely 7. 1986 Dear fin I was the first moment in my hower to why to your very interesting letter of the singt. - In stating my improgsions when the energies I am however July sware that you long public life and active concern in the affairs of the nation, have given you for butter of hartunities of forming a correct judgmers on this question than my more professionot life has afforded to me - and of Communicate my nations on the comhowevery nature become you have done me the howave to adh them, thou from any belief that they will aid your deli. beraturs . -

It would from to me however that rights once wested in a third party by treaty can not be taken away without the consent of the party der interested. - lahore the parties to the trioty was whome interested, they may alter and modify the treaty as they foliase be esses they are dealing with three own rights and not with the rights of athers. But so four as a tructy is ratified it builties to be within has a equied under it les cornes a vested light and connat be taken away without their consent. In this rise of the Integers of a hands think that the aight their acquered weed hat be levested by the treaty making pores, - nor indeed by the Ligis lotive power of longrifs a wording to the principles of moral justice and sound degistation. For the power of the right must hower la compounded tagether. -In whatian to the act of 1793, - in that ware

me third frantis were interested . - There was no actual was which put on end to traties. - But it was suffered that the lowderst of France had alsolved the U.S. from the abligations of the healy- 1/2" am night in these pacts, a Ligislation aux has supposed meeting to find an ind to the stigations of the testy. In my judgmust it was rightly to seemed, for the Orisident and Senate can cet only by meens of the tracy making framer. . duo as no new heaty was to be made in thos ago togat in atomas, the Orisident & Linete with not act along because they was not wet by means of the traty making Jower - 20 regioned therefore, even where third parties were not concerned an act of longues in under to repeat the law of The therty . - It was believed it seems that a atote of things has taken place which justified the measure in whation to France - But the rights of no third harty was of lected by this low. - The rights of France and shapes to make appealed & the consent of France was supposed to just by it.

justify it. according to this view of the subject the Orisident a senate about - mor indeed lowgrap itself wond not rightfully reprial a Treaty by which cutain rights were misted in Georgia welfs grougie consented to relinguish the rights she has Lagrino. The difficulty in that lose must I husum be in the facts. - If the pursues who made the first treaty has no right to cade the lands to the extent-mentioned in the tricky then it would not lind those who win not apont to it . - The U. S. obtained by the traty are thus the parties to it has a right to under lent could obtain nothing more. They would not grant beyond what they had. But if the chiefs who signed the first heaty has a right to that in he half of the notion it would ferm to me to be very clear that he hanguest truty was denest the rights of Georgia a griend under the first. behitten on not the chiefs who lights the first haty has a right to contract in belong of the nation, is a fact whom which of every I am unable to form or opinion.

Tany Jackem alt gal Thus my dear fin I have hastily hat to ge the my notions whom the very important question suggested in your letter. and I have done so, rather in taken of my great respect and good will thoughow any hope that you will find them useful. all of these topies of argument have no Soult already singgested them selves to your own mino. you will please a cecht my thanks for the interesting reports where you here by good as to send me. On monday must I hope to be with you -L'an bearfir with gunt respect & estrem g. mis. och. Tt. R.B. Janes

の大川田

Dear Sir,

I use the first moment in my power to reply to your very interesting letter of the 5th inst. In stating my impressions upon the subject I am however fully aware that your long public life and certain concern in the affairs of the nation, have given you far better opportunities of forming a correct judgement on this question, than my more professional life has afforded to me, and I communicate my notions on the controversy rather because you have done me the honor to ask them, than from any belief that they will aid your deliberations.

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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 devested 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 <u>power</u> & the <u>right</u> must never be confounded together.

In relation to the act of 1793, in that case

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no third parties were interested. There was no actual war which put an end to treaties. 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 judgement 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 instance, the President & Senate could not act alone, because they could not act by means of the treaty making power. It required therefore, even where 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.

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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 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 the subsequent treaty would devest 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.

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Thus my dear sir I have hastily put together my notions upon the very important 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. mst. obt. St.
R. B. Taney

[addressed]
The Honble
S[amuel] Smith
Washington