

University of Oklahoma College of Law

University of Oklahoma College of Law Digital Commons

American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899

2-14-1831

Memorial of a number of citizens of Pittsburg, Pennsylvania, praying that the treaties with the Indians may be preserved inviolable, and that they be protected in their rights.

Follow this and additional works at: <https://digitalcommons.law.ou.edu/indianserialset>



Part of the [Indigenous, Indian, and Aboriginal Law Commons](#)

Recommended Citation

S. Doc. No. 53, 21st Cong., 2nd Sess. (1831)

This Senate Document is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899 by an authorized administrator of University of Oklahoma College of Law Digital Commons. For more information, please contact Law-LibraryDigitalCommons@ou.edu.

MEMORIAL

OF A

NUMBER OF CITIZENS OF PITTSBURG, PENNSYLVANIA,

PRAYING

That the treaties with the Indians may be preserved inviolable, and that they be protected in their rights.

FEBRUARY 14, 1831.

Read, and ordered to be printed.

To the Honorable the Senate and House of Representatives of the United States of America in Congress assembled.

The undersigned memorialists, inhabitants of the city of Pittsburg and its vicinity, in the county of Alleghany, and State of Pennsylvania, appear before your honorable bodies with the respect and deference due to the assembled representatives of the nation. Our object is a simple one—to ask for justice to an oppressed and a persecuted race. Governments, we know, like individuals, are sometimes drawn aside from the path of rectitude by the operation of interest or prejudiced feelings. And as injustice in an individual meets with its due punishment, so also will nations, who, regardless of their oft-plighted faith, lay the iron hand of oppression on their weaker and confiding neighbors, assuredly have their deserts meted out to them by the Omnipotent Ruler of the Universe and the Dispenser of the destinies of nations.

When the citizens of a free nation think they perceive in its governmental acts a dereliction from the immutable principles of justice, it becomes their duty, as it is their right, "peaceably to assemble, and petition the Government for the redress of grievances." This right is secured to us by the fundamental charter of our Union. It is unalienable; it is inherent to our existence as freemen. As individuals, we come not humbly to sue a favor; but, as citizens of the United States, to assert our right candidly and conscientiously, to state what are our views of the true policy of our national Government on the subject of our Indian relations.

With the honorable Washington, we believe that "there is no truth more thoroughly established than that there exists in the economy and course of nature an indissoluble union between virtue and happiness—between duty and advantage—between the genuine maxims of an honest and magnanimous policy and the solid rewards of public prosperity and felicity;" that "we ought to be no less persuaded that the propitious smiles of Heaven can never be expected on a nation that disregards the eternal rules of order and right which Heaven itself has ordained;" and that "the preservation of the sacred fire of liberty, and the destiny of the republican model of government, are

justly considered as *deeply*, perhaps as *finally*, staked on the experiment entrusted to the hands of the American people." With feelings and sentiments of this character, have we viewed the expressed opinions of the present Executive of the United States, and its conforming course of conduct towards our Indian allies at the South; with a dread, that, as a nation, we shall no longer be blessed with "the propitious smiles of Heaven," have we witnessed the party legislation on this subject; and with an apprehension that "the sacred fire of our liberties" is now to be quenched, and, instead of the pure, brilliant, and steady light with which it has heretofore guided our nation to glory, we are to be left to the uncertain flickerings of its dying embers, have we marked the greedy, rapacious and tyrannic legislation of the State of Georgia relative to the Cherokee nation of Indians. The time has indeed come, when men who value their possessions, when parents who regard the security of their families, when freemen who prize their birthright, and Christians who worship the God of Justice, should speak, and that in no equivocal language.

We believe that "God hath made of one blood all the nations that dwell upon the face of the earth;" and we also hold this truth to be self evident, "that all men are created equal; and that they are endowed by their Creator with certain unalienable rights; and that, amongst them, are life, liberty, and the pursuit of happiness." How then, can we regard—

I. The assumed right of jurisdiction by the State of Georgia over all the Indians within what her legislators are pleased to call her "chartered limits; and

II. The consequent passage of laws by her legislature relative to these Indians, which are unparalleled in the records of American legislation?

Your memorialists consider the question of the claims of the State of Georgia to the Indian lands within her limits to be a very plain one. Divested, as its consideration should be, of the provisional engagements entered into by the United States, under the convention of 1802, with the State of Georgia, it may be easily ascertained in whom rests the right of proprietorship and jurisdiction. The question is one of *right*; and, as a question of right only, do your memorialists conceive that it ought to be treated by the United States' Government. Whether it be expedient for the Indians to remove, is for them to determine. But it is a new doctrine indeed, if *expediency* is to be considered in the decision of a question of abstract right.

Our opinions on this question are founded on the following facts and arguments:

At the discovery of the continent of North America by Europeans, its inhabitants were in full and undisputed possession of its territory. The right of discovery, as exercised by the European Government, of that age did not affect them. It was a conventional right, agreed upon between these Governments for the guidance of their own subjects. The fact that all the settlements made by Europeans on the continent of North America, and having been by treaty with the original inhabitants, and by the purchase or voluntary cession of their lands, conclusively and incontrovertibly demonstrates that the discoverers and colonists themselves did not consider the *discovery* only of these lands as investing them with the "fee simple title" to them. The rights then conveyed under the royal charters to the various colonies, were—

1st. The right of discovery, whereby the parent Government guaranteed to its colony security against molestation by other European powers or their colonies; and

2d. The right of preemption to the Indians lands—a right acquired by treaty with their proprietors.

The argument so repeatedly urged, that the *consideration* given by the colonists for the lands they purchased was inadequate and insufficient, is equally futile with the doctrine of the right of discovery, as now advanced by many. Of the sufficiency of any consideration in trade, each party is his own judge. No one will deny the right of a citizen of these United States to alienate his property without receiving the least consideration therefor; provided there are no claims on him to be affected by this alienation or gift. What justice or morality, then, is there in our establishing one rule for our own conduct and government, and another for that of our neighbors? As well might we at once proclaim our Constitution a nullity, our laws a farce, and resolve ourselves into chaos. Order, indeed, might come out of the confusion; but it would be the order established by the sword, and sustained by the sceptre.

During the period in which these States sustained the relation of colonies to Great Britain, treaties and talks were repeatedly held by them with the Indian tribes, in all of which they were considered and addressed as independent sovereignties, and their friendship and alliance were assiduously sought and cultivated. On the colonies becoming independent States, no rights to territory were acquired by them beyond those conveyed in the royal charters. So did the government of the Confederation consider; and accordingly continued to treat with the Indians as nations dependent on none but themselves for their acts, and responsible for the consequences of their acts only to themselves.

On the adoption of the present Federal Constitution, the treaty-making power was expressly reserved to the United States. Previous to their accession to the Union, the independence of each State was full and complete. If Georgia, before this accession, had any jurisdiction over the Cherokee nation and territory—which, indeed, she had not—by her assent, as a member of the United States, to treaties made under its authority, in which the independence and sovereign character of this nation of Indians was distinctly recognised, she has for ever and effectually waived that right.

Subsequent to these treaties, the United States, by the convention of 1802 with the State of Georgia, bound themselves to endeavor to obtain the extinguishment of the Indian title to these lands. Let this endeavor be made; but let it be made in conformity with both the spirit and the letter of that instrument—"peaceably, and on reasonable terms." The very assent to this convention acknowledged, on the part of each party to it, that the then proprietors of the lands in question had it in their power to alienate them or not, at their own option. How has it come to pass, that this power has since departed from them? That power has not passed from these Indians; they have never forfeited or abandoned it.

If, however, the Cherokees refuse to part with their lands, and the obligation of the General Government to the State of Georgia is still urged and insisted on by the latter, then let Georgia herself estimate their value, and the amount be paid to her out of the national treasury.

It has been urged, that, in the treaties of 1785, 1791, and 1798, the Cherokee Indians expressly yielded up the character of independent nations, by placing themselves under the protection of the United States. This position is utterly at variance with the fundamental law of nations, that "a nation that

has placed herself under the protection of another has not on that account forfeited her character of sovereignty."

But the assumption of the right of jurisdiction over the Cherokee nation and territory, by the State of Georgia, is, if possible, less surprising to your memorialists, than the extraordinary methods she has taken of asserting that right. She has passed laws abridging their freedom of speech on subjects of national concernment—a tyranny never exemplified in the history of free Governments; she has deprived these Indians of the power of giving testimony in her courts of justice, in cases where white men are parties—a refinement on the one-sided justice of the Inquisition; her legislators have, as if personally to interest each individual in the State in their reckless course, sought to operate on their avarice and cupidity, by the lures of gain in a lottery of these identical lands; and more recently, her legislature has set at defiance the civil process of the highest judicial tribunal in this Union, thus casting off the last remnant of moral restraint, and exposing to the shame of her sister States, and the contempt of the world, a character destitute of principle, and governed only by avaricious lusts.

It is with pain and with sorrow that your memorialists have viewed these acts. We had hoped that the Genius of Freedom, exiled from the eastern continent, had, in this western world, found an abiding place for her foot; and that here, at least, her banner would long have floated over a free because virtuous people, and her white garments would not here have been stained by crime, and polluted by tyranny.

If the times have gone by that "tried men's souls," yet we have fallen upon the days that try men's principles. Considerations of justice and humanity are forgotten in the anxiety to uphold this party, and keep down that. We see official documents proceeding from the Executive Department of our National Government bearing on their seals the insignia of party, and on their face a disregard to treaties, and contempt of righteousness. More particularly do we now allude to an order issued by the War Department, under the date of May 30, 1830, in which the following admonition is held out to the Cherokee nation of Indians: "The President views the Indians as the children of the Government; he sees what is best for them; and that a perseverance in the refusal to fly the dangers that surround them must result in their misery and destruction."

Here do we see the President of the United States regardless of one treaty which says;

"The said Indians, for themselves and their respective tribes and towns, do acknowledge all the Cherokees to be under the protection of the United States:"

"The hatchet shall be for ever buried, and the peace given by the United States, and friendship re-established between the States on the one part, and all the Cherokees on the other, shall be universal; and the contracting parties shall use their utmost endeavors to maintain the peace given as aforesaid, and friendship re-established."

And of another treaty, which provides—

"The United States solemnly guaranty to the Cherokee nation all their lands not hereby ceded;"

"All animosities for past grievances shall henceforth cease, and the contracting parties will carry the foregoing treaty into full execution with all good faith and sincerity."

And of yet a third, which again reiterates the promise of peace, friendship, and protection in these words:

“The peace and friendship subsisting between the United States and the Cherokee people are hereby renewed, continued, and declared perpetual:”

“The treaties subsisting between the present contracting parties are acknowledged to be of full and operating force:”

“The limits and boundaries of the Cherokee nation, as stipulated and marked by the existing treaties between the parties, shall be and remain the same, where not altered by the present treaty:”

“And (the United States) will continue the guaranty of the remainder of their country for ever, as made and contained in former treaties.”

Here do we see the chief magistrate and first executive officer of the Union throwing aside these repeated and solemn guarantees, for the maintenance of which the faith of the nation has been pledged, and its character staked, and telling this confiding and persecuted people—Depart or abide, at your peril.

These things grieve us. The hatchet has been dug up; and if we turn to use it amongst ourselves, the curse be upon him whose avarice would not let it lay buried.

In conclusion, your memorialists pray, that, in whatever shape the question of our Indian relations may come before your honorable bodies during your present session, such consideration only may be given it, as shall preserve inviolate the pledged faith of the nation; and such consideration, too, as can be sanctioned by the high principles of justice and humanity.

And your memorialists, as in duty bound, will ever pray.