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Message from the President of the United States, in compliance with a resolution of the Senate, relative to the execution of the act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, passed the 30th March, 1802.

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MESSAGE

FROM THE

PRESIDENT OF THE UNITED STATES,

IN COMPLIANCE

With a resolution of the Senate, relative to the execution of the act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, passed the 30th March, 1802.

FEBRUARY 23, 1831.

Read, and ordered to be printed, and that 3,000 additional copies be furnished for the use of the Senate.

February 22, 1831.

To the Senate of the United States:

I have received your resolution of the 15th instant, requesting me "to inform the Senate whether the provisions of the act entitled 'An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers,' passed the 30th of March, 1802, have been fully complied with on the part of the United States' Government, and, if they have not, that he inform the Senate of the reasons that have induced the Government to decline the enforcement of said act:" and I now reply to the same.

According to my views of the act referred to, I am not aware of any omission to carry into effect its provisions in relation to trade and intercourse with the Indian tribes, so far as their execution depended on the agency confided to the Executive.

The numerous provisions of that act, designed to secure to the Indians the peaceable possession of their lands, may be reduced, substantially, to the following: That citizens of the United States are restrained, under sufficient penalties, from entering upon the lands, for the purpose of hunting thereon, or of settling them, or of giving their horses and cattle the benefit of a range upon them, or of travelling through them without a written permission; and that the President of the United States is authorized to employ the military force of the country to secure the observance of these provisions. The authority to the President, however, is not imperative. The language is, "it shall be lawful for the President to take such measures, and to employ such military force, as he may judge necessary to remove from lands belonging to, or secured by treaty to any Indian tribe, any citizen who shall make a settlement thereon."

By the 19th section of this act, it is provided that nothing in it "shall be construed to prevent any trade or intercourse with Indians living on lands surrounded by settlements of citizens of the United States, and being within the ordinary jurisdiction of any of the individual States." This provision I have interpreted as being prospective in its operation, and as applicable not only to Indian tribes which at the date of its passage were subject to the jurisdiction of any State, but to such also as should thereafter become so. To this construction of its meaning I have endeavored to conform, and have taken no step inconsistent with it. As soon, therefore, as the sovereign power of the State of Georgia was exercised, by an extension of her laws, throughout her limits, and I had received information of the same, orders were given to withdraw from the State the troops which had been detailed to prevent intrusion upon the Indian lands within it; and these orders were executed. The reasons which dictated them shall be frankly communicated.

The principle recognised in the section last quoted was not for the first time then avowed. It is conformable to the uniform practice of the Government before the adoption of the Constitution, and amounts to a distinct recognition by Congress, at that early day, of the doctrine that that instrument had not varied the powers of the Federal Government over Indian affairs from what they were under the articles of confederation. It is not believed that there is a single instance in the legislation of the country in which the Indians have been regarded as possessing political rights, independent of the control and authority of the States within the limits of which they resided. As early as the year 1782, the journals of Congress will show that no claim of such a character was countenanced by that body. In that year the application of a tribe of Indians residing in South Carolina to have certain tracts of land which had been reserved for their use in that State secured to them, free from intrusion, and without the right of alienating them, even with their own consent, was brought to the consideration of Congress by a report from the Secretary of War. The resolution which was adopted on that occasion is as follows:

"Resolved, That it be recommended to the Legislature of South Carolina to take such measures for the satisfaction and security of said tribes as the said Legislature in their wisdom may think fit."

Here is no assertion of the right of Congress, under the articles of confederation, to interfere with the jurisdiction of the States over Indians within their limits; but rather a negation of it. They refused to interfere with the subject, and referred it, under a general recommendation, back to the State, to be disposed of as her wisdom might decide.

If, in addition to this act and the language of the articles of confederation, any thing further can be wanting to show the early views of the Government on the subject, it will be found in the proclamation issued by Congress in 1783. It contains this language: "The United States in Congress assembled have thought proper to issue their proclamation, and they do hereby prohibit and forbid all persons from making settlements on lands inhabited or claimed by Indians, without the limits or jurisdiction of any particular State." And again:

"Resolved, That the preceding measures of Congress relative to Indian affairs shall not be construed to affect the territorial claims of any of the States, or their legislative rights within their respective limits."

It was not then pretended that the General Government had the power, in their relations with the Indians; to control or oppose the internal polity of the individual States of this Union; and if such was the case under the articles of confederation, the only question on the subject since must arise out of some more enlarged power or authority given to the General Government by the present Constitution. Does any such exist?

Amongst the enumerated grants of the Constitution; that which relates to this subject is expressed in these words: "Congress shall have power to regulate commerce with the Indian tribes." In the interpretation of this power, we ought certainly to be guided by what had been the practice of the Government, and the meaning which had been generally attached to the resolves of the old Congress, if the words used to convey it do not clearly import a different one, as far as it affects the question of jurisdiction in the individual States. The States ought not to be divested of any part of their antecedent jurisdiction, by implication or doubtful construction. Tested by this rule, it seems to me to be unquestionable, that the jurisdiction of the States is left untouched by this clause of the Constitution, and that it was designed to give to the General Government complete control over the trade and intercourse of those Indians only who were not within the limits of any State.

From a view of the acts referred to, and the uniform practice of the Government, it is manifest that, until recently, it has never been maintained that the right of jurisdiction by a State over Indians within its territory, was subordinate to the power of the Federal Government. That doctrine has not been enforced, nor even asserted, in any of the States of New England, where tribes of Indians have resided, and where a few of them yet remain. These tribes have been left to the undisturbed control of the States in which they were found, in conformity with the view which has been taken of the opinions prevailing up to 1789, and the clear interpretation of the act of 1802. In the State of New York, where several tribes have resided, it has been the policy of the Government to avoid entering into quasi-treaty engagements with them, barely appointing commissioners occasionally, on the part of the United States, to facilitate the objects of the State in its negotiations with them.

The southern States present an exception to this policy. As early as 1784 the settlements within the limits of North Carolina were advanced further to the west than the authority of the State to enforce an obedience of its laws; others were in a similar condition. The necessities, therefore, and not the acknowledged principles of the Government, must have suggested the policy of treating with the Indians in that quarter, as the only practicable mode of conciliating their good will. The United States at that period had just emerged from a protracted war for the achievement of their independence. At the moment of its conclusion, many of these tribes, as powerful as they were ferocious in their mode of warfare, remained in arms, desolating our frontier settlements. Under these circumstances, the first treaties, in 1785 and 1790, with the Cherokees, were concluded by the Government of the United States, and were evidently sanctioned as measures of necessity, adapted to the character of the Indians, and indispensable to the peace and security of the western frontier. But they cannot be understood as changing the political relations of the Indians to the States, or to the Federal Government. To effect this would have required the operation of quite a different principle, and the intervention of a tribunal higher than that of the treaty making power.

To infer from the assent of the Government to this deviation from the practice which had before governed its intercourse with the Indians, and the accidental forbearance of the States to assert their right of jurisdiction over them, that they had surrendered this portion of their sovereignty, and that its assumption now is usurpation, is conceding too much to the necessity which dictated those treaties, and doing violence to the principles of the Government and the rights of the States; without benefitting in the least degree the Indians. The Indians, thus situated, cannot be regarded in any other light than as members of a foreign Government, or of that of the State within whose chartered limits they reside. If in the former, the ordinary legislation of Congress in relation to them is not warranted by the Constitution, which was established for the benefit of our own; not of a foreign people: if in the latter, then, like other citizens or people resident within the limits of the States, they are subject to their jurisdiction and control. To maintain a contrary doctrine, and to require the Executive to enforce it by the employment of a military force, would be to place in his hands a power to make war upon the rights of the States and the liberties of the country—a power which should be placed in the hands of no individual.

If, indeed, the Indians are to be regarded as people possessing rights which they can exercise independently of the States, much error has arisen in the intercourse of the Government with them. Why is it that they have been called upon to assist in our wars, without the privilege of exercising their own discretion? If an independent people, they should, as such, be consulted and advised with; but they have not been. In an order which was issued to me from the War Department, in September, 1814, this language is employed: "All the friendly Indians should be organised and prepared to co-operate with your other forces. There appears to be some dissatisfaction among the Choctaws: their friendship and services should be secured without delay. The friendly Indians must be fed and paid, and *made to fight when and where their services may be required.*" To an independent and foreign people, this would seem to be assuming, I should suppose, rather too lofty a tone; one which the Government would not have assumed if they had considered them in that light. Again: By the Constitution, the power of declaring war belongs exclusively to Congress. We have been often engaged in war with the Indian tribes within our limits; but when have these hostilities been preceded or accompanied by an act of Congress declaring war against the tribe which was the object of them? and was the prosecution of such hostilities an usurpation, in each case, by the Executive which conducted them, of the constitutional power of Congress? It must have been so, I apprehend, if these tribes are to be considered as foreign and independent nations.

The steps taken to prevent intrusion upon Indian lands had their origin with the commencement of our Government, and became the subject of special legislation in 1802, with the reservations which have been mentioned in favor of the jurisdiction of the States. With the exception of South Carolina, who has uniformly regulated the Indians within her limits without the aid of the General Government, they have been felt within all the States of the south, without being understood to affect their rights or prevent the exercise of their jurisdiction, whenever they were in a situation to assume and enforce it. Georgia, though materially concerned, has, on this principle, forbore to spread her legislation further than the settlements of her own white citizens, until she has recently perceived within her limits a people claiming to

be capable of self-government, sitting in legislative council, organizing courts, and administering justice. To disarm such an anomalous invasion of her sovereignty, she has declared her determination to execute her own laws throughout her limits—a step which seems to have been anticipated by the proclamation of 1783, and which is perfectly consistent with the 19th section of the act of 1802. According to the language and reasoning of that section, the tribes to the south and the southwest are not only “surrounded by settlements of the citizens of the United States,” but are now also “within the ordinary jurisdiction of the individual States.” They became so from the moment the laws of the State were extended over them, and the same result follows the similar determination of Alabama and Mississippi. These States have, each, a right to claim in behalf of their position, now, on this question, the same respect which is conceded to the other States of the Union.

Towards this race of people, I entertain the kindest feelings; and am not sensible that the views which I have taken of their true interests, are less favorable to them than those which oppose their emigration to the west. Years since, I stated to them my belief, that, if the States chose to extend their laws over them, it would not be in the power of the Federal Government to prevent it. My opinion remains the same; and I can see no alternative for them, but that of their removal to the west, or a quiet submission to the State laws. If they prefer to remove, the United States agree to defray their expenses, to supply them the means of transportation, and a year's support after they reach their new homes—a provision too liberal and kind to deserve the stamp of injustice. Either course promises them peace and happiness, whilst an obstinate perseverance in the effort to maintain their possessions independent of the State authority, cannot fail to render their condition still more helpless and miserable. Such an effort ought, therefore, to be discountenanced by all who sincerely sympathise in the fortunes of this peculiar people, and especially by the political bodies of the Union, as calculated to disturb the harmony of the two Governments, and to endanger the safety of the many blessings which they enable us to enjoy.

As connected with the subject of this inquiry, I beg leave to refer to the accompanying letter from the Secretary of War, enclosing the orders which proceeded from that Department, and a letter from the Governor of Georgia.

ANDREW JACKSON.

DEPARTMENT OF WAR, *February 21, 1831.*

SIR: In reply to your direction, to be informed of the course which has been pursued at this Department to enforce the provisions of the act of March, 1802, regulating trade and intercourse with the Indians, I have the honor to state:

During last year, frequent complaints were made, that persons from Georgia, and other States, had entered upon the lands of the Cherokee Indians, and were digging for gold. The prospect of gain from the pursuit had drawn many to the country. Riots had taken place, and serious disturbances were threatened and feared. To prevent them, a detachment of troops was ordered into the Indian country, under and in pursuance of the act of

1802, as will appear by orders to the commanding officer stationed at fort Mitchell, hereto appended, marked 1, 2, 3.

On the 8th of November last, another order issued, directing the troops to retire from the country of the Cherokee Indians, and to resume their position again at their former encampment. (See order marked 4.)

Within a day or two after this order was issued, information was officially communicated by the Governor of Georgia, that the Legislature being in session, had entered upon the consideration of this subject, and that the law of Georgia would be extended over the Indian country. His letter is annexed, marked A.

The opinion entertained by you being, that the United States cannot rightfully interfere within a State where the laws are extended, any application to place troops within Georgia, on account of the act of 1802, must, for the future, be disregarded.

Very respectfully,

J. H. EATON.

The PRESIDENT of the United States.

No. 1.

HEAD QUARTERS OF THE ARMY,
Washington, 20th March, 1830.

SIR: I transmit to you, herewith annexed, a copy of instructions, dated the 16th of March, 1830, which I have received from the War Department, concerning the intruders upon the lands of the Cherokees.

You are charged with the execution of the intentions of the Government, as expressed in said instructions; and, taking them for your guidance, you will perform every thing directed therein. It is deemed unnecessary to be more particular in regard to that part of the instructions which relates to the Indians and intruders; but as it respects the troops, it is desirable that two companies of the 4th regiment of infantry should be stationed in the Cherokee nation, in conformity with the letter of the Secretary of War, above alluded to, and hereunto annexed, leaving at fort Mitchell the company of artillery, and one company of the 4th regiment of infantry. This is, however, on the presumption that two companies of the 4th regiment of infantry will have arrived in time to admit of the arrangement. You will be pleased to acknowledge the receipt of this letter, and, as often as any thing of importance occurs, you will communicate the same to me, in order that I may lay the same before the Secretary of War.

I have the honor to be, sir,

Your most obedient servant,

ALEXANDER MACOMB,

Major General commanding the Army.

Bvt. Brig. Gen. BROOKE,

Or officer commanding the troops of the
United States at fort Mitchell, Alabama.

DEPARTMENT OF WAR,

November 16, 1830.

SIR: The President of the United States directs that you instruct the commanding officer at fort Mitchell to remove the intruders from the lands of the Cherokees. The agent, Colonel Montgomery, will furnish him with a list of those who are not to be interfered with. Persons who are entitled to live in the nation by virtue of any Indian law or regulation, who are married there, will not be interrupted. Those who have permits from the agents, and those who are seated on lands from which, in pursuance of treaties, the Indians have removed, and which have been valued by commissions for payment by the Government, he will not interfere with. All others will be notified to remove beyond the lines of the Cherokee Indians; and, after reasonable notice, the commanding officer will proceed to rase their houses and destroy their fences, that the laws of the country may be faithfully administered, intrusion prevented, and quiet preserved.

Having executed this order, he will assume a position at some healthful point, and occupy it with two companies, to prevent intrusions. The most eligible may be somewhere near the dividing ridge which General Coffee has fixed as the boundary to the south between the Creeks and Cherokees. The agent is furnished with a map, showing the boundary. In selecting a position, regard must be had to health and good water, and to the object on account of which the troops are sent—the preventing intrusion.

He will issue notice to the Indians living south of this established line by General Coffee, to remove north of it; but will use no violence towards them, until he shall report his proceedings to the Department, and obtain further instructions.

Very respectfully,

J. H. EATON.

Major General A. MACOMB.

 No. 2.

DEPARTMENT OF WAR,

March 17, 1830.

SIR: An order was yesterday directed to you, concerning intrusions on the Cherokee lands. It is hoped that your appearance with the troops may impress upon the intruders the necessity of retiring, and thereby save you from a resort to forcible measures. The President would have you practice forbearance, and by that means effect peaceably, if it can be done, a removal of the settlers, and only to pursue the orders of rasing their houses, and destroying their fences; when every thing of peaceable effort has failed. If a course of violence shall be rendered unavoidable through obstinacy of the settlers, the better course for you will be, to proceed to operate first upon some small and detached settlement, and, having acted, to wait a little while for the information to spread, and the example to become effected. To proceed directly and generally against any numerous and strong settlement might wake up an excitement, which would perhaps operate prejudicially.

It is desirable, therefore, that, in executing the order directed to you, an exercise of prudence, caution, and sound judgment be constantly regarded. Every confidence is reposed in your discretion, that, in performing this unpleasant duty, it will be done in a way to avoid, as much as possible, any strong excitement.

Very respectfully,
JOHN H. EATON.

Major P. WAGER,
Fort Mitchell, Alabama.

No. 3.

DEPARTMENT OF WAR,
17th March, 1830.

Sir: You will proceed without delay to make out a list of those persons within the Cherokee nation who have settled upon lands which the Indians, under treaties made with the United States, have abandoned, and which have been valued by commissioners appointed by the Government. These it is not now contemplated to interrupt, and the commanding officer from fort Mitchell must be apprised of their names.

You will make a list, too, of those who rightfully may remain in the nation, whether under any legal sanction from yourself, or by the regulations and rules of the Indians. White men having Indian families will not be removed, unless their deportment and character be such, in your opinion, as to render it necessary.

The commanding officer from fort Mitchell is ordered with a detachment of troops into the Cherokee nation, where he is directed to remain. Soon as you shall be advised of his approach to the southern boundary of the Cherokee nation, you will forward by the express to him the information directed to be given in this letter, also the map which was two days ago sent to you, together with the enclosed order.

Very respectfully,
JOHN H. EATON.

To Col. HUGH MONTGOMERY,
Cherokee Agent, &c.

No. 4.

HEAD QUARTERS OF THE ARMY,
Washington, 8th November, 1830.

Sir: The purposes for which the troops were ordered into the Cherokee nation having in a great measure been answered, the Secretary of War deems it advisable, upon the approach of winter, that you retire to some position where the troops can be comfortably accommodated, and where they will be in striking distance, to meet any contingency that may arise out of our Indian relations, and which cannot at this time be perceived. It is hoped, however, that no circumstance will occur which will render it necessary again to employ the troops among the Cherokees, particularly as the

Legislature of Georgia, now in session, will doubtless take the proper and necessary steps to preserve tranquillity along the Indian borders. You will, therefore, with the detachment of the 4th regiment of infantry, retire upon fort Mitchell; the artillery, with the exception of Captain Baden's company, now at fort Mitchell, will return to their respective stations, viz: the men belonging to Lieutenant Colonel Fanning's company to Augusta arsenal, Captain Legate's company to Charleston, and Captain Taylor's to Savannah.

I have the honor to be, Sir,

Your obedient servant,

ALEX. MACOMB,

Maj. Gen. commanding the Army.

Brevet Major P. WAGER, *4th reg't of Infantry,*

Commanding the troops in the Cherokee nation.

A.

EXECUTIVE DEPARTMENT,

Milledgeville, October 29, 1830.

SIR: By an act of the Legislature of Georgia, passed at its last session, all the Cherokee territory, and the persons occupying it, were subjected to the ordinary jurisdiction of the State after the first of June then next ensuing. This act has gone into operation. The acknowledgment by the President of the right of the State to pass such an act renders it unnecessary to say anything in its justification. The object of this letter is to request the President that the United States' troops may be withdrawn from the Indian territory within Georgia. The enforcement of the non-intercourse law within the limits of the State is considered inconsistent with the right of jurisdiction which is now exercised by its authorities, and must, if continued, lead to difficulties between the officers of the United States and State Governments, which it is very desirable should be avoided. No doubt is entertained that the object of the President in ordering the United States' troops into the Cherokee territory, was the preservation of the peace of the Union. The motive is duly appreciated. The Legislature of this State is now in session. The special object of its meeting is the enforcement of the laws of the State within the Cherokee country, and the punishment of intrusion into it by persons searching for gold. Its powers are amply sufficient for that purpose. As it is expected that the law for the punishment of trespassers upon the public lands will go into operation within a few days, the President is, therefore, requested to withdraw the troops as soon as it can be conveniently done.

Information has been received at this Department that the digging for gold is still carried on in various parts of the Cherokee territory, and that the extent of country containing mines is so great that it is wholly impossible to prevent it by the use of military force alone. It is said that the Indians are even more extensively employed in taking gold than before the arrival of the troops. This proceeds from their residence within the country, intimate acquaintance with it, and other means of avoiding the operation of the troops. The fear of the whites had restrained them previously.

The President is assured that, whatever measures may be adopted by the State of Georgia in relation to the Cherokees, the strongest desire will be felt to make them accord with the policy which has been adopted by the present administration of the General Government, upon the same subject.

Very respectfully, yours, &c.,

GEORGE R. GILMER.

To the PRESIDENT of the *United States*.

WAR DEPARTMENT,

September 5, 1814.

SIR: Your letter of August 10th has been received.

The avowed objects of the enemy, and the recent outrages of all principles of civilized warfare, warrant a belief and expectation that they will make their devastations as extensive as their means will enable them.

The writer of the enclosed copy of a communication without signature is known, and is entitled to credit.

Your most prompt attention and vigorous operations will be required in the lower country. All the friendly Indians should be organised, and prepared to co-operate with your other forces. There appears to be some dissatisfaction among the Choctaws: their friendship and services should be secured without delay. The friendly Indians must be fed and paid, and made to fight, when and where their services may be required.

It is desirable that you should repair to New Orleans as soon as your arrangements can be accomplished in the other parts of the district, unless circumstances should render another point more eligible.

I have, &c. &c.

JAMES MONROE.

To General ANDREW JACKSON.