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Memorial of the principal chief and delegates of the Cherokee Nation of Indians, remonstrating against a territorial form of government, legislative jurisdiction of Cong., the abrogation of existing treaties and the burden of government taxation without representation, and in favor of the payment by the United States of all just obligations to said nation.

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MEMORIAL

OF THE

PRINCIPAL CHIEF AND DELEGATES OF THE CHEROKEE NATION OF INDIANS,

REMONSTRATING AGAINST

A territorial form of government, legislative jurisdiction of Congress, the abrogation of existing treaties and the burden of government taxation without representation, and in favor of the payment by the United States of all just obligations to said nation.

MARCH 14, 1870.—Referred to the Committee on Indian Affairs and ordered to be printed.

APPEAL OF THE CHEROKEE DELEGATION.

SENATORS: We approach you with diffidence and awe. We have nothing but the moral power of truth to sustain us. As delegates of our nation we fully realize the great, and we may with truth say appalling responsibility resting upon us. We have endeavored to discharge our duty with justice to our people, honor to ourselves, and decorousness to the United States. The difficulties surrounding us are indeed of fearful moment. We appreciate and think we comprehend them all, and we must meet them as men and representatives of our nation. Our individuality, however, is absorbed in our representative character. We speak to you in the name of, and on behalf of, those who sent us here to transact their business, and we hope to be able to make such a report of our stewardship as will be just and impartial.

Great, wealthy, and powerful monopolies are arrayed against us; the press is closed to our cause, and but a few minutes are allowed us to explain it, although we are a party equal in interest. The only possible medium through which to reach the understanding is by the publication of pamphlets, and these we fear are not read, except in a few instances. Prejudice is stimulated against the Indians as a race, because a comparatively few uncivilized ones are guilty of atrocious crimes, deserving the severest punishment, crimes equally committed by the whites, and equally revolting and disgraceful to all, whilst those committed against them receive no publicity, or if spoken of are denied. Even among ourselves, our women have often been outraged by whites. We could, if necessary, detail instances shocking to humanity, but we forbear. Crimes, alas, are too common among all races. Your presses teem with accounts of them among your own citizens, but no just man thinks of judging all by the acts of a few. Everywhere the guilty too often go unpunished. We have chosen to bear the offenses committed

against us in silence, because we knew the perpetrators could be brought to justice, and that if we attempted it, our people would be sufferers. Excitement would be engendered against them, and the cry for vengeance and blood would be resounded far and near. We thought it better to bear these ills than to have others come upon us.

In Congress we have no one to speak directly for us further than we are required by the demand of moral duty, and claim no right to have. We, therefore, senators, rely upon your high sense of justice and magnanimity for our protection, and we feel confident that will be a sufficient shield.

The manner in which we are approached is as artful as it is unjust. The following are some of the devices resorted to for our demoralization and ultimate overthrow:

First. To place us under a territorial government.

Second. To abrogate our treaties.

Third. To refuse to pay us our just demands.

Fourth. To declare us citizens of the United States and subject to legislative jurisdiction.

Fifth. To make it appear we have no title to our lands which the government of the United States is bound to respect.

Sixth. That we are civilized and wealthy, and have no need for money the government owes us.

Seventh. Then, again, that we are savages and unfit to govern ourselves.

Eighth. That whether civilized or savage, wards or independents, we have no rights which the government is bound to respect; and hence those we have should be taken from us, and those we are entitled to should be withheld.

Ninth. That the tax-gatherer should be sent into our country to carry off our substance for the support of a government in which we have no representation, and are entitled to none, thus compelling our people to be taxed for the support of two governments, their own and yours.

All these various movements spring from a common source and lead to a common end—the extinguishment of our land titles. If this could be consummated the United States will, of course, come into possession of our property. If this were not the object aimed at by gentlemen we apprehend that they would not be much concerned about a few Indians maintaining in the republic the status which they have always occupied, and which has been so often solemnly guaranteed to them. Railroad combinations, land speculators, and those who hang upon the frontiers to seize whatever they can, are stimulating hostility to the Indians, and are at the bottom of the movements against them. We speak plainly because we do not wish to be misunderstood. The time seems to have arrived when the greatest efforts are to be made to break down the integrity of the government, ignore its pledges, and rupture our present relations with it. It is well known that while our political status, accorded to us both before and since the adoption of the Constitution, is recognized, our lands are beyond the grasp of speculators. Hence, the multiplicity of new lights and new theories in relation to Indian policy.

Railroad men represent that we are opposed to progress. We answer that we have progressed as fast as any other people ever did on earth and hope to continue to do so, if not disturbed. Railroad gentlemen also say we are opposed to railroads passing through our country. We have proven by our acts that this is an error. By the treaty of 1836 we granted the right of way through our lands for two roads, one running

north and south, and the other east and west. That right will remain permanent, if the treaty continues valid, by a compliance with its terms on the part of the United States. Our people always adhere to their agreements and obligations. We are instructed, however, by our nation to ask of Congress permission (because, as the question now stands, we have conveyed to the government by treaty the right to authorize the building of the roads,) to build the connecting links through the Indian country ourselves. We are sure this would be better for us, and do not see how it would be worse for others. The railroad companies do not seem to be satisfied with the mere right of way. That does not appear to be the desideratum with them. We want, they say, every alternate section of land for twenty miles on each side of our respective roads, so as to have the region filled with whites, that they may supply us with freight. We cannot agree to this; is our response, because we will do that ourselves. Moreover, we do not want to part with our lands, or have an element introduced among us which would inevitably prove our ruin. Well, is again answered, you must give way to the demands of commerce. We say we are not opposed to trade and commerce; what we want is to protect our homes and be secure. We are a homogeneous people. Our own prosperity, we freely acknowledge, depends in a great measure upon yours. We hold, however, that our ruin is not essential to your advancement. You have possessions large enough for all your citizens, and we claim that ours should not be intruded on. They are the last we can ever have on the American continent, for all the balance is owned by somebody else; and ours have been guaranteed to us and our descendents forever. Yet railroad men pretend not to see the strength of our title, and do not hesitate to proclaim that they have sufficient power to force their roads through our country on such terms as they please. Perhaps they have, but possibly they may be deceived in this. We beg of them not to outlaw us. If they intend to be reckless of our rights, and seize what we have; if they will not be admonished by lessons of worldly wisdom, they will perhaps be equally unmindful of the higher law. At the risk of incurring their displeasure, however, we call their attention to the words of the Bible, which you placed in our hands, and for which we will ever be grateful: "Thou shalt not covet thy neighbor's house; thou shalt not covet thy neighbor's wife, nor his servant, nor his maid, nor his ox, nor his ass, nor anything that is his."

W. J. Murtagh, esq., of the Washington National Republican, relates the following unwritten incident in the history of the late lamented President Lincoln: He was, he says, present on one occasion when some railroad gentlemen waited on Mr. Lincoln with their attorney to induce him to co-operate with them to secure the building of a railroad through the Indian lands, and also to secure a part of them. Mr. Lincoln listened politely for an hour to the argument, and at its conclusion said, "Are you done?" The answer was affirmative. He then, with a good deal of feeling—more, indeed, than he was in the habit of displaying—replied:

"I have lived on the frontier and among the Indians. I know them well, and I know that whenever a white man proposes to deal with them—however plausible his scheme, and however artfully it may be devised, it means that Indians are to be swindled in the end, and it don't mean anything else. This has been the principal cause of our Indian wars. They own their lands as much as we do ours, and they have been solemnly guaranteed by the government their peaceful enjoyment, and I want to say to you that as long as I am President and their

trustee you shall never disturb them. If you want to **build** a railroad, build it somewhere else, for you shall never have a foot of land belonging to the Indians with my consent."

Great man! and as good as he was great. We are rejoiced to be able to invoke that greatness and goodness in our behalf. **President Grant** we are sure will display toward us the same noble traits of character.

Few and feeble as we are, we hope that the dying echo of our prayers shall not be heard over the graves of our ancestors, and those of our wives and children. If, however, the irrevocable decree has gone forth that we must perish from the face of the earth, and others occupy our homes and our lands, it were mercy that the sooner the decree attempted to be carried into effect the better, that we may know the worst and prepare for it.

The occupants of lands lying along railroad lines in the States are required to surrender them to the owners of said roads, and why should a rule be enforced against us that is not enforced against them? The answer is, we are only Indians. Does the color of our skin deprive us of our legal rights; and because we may not be able to maintain them are they any the less sacred in the eyes of humanity? Are the civilized nations of Indians to be reached by statutory enactments, and the uncivilized ones by violating the laws of mercy?

The present distinguished Secretary of the Interior, in a communication he addressed to the President, which his Excellency fully indorsed and transmitted to Congress a few days ago, says, in speaking of Indian treaties:

"I confess myself unable to see how a more complete obligation on the part of the government of the United States could be created by law." Treaties were made with our ancestors living in Georgia and North Carolina in 1828, and 1835-'36, for their removal west of the river Mississippi. In 1830, a law was passed by Congress to affirm the first and specify the terms on which others might be executed. The rights acquired by these treaties were affirmed by others made in 1846 and 1866. The Cherokees obtained by said treaties not only the right to soil, but it was further guaranteed by the United States, that their lands should be to them "a permanent home—a home that shall never in all future time, be embarrassed by having extended around it and placed over it the jurisdiction of a Territory or State, nor be pressed upon by the extension in any way of any of the limits of any existing Territory or State."

This language would seem to be understood, and to require no argument to enforce it. The lands in Georgia and North Carolina which our ancestors owned and occupied, and from which they were removed, many of them in chains, and drawn away in wagons because they refused to go, were then of great value, and are probably worth to-day from one to two hundred millions of dollars. At that time the lands in the west were of little value; still they were compelled to go to them. They were turned out upon a desolate wild, to begin life anew. Now these lands have in turn been made valuable by our industry and advanced civilization, and are wanted. Where are we to be sent next? **Echo gives the only reply.** We are living upon them, holding them in common. There is an imperative necessity for this. While the more advanced portion of our people are able to manage for themselves, so far the largest part have not yet been sufficiently educated to do it. If they held their farms in severalty, the sharper would soon get them for little or nothing, and then they would be dependents on the balance. Our object is to protect them, and we claim to know our situation and

necessities better than any one knows them for us. What we want is the privilege of working out our own destiny, without being put under the absolute control of another race; as experience has clearly demonstrated, it would result in the demoralization, imbecility, and ruin of the Indians.

We are but too fully sensible that were we ever incorporated into the government of the United States, vastly inferior in numbers and distinguished from you in color and race, we would have no power to protect ourselves or our rights, or even to command decent respect. We would scarcely make a perceptible shadow on the great national political dial for an hour, and then pass away forever. Can you, senators, think it strange that we should refuse to consent to self-immolation? There is a natural instinct in us all which teaches the doctrine of self-preservation as the first law of nature, and something should at least be pardoned to its dictates.

If we can be allowed to go on as we are, we anticipate for our people a bright future. In one generation their progress has been almost incredible. Our country is well supplied with school-houses, meeting-houses, work-shops, court-houses, and other evidences of civilization. We have never asked from the United States eleemosynary contributions, nor are we before you to-day seeking charity—only pleading for our rights.

What are those rights? On the 31st of December, 1838, in compliance with our treaties, the government of the United States issued to us a patent for 13,594,137 acres of land. At that time, the western boundary of the United States was supposed to be the one hundredth degree of west longitude, and by our treaties our lands were to extend to it wherever it might be. The boundary was subsequently ascertained to be the Rio Grande. The treaty of 1846 affirmed our title to the land lying between the one hundredth degree and said river, and bound the government to extend the patent over said lands. The language of assurance in the patent is: "To have and to hold the same, together with all the rights, privileges, and appurtenances thereto belonging, to the said Cherokee nation, forever."

There is a further provision in it, which will also be found in the treaties, that if the Cherokee nation become extinct, or abandon the lands, they shall revert to the United States. This is only declaratory of the doctrine of escheat, and applying it to the Indians; requiring them to assent that the United States should inherit their possessions on the extinction of blood, and that no other nation or people should; yet this language is seized upon as a pretext to show that we have no right to a foot of land which our feet do not immediately press.

Now, senators, having shown our right of soil, we propose to be very brief in summing up our case.

The government wanted a part of our lands to locate other friendly Indians on. In 1866 we entered into a treaty with it that it might do so on all lands lying west of the ninety-sixth degree of west longitude, conditioned that we should first be paid for them; and until we were paid it was expressly provided in the treaty that the Cherokees should retain possession of, and jurisdiction over, said lands. Before there was even an offer to pay us a dollar, the Hon. O. H. Browning, then Secretary of the Interior, in direct violation of the treaty, commenced to settle friendly and unfriendly Indians on them, until now they are generally occupied. We filed in the Interior Department protest after protest against his action, but no attention was paid to them. Seeing no other hope of relief we

asked for another treaty to fix the price that should be paid. The treaty was entered into July 9, 1868. The sum agreed on and in said treaty was \$3,500,000. That sum is only seventeen cents per acre. We have a cash offer now on file in the Indian office of fifty cents per acre for the strip in Kansas containing 768,000 acres. This is not an average of the balance in quality. The offer is made in bulk by actual settlers on it whose agent is here ready to pay \$500,000 down to bind the bargain. The government has recently charged Seminole Indians fifty cents per acre for the lands they now occupy, the land not being better than the average of ours. These facts speak for themselves, and need no comment.

The treaty was not reported on at the last session, nor have we had satisfactory assurance that it will be reported on at this session. We are here as a delegation from our nation at large expense, as we have been before, urging action, but have failed to obtain it. It would seem to be a plain proposition that it is the duty of the government to act on the premises, and not require us to come here from year to year to obtain that which is ours by right. We were told by the honorable chairman of the Committee of Indian Affairs of the Senate some ten days ago that if we would consent to an amendment of the treaty, so as to allow the President to fix the price to be paid for the lands, he (the chairman) had no question that the treaty would be ratified by the Senate. We at once furnished him with an amendment to that effect. We have offered to go further. We have offered to allow commissioners to be selected, (as they were to value the neutral lands of Kansas,) to value the lands embraced in the treaty; and, still further, we have offered to rescind the contract or treaty, take back our lands, lose the time spent in negotiation, pay our own expenses, and not ask the government of the United States for a dollar, if we be allowed to make other sale of them to citizens of the United States only, though we would prefer otherwise, but would consent to this rather than have further trouble. It is certainly clear that we are entitled to the lands or to their value. It is equally clear that as the owners of them, we have a right to something in regard to the price. Our title has not been extinguished for, by the treaty, extinguishment was to follow, and not precede, payment. The price is a matter of agreement between the contracting parties. The government may be strong enough to put us at defiance and pay us anything or nothing, as it pleases. We submit that a Christian nation—especially with a feeble people, cannot thus afford to act, when they are only appealing to it for justice. We do not believe it will make up such a page in its history. Numerically, you are our superiors, but in the light of moral and Christian truth we are your equals—for both of us will be judged by the Divine doctrine: "Do unto others as ye would that others should do unto you."

A bill has been introduced into the Senate, proposing to pay, under severe restrictions, two millions of dollars for the lands taken under the treaty of 1866. That bill was not submitted to us for our consideration or approval, and in various particulars violates that treaty. It is objectionable to us in all its features, and without entering into a discussion of it, we beg, senators, to assure you in the most respectful manner that it will never be accepted by the Cherokee nation, and that if you were to consent to it, it would not only be contrary to our own convictions, but place us in such disgrace with our people at home that we could scarcely have the assurance to return to them.

In conclusion, senators, we beg to say that nothing could have induced

us to refer to the proposed legislation except the fact that it bears directly upon us. In this view of the subject we hope to be considered blameless.

Very respectfully,

LEWIS DOWNING,
Principal Chief Cherokee Nation.
SAMUEL SMITH,
ARCH SCRAPER.
J. P. DAVIS,
C. N. VANN,
W. P. ADAIR,
Cherokee Delegation.