

Documents of United States Indian Policy

Third Edition

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then down the said branch to the forks at the crossing place above Fort Lawrence; then westerly to the portage of the Big Miami, which runs into the Ohio, at the mouth of which branch the fort stood which was taken by the French in one thousand seven hundred and fifty-two; then along the said portage to the Great Miami or Ome river, and down the south-east side of the same to its mouth; thence along the south shore of lake Erie, to the mouth of Cayahoga where it began.

ARTICLE IV. The United States allot all the lands contained within the said lines to the Wiantot and Delaware nations, to live and to hunt on, and to such of the Ottawa nation as now live thereon; saving and reserving for the establishment of trading posts, six miles square at the mouth of Miami or Ome river, and the same at the portage on that branch of the Big Miami which runs into the Ohio, and the same on the lake of Sanduske where the fort formerly stood, and also two miles square on each side of the lower rapids of Sanduske river, which posts and the lands annexed to them, shall be to the use and under the government of the United States.

ARTICLE V. If any citizen of the United States, or other person not being an Indian, shall attempt to settle on any of the lands allotted to the Wiantot and Delaware nations in this treaty, except on the lands reserved to the United States in the preceding article, such person shall forfeit the protection of the United States, and the Indians may punish him as they please.

ARTICLE VI. The Indians who sign this

treaty, as well in behalf of all their tribes as of themselves, do acknowledge the lands east, south and west of the lines described in the third article, so far as the said Indians formerly claimed the same, to belong to the United States; and none of their tribes shall presume to settle upon the same, or any part of it.

ARTICLE VII. The post of Detroit, with a district beginning at the mouth of the river Rosine, on the west end of lake Erie, and running west six miles up the southern bank of the said river, thence northerly and always six miles west of the strait, till it strikes the lake St. Clair, shall be also reserved to the sole use of the United States.

ARTICLE VIII. In the same manner the post of Michilimachenac with its dependencies, and twelve miles square about the same, shall be reserved to the use of the United States.

ARTICLE IX. If any Indian or Indians shall commit a robbery or murder on any citizen of the United States, the tribe to which such offenders may belong, shall be bound to deliver them up at the nearest post, to be punished according to the ordinances of the United States.

ARTICLE X. The Commissioners of the United States, in pursuance of the humane and liberal views of Congress, upon this treaty's being signed, will direct goods to be distributed among the different tribes for their use and comfort. . . .

[Charles J. Kappler, ed., *Indian Affairs: Laws and Treaties*, 2:6-8.]

6. Treaty of Hopewell with the Cherokees

November 28, 1785

The United States signed treaties with the southern tribes at Hopewell, South Carolina, in 1785 and 1786. These treaties fixed boundaries for the Indian country, withdrew protection from white settlers on Indian lands, made arrangement for the punishment of criminals, and provided trade regulations. Typical of these agreements was the treaty with the Cherokees.

Articles concluded at Hopewell, on the Keowee, between Benjamin Hawkins, Andrew Pickens, Joseph Martin, and Laclan McIntosh, Commissioners Plenipotentiary of the United States of America, of the one Part, and the Head-Men and Warriors of all the Cherokees of the other.

The Commissioners Plenipotentiary of the United States, in Congress assembled, give peace to all the Cherokees, and receive them into the favor and protection of the United States of America, on the following conditions:

ARTICLE I. The Head-Men and Warriors of all the Cherokees shall restore all the prisoners, citizens of the United States, or subjects of their allies, to their entire liberty: They shall also restore all the Negroes, and all other property taken during the late war from the citizens, to such person, and at such time and place, as the Commissioners shall appoint.

ARTICLE II. The Commissioners of the United States in Congress assembled, shall restore all the prisoners taken from the Indians, during the late war, to the Head-Men and Warriors of the Cherokees, as early as is practicable.

ARTICLE III. 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 of America, and of no other sovereign whosoever.

ARTICLE IV. [Describes the boundary line between the Indians and the citizens of the United States.]

ARTICLE V. If any citizen of the United States, or other person not being an Indian, shall attempt to settle on any of the lands westward or southward of the said boundary which are hereby allotted to the Indians for their hunting grounds, or having already settled and will not remove from the same within six months after the ratification of this treaty, such person shall forfeit the protection of the United States, and the Indians may punish him or not as they please: Provided nevertheless, That this article shall not extend to the people settled between the fork of French Broad and Holstein rivers, whose particular situation shall be transmitted to the United States in Congress assembled for their decision thereon, which the Indians agree to abide by.

ARTICLE VI. If any Indian or Indians, or person residing among them, or who shall take refuge in their nation, shall commit a robbery, or murder, or other capital crime, on any citizen of the United States, or person under their protection, the nation, or the tribe to which such offender or offenders may belong, shall be bound to deliver him or them up to be punished according to the ordinances of the United States; Provided, that the punishment shall not be greater than

if the robbery or murder, or other capital crime had been committed by a citizen on a citizen.

ARTICLE VII. If any citizen of the United States, or person under their protection, shall commit a robbery or murder, or other capital crime, on any Indian, such offender or offenders shall be punished in the same manner as if the murder or robbery, or other capital crime, had been committed on a citizen of the United States; and the punishment shall be in presence of some of the Cherokees, if any shall attend at the time and place, and that they may have an opportunity so to do, due notice of the time of such intended punishment shall be sent to some one of the tribes.

ARTICLE VIII. It is understood that the punishment of the innocent under the idea of retaliation, is unjust, and shall not be practiced on either side, except where there is a manifest violation of this treaty; and then it shall be preceded first by a demand of justice, and if refused, then by a declaration of hostilities.

ARTICLE IX. For the benefit and comfort of the Indians, and for the prevention of injuries or oppressions on the part of the citizens or Indians, the United States in Congress assembled shall have the sole and exclusive right of regulating the trade with the Indians, and managing all their affairs in such manner as they think proper.

ARTICLE X. Until the pleasure of Congress be known, respecting the ninth article, all traders, citizens of the United States, shall have liberty to go to any of the tribes or towns of the Cherokees to trade with them, and they shall be protected in their persons and property, and kindly treated.

ARTICLE XI. The said Indians shall give notice to the citizens of the United States, of any designs which they may know or suspect to be formed in any neighboring tribe, or by any person whatsoever, against the peace, trade or interest of the United States.

ARTICLE XII. That the Indians may have full confidence in the justice of the United States, respecting their interests, they shall have the right to send a deputy of their choice, whenever they think fit, to Congress.

ARTICLE XIII. The hatchet shall be forever buried, and the peace given by the United States, and friendship re-established between

the said 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.

In witness of all and every thing herein determined, between the United States of

America and all the Cherokees, we, their underwritten Commissioners, by virtue of our full powers, have signed this definitive treaty, and have caused our seals to be hereunto affixed. . . .

[Charles J. Kappler, ed., *Indian Affairs: Laws and Treaties*, 2:8-11.]

7. Ordinance for the Regulation of Indian Affairs

August 7, 1786

An ordinance to govern the Indian trade was approved by the Continental Congress on August 7, 1786. The features it proposed—essentially a licensing system administered by superintendents and agents—were adapted from earlier British practice. This ordinance was never fully effective, but its provisions in modified form became the accepted elements of later laws passed by Congress to regulate trade with the Indian tribes.

Whereas the safety and tranquillity of the frontiers of the United States, do in some measure, depend on the maintaining a good correspondence between their citizens and the several nations of Indians in Amity with them: And whereas the United States in Congress assembled, under the 9th of the Articles of Confederation and perpetual Union, have the sole and exclusive right and power of regulating the trade, and managing all affairs with the Indians not members of any of the states; provided that the legislative right of any state within its own limits be not infringed or violated.

Be it ordained, by the United States Congress assembled, That from and after the passing of this Ordinance, the Indian department be divided into two districts, viz. The *Southern*, which shall comprehend within its limits, all the Nations in the territory of the United States, who reside southward of the river Ohio; and the *Northern*, which shall comprehend all the other Indian Nations within the said territory, and westward of Hudson river: Provided that all councils, treaties, communications and official transactions, between the Superintendent hereafter mentioned for the northern district, and the Indian Nations, be held, transacted and done, at the Outpost occupied by the troops of the United States, in the said district. That a Superintendent be appointed for each of the said districts, who shall continue in office for two Years, unless sooner removed by Congress, and shall reside within or as near the district for which he

allowed to trade with any nation of Indians, within the territory of the United States. That no person, citizen or other, under the penalty of five hundred dollars, shall reside among or trade with any Indian or Indian nation, within the territory of the United States, without a license for that purpose first obtained from the Superintendent of the district, or one of the deputies, who are hereby directed to give such license to every person, who shall produce from the supreme executive of any state, a certificate under the seal of the state, that he is of good character and suitably qualified, and provided for that employment, for which license he shall pay the sum of fifty dollars, to the said superintendent for the use of the United States. That no license to trade with the Indians shall be in force for a longer term than one year; nor shall permits or passports be granted to any other persons than citizens of the United States to travel through the Indians nations, without their having previously made their business known to the superintendent of the district, and received his special approbation. That previous to any person or persons obtaining a license to trade as aforesaid, he or they shall give bond in three thousand dollars to the superintendent of the district, for the use of the United States, for his or their strict adherence to, and observance of such rules and regulations as Congress may, from time to time, establish for the government of the Indian trade. All sums to be received by the said Superintendents, either for licenses or fines, shall be annually accounted for by them

with the board of treasury.

And be it further ordained, That the said superintendants, and the deputies, shall not be engaged, either directly or indirectly, in trade with the Indians, on pain of forfeiting their Offices. . . . And the said Superintendants and deputy superintendents, shall each of them give bond with surety to the board of treasury, in trust for the United States; the superintendants each in the sum of six thousand dollars, and the deputy superintendents each in the sum of three thousand dollars, for the faithful discharge of the duties of their office.

And be it further ordained, That all fines and forfeitures which may be incurred by contravening this ordinance, shall be sued for and recovered before any court of record within the United States, the one moiety thereof to the use of him or them who may prosecute therefor, and the other moiety to the use of the United States. And the said Superintendants shall have power, and hereby are authorized, by force to restrain therefrom, all persons who shall attempt an intercourse with the said Indians without a license therefor, obtained as aforesaid.

And be it further ordained, That in all cases where transactions with any nation or tribe of Indians shall become necessary to the purposes of this ordinance, which cannot be done without interfering with the legislative rights of a State, the Superintendent in whose district the same shall happen, shall act in conjunction with the authority of such State.

[*Journals of the Continental Congress*, 3:1:490-93.]

8. Northwest Ordinance

July 13, 1787

The legislation which established the Northwest Territory, thus inaugurating the policy of organizing and governing the national domain west of the Appalachians, included a firm statement of good faith and justice in dealing with the Indians.

. . . Article the Third. Religion, Morality and knowledge being necessary to good government and the happiness of mankind, Schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians, their lands and property shall never be taken from them without their consent; and in their property, rights and liberty, they never shall be invaded

or disturbed, unless in just and lawful wars authorised by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them. . . .

[*Journals of the Continental Congress*, 3:2:340-41.]

lands unless the same shall have been fairly purchased of the said Indians shall be warned at their peril to depart previously to a day to be affixed.

That in order to carry efficiently into effect the determinations of Congress the commanding officer of the troops on the Ohio should be directed to make himself acquainted of the best routes by which a body of three hundred men could be transported most easily and expeditiously to Chota on the Tennessee river, and report the same to the secretary at war.

That in case the Proclamation of Congress should be attended with no effect that the said commanding officer should be directed to move as early in the spring of the next year as the season should admit with a body of three hundred troops to Chota and there to act according to the special instructions he shall receive from the

Secretary at War . . .

Your Secretary begs leave to observe that he is utterly at a loss to devise any other mode of correcting effectually the evils specified than the one herein proposed. That he conceives it of the highest importance to the peace of the frontiers that all the Indian tribes should rely with security on the treaties they have made or shall make with the United States. That unless this shall be the case the powerful tribes of the Creeks Choctaws and Chickesaws will be able to keep the frontiers of the southern states constantly embroiled with hostilities, and that all the other tribes will have good grounds not only according to their own opinions but according to the impartial judgements of the civilized part of the human race for waging perpetual war against the citizens of the United States. . . .

[*Journals of the Continental Congress*, 34:342-44.]

11. Report of Henry Knox on the Northwestern Indians

June 15, 1789

The disturbances between whites and Indians along the Wabash River created a crisis in Indian affairs. Secretary of War Henry Knox urged a just and humane policy which would recognize Indian rights to the soil, reject the principle of conquest, and compensate the Indians for lands ceded by them.

. . . . In examining the question how the disturbances on the frontiers are to be quieted, two modes present themselves, by which the object might perhaps be effected; the first of which is by raising an army, and extirpating the refractory tribes entirely, or 2dly by forming treaties of peace with them, in which their rights and limits should be explicitly defined, and the treaties observed on the part of the United States with the most rigid justice, by punishing the whites, who should violate the same.

In considering the first mode, an inquiry would arise, whether, under the existing circumstances of affairs, the United States have a clear right, consistently with the principles of justice and the laws of nature, to proceed to the destruction or expulsion of the savages, on the Wabash, supposing the force for that object easily attainable.

It is presumable, that a nation solicitous of establishing its character on the broad basis of justice, would not only hesitate at, but

could not be undertaken with a probability of success, with less than an army of 2,500 men. The regular troops of the United States on the frontiers, are less than six hundred; of that number, not more than four hundred could be collected from the posts for the purpose of the expedition. To raise, pay, feed, arm, and equip 1900 additional men, with their necessary officers for six months, and to provide every thing in the hospital and quartermaster's line, would require the sum of 200,000 dollars; a sum far exceeding the ability of the United States to advance, consistently with a due regard to other indispensable objects.

Were the representations of the people of the frontiers (who have imbibed the strongest prejudices against the Indians, perhaps in consequence of the murders of their dearest friends and connexions) only to be regarded, the circumstances before stated, would not appear conclusive—an expedition, however inadequate, must be undertaken.

But when the impartial mind of the great public sits in judgment, it is necessary that the cause of the ignorant Indians should be heard as well as those who are more fortunately circumstanced. It well becomes the public to inquire before it punishes; to be influenced by reason, and the nature of things, and not by its resentments.

It would be found, on examination, that both policy and justice unite in dictating the attempt of treating with the Wabash Indians: for it would be unjust, in the present confused state of injuries, to make war on those tribes without having previously invited them to a treaty, in order amicably to adjust all differences. If they should afterwards persist in their depredations, the United States may with propriety inflict such punishment as they shall think proper . . .

The time has arrived, when it is highly expedient that a liberal system of justice should be adopted for the various Indian tribes within the limits of the United States.

By having recourse to the several Indian treaties, made by the authority of Congress, since the conclusion of the war with Great Britain, excepting those made January 1789, at fort Harmar, it would appear, that Congress were of opinion, that the Treaty of Peace, of 1783, absolutely invested them with the fee of all the Indian lands within the limits of the United States; that they had the right to assign, or retain such portions as they should judge proper.

But it is manifest, from the representations of the confederated Indians at the Huron village, in December, 1786, that they entertained a different opinion, and that they were the only rightful proprietors of the soil; and it appears by the resolve of the 2d of July, 1788, that Congress so far conformed to the idea, as to appropriate a sum of money solely to the purpose of extinguishing the Indian claims to lands they had ceded to the United States, and for obtaining regular conveyances of the same. This object was accordingly accomplished at the treaty of fort Harmar, in January, 1789.

The principle of the Indian right to the lands they possess being thus conceded, the dignity and interest of the nation will be advanced by making it the basis of the future administration of justice towards the Indian tribes. . . .

As the settlements of the whites shall approach near to the Indian boundaries established by treaties, the game will be diminished, and the lands being valuable to the Indians only as hunting grounds, they will be willing to sell further tracts for small considerations. By the expiration, therefore, of the above period, it is most probable that the Indians will, by the invariable operation of the causes which have hitherto existed in their intercourse with the whites, be reduced to a very small number. . . .

[*American State Papers: Indian Affairs*, 1:13-14.]

12. Establishment of the War Department

August 7, 1789

When the First Congress under the Constitution established the War Department, it placed Indian affairs under its jurisdiction, where they remained until the establishment of the Interior Department in 1849.

An Act to establish an Executive Department, to be denominated the Department of War.

SECTION 1. *Be it enacted* . . . , That there shall be an executive department to be denominated the Department of War; and that there shall be a principal officer therein, to be called the Secretary for the Department of War, who shall perform and execute such duties as shall from time to time be enjoined on, or entrusted to him by the President of the United States, agreeably to the Constitution, relative to military commissions, or to the land or naval forces, ships, or warlike

13. Trade and Intercourse Act
July 22, 1790

Unrest on the frontiers threatened the peace of the young nation, and President Washington and Secretary of War Knox called on Congress to provide legislation to prevent further outrages. Congress replied in July 1790 with the first of a series of laws "to regulate trade and intercourse with the Indian tribes." These laws, which were originally designed to implement the treaties and enforce them against obstreperous whites, gradually came to embody the basic features of federal Indian policy.

An Act to regulate trade and intercourse with the Indian tribes.

SECTION 1. *Be it enacted* . . . , That no person shall be permitted to carry on any trade or intercourse with the Indian tribes, without a license for that purpose under the hand and seal of the superintendent of the department, or of such other person as the President of the United States shall appoint for that purpose; which superintendent, or other person so appointed, shall, on application, issue such license to any proper person, who shall enter into bond with one or more sureties, approved of by the superintendent, or person issuing such license, or by the President of the United States, in the penal sum of one thousand dollars, payable to the President of the United States for the time being, for the use of the United States, conditioned for the true and faithful observance of such rules, regulations and restrictions, as now are, or hereafter shall be made for the government of trade and intercourse with the Indian tribes. The said superintendents, and persons by them licensed as aforesaid, shall be governed in all things touching the said trade and intercourse, by such rules and regulations as

person who shall attempt to trade with the Indian tribes, or be found in the Indian country with such merchandise in his possession as are usually vended to the Indians, without a license first had and obtained, as in this act prescribed, and being thereof convicted in any court proper to try the same, shall forfeit all the merchandise so offered for sale to the Indian tribes, or so found in the Indian country, which forfeiture shall be one half to the benefit of the person prosecuting, and the other half to the benefit of the United States.

SEC. 4. *And be it enacted and declared*, That no sale of lands made by any Indians, or any nation or tribe of Indians within the United States, shall be valid to any person or persons, or to any state, whether having the right of pre-emption to such lands or not, unless the same shall be made and duly executed at some public treaty, held under the authority of the United States.

SEC. 5. *And be it further enacted*, That if any citizen or inhabitant of the United States, or of either of the territorial districts of the United States, shall go into any town, settlement or territory belonging to any nation or tribe of Indians, and shall there commit any crime upon, or trespass against, the person or property of any peaceable and friendly Indian or Indians, which, if committed within the jurisdiction of any state, or within the juris-

diction of either of the said districts, against a citizen or white inhabitant thereof, would be punishable by the laws of such state or district, such offender or offenders shall be subject to the same punishment, and shall be proceeded against in the same manner as if the offence had been committed within the jurisdiction of the state or district to which he or they may belong, against a citizen or white inhabitant thereof.

SEC. 6. *And be it further enacted*, That for any of the crimes or offences aforesaid, the like proceedings shall be had for apprehending, imprisoning or bailing the offender, as the case may be, and for recognizing the witnesses for their appearance to testify in the case, and where the offender shall be committed, or the witnesses shall be in a district other than that in which the offence is to be tried, for the removal of the offender and the witnesses or either of them, as the case may be, to the district in which the trial is to be had, as by the act to establish the judicial courts of the United States, are directed for any crimes or offences against the United States.

SEC. 7. *And be it further enacted*, That this act shall be in force for the term of two years, and from thence to the end of the next session of Congress, and no longer.

[*U.S. Statutes at Large*, 1:137-38.]

14. President Washington's Third Annual Message
October 25, 1791

President Washington carried his concern for a just Indian policy to Congress in his annual messages. In 1791 he outlined the essential elements of a policy to "advance the happiness of the Indians and to attach them firmly to the United States."

. . . It is sincerely to be desired that all need of coercion in future may cease and that an intimate intercourse may succeed, calculated to advance the happiness of the Indians and to attach them firmly to the United States.

In order to this it seems necessary—
That they should experience the benefits of an impartial dispensation of justice.

That the mode of alienating their lands, the main source of discontent and war, should be so defined and regulated as to obviate imposition and as far as may be practicable controversy concerning the reality and extent

of the alienations which are made.
That commerce with them should be promoted under regulations tending to secure an equitable deportment toward them, and that such rational experiments should be made for imparting to them the blessings of civilization as may from time to time suit their condition.

That the Executive of the United States should be enabled to employ the means to which the Indians have been long accustomed for uniting their immediate interests with the preservation of peace.

And that efficacious provision should be

made for inflicting adequate penalties upon all those who, by violating their rights, shall infringe the treaties and endanger the peace of the Union.

A system corresponding with the mild principles of religion and philanthropy toward an unenlightened race of men, whose

[James D. Richardson, comp., *Messages and Papers of the Presidents*, 1:96-97.]

15. President Washington on Government Trading Houses

December 3, 1793

Washington repeatedly stressed the importance of properly regulated trade with the Indians. In his Fifth Annual Message to Congress he suggested that the United States government itself should enter the trade, a recommendation later incorporated in the factory system.

... After they [Congress] shall have provided for the present emergency, it will merit their most serious labors to render tranquility with the savages permanent by creating ties of interest. Next to a rigorous execution of justice on the violators of peace, the establishment of commerce with the Indian nations in behalf of the United States is most likely to conciliate their attachment. But it ought to be conducted without fraud, without extortion, with constant and plentiful supplies, with a ready market for the

commodities of the Indians and a stated price for what they give in payment and receive in exchange. Individuals will not pursue such a traffic unless they be allured by the hope of profit; but it will be enough for the United States to be reimbursed only. Should this recommendation accord with the opinion of Congress, they will recollect that it can not be accomplished by any means yet in the hands of the Executive. . . .

[James D. Richardson, comp., *Messages and Papers of the Presidents*, 1:133.]

16. Establishment of Government Trading Houses

April 18, 1796

Washington's proposal for government trading houses was accepted as a trial measure in 1795, and in 1796 Congress established a system of Indian trading houses, which would provide "liberal trade with the several Indian nations." This so-called factory system was extended periodically until it was abolished in 1822.

An Act for establishing Trading Houses with the Indian Tribes.

SECTION 1. *Be it enacted . . .* That it shall be lawful for the President of the United States, to establish trading houses at such posts and places on the western and southern frontiers, or in the Indian country, as he shall judge most convenient for the purpose of carrying on a liberal trade with the several Indian nations, within the limits of the United States.

SEC. 2. *And be it further enacted*, That the President be authorized to appoint an agent for each trading house established,

agents, their clerks, or other persons employed by them, shall not be, directly or indirectly, concerned or interested in carrying on the business of trade or commerce, on their own, or any other than the public account, or take, or apply to his or their own use, any emolument or gain for negotiating or transacting any business or trade, during their agency or employment, other than is provided by this act. . . .

SEC. 4. *And be it further enacted*, That the prices of the goods supplied to, and to be paid for by the Indians, shall be regulated in such manner, that the capital stock furnished by the United States may not be diminished.

SEC. 5. *Be it further enacted*, That during the continuance of this act, the President of the United States be, and he is hereby authorized to draw annually from the treasury of the United States, a sum not exceeding eight thousand dollars, to be applied, under his direction, for the purpose of paying the agents and clerks; which agents shall be allowed to

draw out of the public supplies, two rations each, and each clerk one ration per day.

SEC. 6. *And be it further enacted*, That one hundred and fifty thousand dollars, exclusive of the allowances to agents and clerks, be and they are hereby appropriated for the purpose of carrying on trade and intercourse with the Indian nations, in the manner aforementioned, to be paid out of any monies appropriated in the treasury of the United States.

SEC. 7. *And be it further enacted*, That if any agent or agents, their clerks, or other persons employed by them, shall purchase, or receive of any Indian, in the way of trade or barter, a gun or other article commonly used in hunting; any instrument of husbandry, or cooking utensil, of the kind usually obtained by Indians in their intercourse with white people; any article of clothing (excepting skins or furs) he or they shall, respectively, forfeit the sum of one hundred dollars for each offence. . . .

[*U.S. Statutes at Large*, 1:452-53.]

17. Trade and Intercourse Act

March 30, 1802

The temporary trade and intercourse acts passed in 1790, 1796, and 1799 were replaced in 1802 by a more permanent measure, which was largely a restatement of the earlier laws. With occasional additions it remained in force as the basic law governing Indian relations until it was replaced by a new codification of Indian policy in 1834.

An Act to regulate trade and intercourse with the Indians tribes, and to preserve peace on the frontiers.

Be it enacted . . . That the following boundary line, established by treaty between the United States and various Indian tribes, shall be clearly ascertained, and distinctly marked in all such places as the President of the United States shall deem necessary, and in such manner as he shall direct, to wit: [The boundary is described in detail.] . . . *Provided* always, that if the boundary line between the said Indian tribes and the United States shall, at any time hereafter, be varied, by any treaty which shall be made between the said Indian tribes and the United States, then all the provisions contained in this act shall be construed to apply to the said line so to be varied, in the same manner as said provisions

apply, by force of this act, to the boundary line herein before recited.

SEC. 2. *And be it further enacted*, That if any citizen of, or other person resident in, the United States, or either of the territorial districts of the United States, shall cross over, or go within the said boundary line, to hunt, or in any wise destroy the game; or shall drive, or otherwise convey any stock of horses or cattle to range on any lands allotted or secured by treaty with the United States, to any Indian tribes, he shall forfeit a sum not exceeding one hundred dollars, or be imprisoned not exceeding six months.

SEC. 3. *And be it further enacted*, That if any such citizen or other person, shall go into any country which is allotted, or secured by treaty as aforesaid, to any of the Indian tribes south of the river Ohio, without a passport first had and obtained from the governor of some

one of the United States, or the officer of the troops of the United States, commanding at the nearest post on the frontiers, or such other person as the President of the United States may, from time to time, authorize to grant the same, shall forfeit a sum not exceeding fifty dollars, or be imprisoned not exceeding three months.

Sec. 4. *And be it further enacted*, That if any such citizen, or other person, shall go into any town, settlement or territory, belonging, or secured by treaty with the United States, to any nation or tribe of Indians, and shall there commit robbery, larceny, trespass or other crime, against the person or property of any friendly Indian or Indians, which would be punishable, if committed within the jurisdiction of any state, against a citizen of the United States: or, unauthorized by law, and with a hostile intention, shall be found on any Indian land, such offender shall forfeit a sum not exceeding one hundred dollars, and be imprisoned not exceeding twelve months; and shall also, when property is taken or destroyed, forfeit and pay to such Indian or Indians, to whom the property taken and destroyed belongs, a sum equal to twice the just value of the property so taken or destroyed: and if such offender shall be unable to pay a sum at least equal to the said just value, whatever such payment shall fall short of the said just value, shall be paid out of the treasury of the United States: *Provided nevertheless*, that no such Indian shall be entitled to any payment out of the treasury of the United States, for any such property taken or destroyed, if he, or any of the nation to which he belongs, shall have sought private revenge, or attempted to obtain satisfaction by any force or violence.

Sec. 5. *And be it further enacted*, That if any such citizen, or other person, shall make a settlement on any lands belonging, or secured, or granted by treaty with the United States, to any Indian tribe, or shall survey, or attempt to survey, such lands, or designate any of the boundaries, by marking trees, or otherwise, such offender shall forfeit a sum not exceeding one thousand dollars, and suffer imprisonment, not exceeding twelve months. And it shall, moreover, be lawful for the President of the United States to take such measures, and to employ such military force, as he may judge necessary, to remove

from lands, belonging or secured by treaty, as aforesaid, to any Indian tribe, any such citizen, or other person, who has made, or shall hereafter make, or attempt to make a settlement thereon.

Sec. 6. *And be it further enacted*, That if any such citizen, or other person, shall go into any town, settlement or territory belonging to any nation or tribe of Indians, and shall there commit murder, by killing any Indian or Indians, belonging to any nation or tribe of Indians, in amity with the United States, such offender, on being thereof convicted, shall suffer death.

Sec. 7. *And be it further enacted*, That no such citizen, or other person, shall be permitted to reside at any of the towns, or hunting camps, or any of the Indian tribes as a trader, without a license under the hand and seal of the superintendent of the department, or of such other person as the President of the United States shall authorize to grant licenses for that purpose: which superintendent, or person authorized, shall, on application, issue such license, for a term not exceeding two years, to such trader, who shall enter into bond with one or more sureties, approved of by the superintendent, or person issuing such license, or by the President of the United States, in the penal sum of one thousand dollars, conditioned for the true and faithful observance of such regulations and restrictions, as are, or shall be made for the government of trade and intercourse with the Indian tribes: and the superintendent, or person issuing such license, shall have full power and authority to recall the same, if the person so licensed shall transgress any of the regulations, or restrictions, provided for the government of trade and intercourse with the Indian tribes; and shall put in suit such bonds as he may have taken, on the breach of any condition therein contained.

Sec. 8. *And be it further enacted*, That any such citizen or other person, who shall attempt to reside in any town or hunting camp, of any of the Indian tribes, as a trader, without such license, shall forfeit all the merchandise offered for sale to the Indians, or found in his possession, and shall, moreover, be liable to a fine not exceeding one hundred dollars, and to imprisonment not exceeding thirty days.

Sec. 9. *And be it further enacted*, That if any such citizen, or other person, shall purchase,

or receive of any Indian, in the way of trade or barter, a gun, or other article commonly used in hunting, any instrument of husbandry, or cooking utensil, of the kind usually obtained by the Indians, in their intercourse with white people, or any article of clothing, excepting skins or furs, he shall forfeit a sum not exceeding fifty dollars, and be imprisoned not exceeding thirty days.

Sec. 10. *And be it further enacted*, That no such citizen or other person shall be permitted to purchase any horse of an Indian, or of any white man in the Indian territory, without special license for that purpose; which license, the superintendent, or such other person as the President shall appoint, is hereby authorized to grant, on the same terms, conditions and restrictions, as other licenses are to be granted under this act: and any such person, who shall purchase a horse or horses, under such license, before he exposes such horse or horses for sale, and within fifteen days after they have been brought out of the Indian country, shall make a particular return to the superintendent, or other person, from whom he obtained his license, of every horse purchased by him, as aforesaid; describing such horses, by their colour, height, and other natural or artificial marks, under the penalty contained in their respective bonds. And every such person, purchasing a horse or horses, as aforesaid, in the Indian country, without a special license, shall for every horse thus purchased and brought into any settlement of citizens of the United States, forfeit a sum not exceeding one hundred dollars, and be imprisoned not exceeding thirty days. And every person, who shall purchase a horse, knowing him to be brought out of the Indian territory, by any person or persons, not licensed, as above, to purchase the same, shall forfeit the value of such horse.

Sec. 11. *And be it further enacted*, That no agent, superintendent, or other person authorized to grant a license to trade, or purchase horses, shall have any interest or concern in any trade with the Indians, or in the purchase or sale of any horse to or from any Indian, excepting for and on account of the United States; and any person offending herein, shall forfeit a sum not exceeding one thousand dollars, and be imprisoned not exceeding twelve months.

Sec. 12. *And be it further enacted*, That no

purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian, or nation, or tribe of Indians, within the bounds of the United States, shall be of any validity, in law or equity, unless the same be made by treaty or convention, entered into pursuant to the constitution: and it shall be a misdemeanor in any person, not employed under the authority of the United States, to negotiate such treaty or convention, directly or indirectly, to treat with any such Indian nation, or tribe of Indians, for the title or purchase of any lands by them held or claimed, punishable by fine not exceeding one thousand dollars, and imprisonment not exceeding twelve months: *Provided nevertheless*, that it shall be lawful for the agent or agents of any state, who may be present at any treaty held with Indians under the authority of the United States, in the presence, and with the approbation of the commissioner or commissioners of the United States, appointed to hold the same, to propose to, and adjust with the Indians, the compensation to be made, for their claims to lands within such state, which shall be extinguished by the treaty.

Sec. 13. *And be it further enacted*, That in order to promote civilization among the friendly Indian tribes, and to secure the continuance of their friendship, it shall be lawful for the President of the United States, to cause them to be furnished with useful domestic animals, and implements of husbandry, and with goods or money, as he shall judge proper, and to appoint such persons, from time to time, as temporary agents, to reside among the Indians, as he shall think fit: *Provided*, that the whole amount of such presents, and allowance to such agents, shall not exceed fifteen thousand dollars per annum.

Sec. 14. *And be it further enacted*, That if any Indian or Indians, belonging to any tribe in amity with the United States, shall come over or cross the said boundary line, into any state or territory inhabited by citizens of the United States, and there take, steal or destroy any horse, horses, or other property, belonging to any citizen or inhabitant of the United States, or of either of the territorial districts of the United States, or shall commit any murder, violence or outrage, upon any such citizen or inhabitant, it shall be the duty

of such citizen or inhabitant, his representative, attorney, or agent, to make application to the superintendent, or such other person as the President of the United States shall authorize for that purpose; who, upon being furnished with the necessary documents and proofs, shall, under the direction or instruction of the President of the United States, make application to the nation or tribe, to which such Indian or Indians shall belong, for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction, in a reasonable time, not exceeding twelve months, then it shall be the duty of such superintendent or other person authorized as aforesaid, to make return of his doings to the President of the United States, and forward to him all the documents and proofs in the case, that such further steps may be taken, as shall be proper to obtain satisfaction for the injury: and in the mean time, in respect to the property so taken, stolen or destroyed, the United States guarantee to the party injured, an eventual indemnification: *Provided always*, that if such injured party, his representative, attorney or agent, shall, in any way, violate any of the provisions of this act, by seeking, or attempting to obtain private satisfaction or revenge, by crossing over the line, on any of the Indian lands, he shall forfeit all claim upon the United States, for such indemnification: *And provided also*, that nothing herein contained shall prevent the legal apprehension or arresting, within the limits of any state or district, of any Indian having so offended: *And provided further*, that it shall be lawful for the President of the United States, to deduct such sum or sums, as shall be paid for the property taken, stolen or destroyed by any such Indian, out of the annual stipend, which the United States are bound to pay to the tribe, to which such Indian shall belong.

Sec. 15. [Detailed specification of courts having jurisdiction under the act.]

Sec. 16. *And be it further enacted*, That it shall be lawful for the military force of the United States to apprehend every person who shall, or may be found in the Indian country over and beyond the said boundary line between the United States and the said Indian tribes, in violation of any of the provisions or regulations of this act, and him or them immediately to convey, in the nearest, convenient and safe route, to the civil au-

thority of the United States, in some one of the three next adjoining states or districts, to be proceeded against in due course of law: *Provided*, that no person, apprehended by military force as aforesaid, shall be detained longer than five days after the arrest, and before removal. And all officers and soldiers who may have any such person or persons in custody, shall treat them with all the humanity which the circumstances will possibly permit; and every officer and soldier who shall be guilty of maltreating any such person, while in custody, shall suffer such punishment as a court martial shall direct. . . .

Sec. 17. *And be it further enacted*, That if any person, who shall be charged with a violation of any of the provisions or regulations of this act, shall be found within any of the United States, or either of the territorial districts of the United States, such offender may be there apprehended and brought to trial in the same manner, as if such crime or offence had been committed within such state or district; and it shall be the duty of the military force of the United States, when called upon by the civil magistrate, or any proper officer, or other person duly authorized for that purpose and having a lawful warrant, to aid and assist such magistrate, officer, or other person authorized, as aforesaid, in arresting such offender, and him committing to safe custody, for trial according to law.

Sec. 18. *And be it further enacted*, That the amount of fines, and duration of imprisonment, directed by this act as a punishment for the violation of any of the provisions thereof, shall be ascertained and fixed, not exceeding the limits prescribed, in the discretion of the court, before whom the trial shall be had; and that all fines and forfeitures, which shall accrue under this act, shall be one half to the use of the informant, and the other half to the use of the United States; except where the prosecution shall be first instituted on behalf of the United States; in which case the whole shall be to their use.

Sec. 19. *And be it further enacted*, That nothing in this act shall be construed to prevent any trade or intercourse with Indians living on lands surrounded by settlements of the citizens of the United States, and being within the ordinary jurisdiction of any of the individual states; or the unmolested use of a road from Washington district to

Mero district, or to prevent the citizens of Tennessee from keeping in repair the said road, under the direction or orders of the governor of said state, and of the navigation of the Tennessee river, as reserved and secured by treaty; nor shall this act be construed to prevent any person or persons travelling from Knoxville to Price's settlement, or to the settlement on Obed's river, (so called,) provided they shall travel in the trace or path which is usually travelled, and provided the Indians make no objection; but if the Indians object, the President of the United States is hereby authorized to issue a proclamation, prohibiting all travelling on said traces, or either of them, as the case may be, after which, the penalties of this act shall be incurred by every person travelling or being found on said traces, or either of them, to which the prohibition may apply, within the Indian boundary, without a passport.

18. President Jefferson on Indian Trading Houses
January 18, 1803

Jefferson sent a special message to Congress at the beginning of 1803, in which he urged a continuation of the government trading houses established in the Indian country. His policy of moving the Indians from a hunting economy to an agricultural state was strongly stated in the message.

Gentlemen of the Senate and of the House of Representatives:

As the continuance of the act for establishing trading houses with the Indian tribes will be under the consideration of the Legislature at its present session, I think it my duty to communicate the views which have guided me in the execution of that act, in order that you may decide on the policy of continuing it in the present or any other form, or discontinue it altogether if that shall, on the whole, seem most for the public good.

The Indian tribes residing within the limits of the United States have for a considerable time been growing more and more uneasy at the constant diminution of the territory they occupy, although effected by their own voluntary sales, and the policy has long been gaining strength with them of refusing absolutely all further sale on any conditions, inasmuch that at this time it hazards their friendship and excites dangerous jealousies and perturbations in their minds to make

SEC. 20. *And be it further enacted*, That the President of the United States be, and he is hereby authorized to cause to be clearly ascertained and distinctly marked, in all such places as he shall deem necessary, and in such manner as he shall direct, any other boundary lines between the United States and any Indian tribe, which now are, or hereafter may be established by treaty.

SEC. 21. *And be it further enacted*, That the President of the United States be authorized to take such measures, from time to time, as to him may appear expedient to prevent or restrain the vending or distribution of spirituous liquors among all or any of the said Indian tribes, any thing herein contained to the contrary thereof notwithstanding.

SEC. 22. *And be it further enacted*, That this act shall be in force from the passage thereof. . . .

[*U.S. Statutes at Large*, 2:139-46.]

the number of traders, and the increase of the capital—would add greatly to the control of the Government over the trade. It would be almost impossible to inspect the conduct, and consequently control the actions, of the multitude of traders with small capitals, diffused over the Indian country, and settled at remote and obscure places. The greatest vigilance on the part of the superintendent and his agents would be unequal to the task. By diminishing the number, and bringing each more permanently before the view of the Government, a due inspection and superintendence becomes practicable. . . .

The reasons for fixing the trading establishments are no less strong. By rendering them stationary, and compelling the proprietor to keep books, containing regular entries of all their sales and purchases, important checks will be presented to prevent fraud and exorbitant charges. It will also strongly tend to prevent collision between the traders, and, consequently, the creation of parties among the Indians for or against particular traders—a state of things unfriendly to their interest, and dangerous to the peace of the frontier. Besides, the trading establishments, being fixed, as they will be, in the most advantageous positions, will, in time, become the nucleus of Indian settlements, which, by giving greater density and steadiness to their population, will tend to introduce a division of real property, and thus hasten their ultimate civilization.

. . . . The time seems to have arrived when our policy towards them should undergo an important change. They neither are, in fact, nor ought to be, considered as independent nations. Our views of their interest, and not their own, ought to govern them. By a proper combination of force and persuasion, of punishments and rewards, they ought to be brought within the pales of law and civilization. Left to themselves, they will never reach that desirable condition. Before the slow operation of reason and experience can convince them of its superior advantages, they must be overwhelmed by the mighty torrent of our population. Such small bodies, with savage customs and character, cannot, and ought not, to be permitted to exist in an independent condition in the midst of civilized society. Our laws and manners ought to supersede their present savage manners

and customs. Beginning with those most advanced in civilization, and surrounded by our people, they ought to be made to contract their settlements within reasonable bounds, with a distinct understanding that the United States intend to make no further acquisition of land from them, and that the settlements reserved are intended for their permanent home. The land ought to be divided among families; and the idea of individual property in the soil carefully inculcated. Their annuities would constitute an ample school fund; and education, comprehending as well the common arts of life, as reading, writing, and arithmetic, ought not to be left discretionary with the parents. Those who might not choose to submit, ought to be permitted and aided in forming new settlements at a distance from ours. When sufficiently advanced in civilization, they would be permitted to participate in such civil and political rights as the respective States within whose limits they are situated might safely extend to them. It is only by causing our opinion of their interest to prevail, that they can be civilized and saved from extinction. Under the present policy, they are continually decreasing and degenerating, notwithstanding the Government has, under all of its administrations, been actuated by the most sincere desire to promote their happiness and civilization. The fault has been, not in the want of zeal, but in the mode by which it has been attempted to effect these desirable objects. The Indians are not so situated as to leave it to time and experience to effect their civilization. By selecting prudently the occasion for the change, by establishing a few essential regulations, and by appointing persons to administer them fairly and honestly, our efforts could scarcely fail of success. Nor ought it to be feared that the power would be abused on our part; for, in addition to the dictates of benevolence, we have a strong interest in their civilization. The enmity even of the frontier settlers towards them is caused principally by the imperfection of the present system; and under the one which I have suggested, it will greatly abate, if not entirely subside. The natural humanity and generosity of the American character would no longer be weakened by the disorders and savage cruelty to which our frontiers are now exposed. A deep conviction of the importance of the subject, and a strong

desire to arrest the current of events, which, if permitted to flow in their present channel, must end in the annihilation of those who were once the proprietors of this prosperous

country, must be my apology for this digression. . . .

[*American State Papers: Indian Affairs, 2:182-84.*]

29. Civilization Fund Act

March 3, 1819

The United States government became increasingly concerned with the education of the Indian tribes in contact with white settlements and encouraged the activities of benevolent societies in providing schools for the Indians. Congress in 1819 authorized an annual "civilization fund" to stimulate and promote this work.

An Act making provision for the civilization of the Indian tribes adjoining the frontier settlements.

Be it enacted . . . That for the purpose of providing against the further decline and final extinction of the Indian tribes, adjoining the frontier settlements of the United States, and for introducing among them the habits and arts of civilization, the President of the United States shall be, and he is hereby authorized, in every case where he shall judge improvement in the habits and condition of such Indians practicable, and that the means of instruction can be introduced with their own consent, to employ capable persons of good moral character, to instruct them in the

mode of agriculture suited to their situation; and for teaching their children in reading, writing, and arithmetic, and performing such other duties as may be enjoined, according to such instructions and rules as the President may give and prescribe for the regulation of their conduct, in the discharge of their duties.

SEC. 2. *And be it further enacted,* That the annual sum of ten thousand dollars be, and the same is hereby appropriated, for the purpose of carrying into effect the provisions of this act; and an account of the expenditure of the money, and proceedings in execution of the foregoing provisions, shall be laid annually before Congress.

[*U.S. Statutes at Large, 3:516-17.*]

30. Abolition of the Government Trading Houses

May 6, 1822

The government trading houses or factories suffered economically during the War of 1812 and after the war were attacked by private trading interests. Although strongly supported by such officials as Thomas L. McKenney, superintendent of Indian trade, and Secretary of War John C. Calhoun, the factory system fell under the assault.

An Act to abolish the United States' trading establishment with the Indian tribes.

Be it enacted . . . That the President of the United States shall be, and hereby is, authorized and required to cause the business of the United States' trading-houses among the Indian tribes to be closed, and the accounts of the superintendent of Indian trade, and of the factors and sub-factors, to be settled; and for that purpose, the President is hereby authorized to select, from among the Indian agents, or others, a competent number of

fit and suitable persons, to be and appear at the office of Indian trade in Georgetown, in the District of Columbia, and at each of the trading-houses established among Indian tribes, on or before the third day of June next, or as soon thereafter as can conveniently be done, to demand and receive of and from the superintendent of Indian trade, and of the respective factors and sub-factors, all the goods, wares, merchandise, furs, peltries, evidences of debt, and property and effects of every kind which may be in their power or possession, by virtue of their respective offices,

and justly due and belonging to the United States; and the said agents, selected for the purpose aforesaid, shall be furnished with copies of the latest quarterly returns of the said superintendent, factors, and sub-factors, as rendered by them to the Treasury Department, and copies of any other papers in the said department which will show what is, or ought to be due and coming to the United States, from the said office of Indian trade in Georgetown, and from each of the trading-houses established among Indians. . . .

Sec. 2. *And be it further enacted*, That the goods, wares, and merchandise, which shall be delivered over to the agents of the United States, under the provisions of this act, shall be placed at the disposition of the President of the United States, subject, under his orders, towards satisfying or extinguishing the treaty obligations on the part of the United States, to keep up trading-houses with the Indians; also, towards the payment of annuities due, or to become due, to Indian tribes; also, in making the customary presents to tribes or individuals in amity with the United States; and the surplus, if any, may be sold to the best advantage, under the orders of the President, and the proceeds paid over to the treasury of the United States.

31. Act for Regulating the Indian Trade
May 6, 1822

With the abolition of the government trading houses, the United States fell back on a system of Indian trade carried on only by private individuals and companies. A new law revised the licensing regulations, strengthened the provisions for restricting the liquor trade, set regulations for the distribution of annuities, and created a special superintendent of Indian affairs to reside at Saint Louis.

An Act to amend an act, entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," approved thirtieth March, one thousand eight hundred and two.

Be it enacted . . . That the seventh section of the act, entitled "An act to regulate trade and intercourse with the Indian tribes and to preserve peace on the frontiers," shall be, and the same is hereby, repealed; and from and after the passing of this act, it shall be lawful for the superintendents of Indian affairs in the territories and Indian agents, under the di-

rectors and agents shall return to the Secretary of War, within each year, an abstract of all licenses granted, showing by and to whom, when, and where, granted, with the amount of the bonds and capital employed, to be laid before Congress, at the next session thereof.

Sec. 2. *And be it further enacted*, That it shall and may be lawful for the President of the United States, in execution of the power vested in him by the twenty-first section of the act of the thirtieth of March, one thousand eight hundred and two, aforesaid, to which this is an amendment, to direct Indian agents, governors of territories acting as superintendents of Indian affairs, and military officers, to cause the stores and packages of goods of all traders to be searched, upon suspicion or information that ardent spirits are carried into the Indian countries by said traders in violation of the said twenty-first section of the act to which this is an amendment; and if any ardent spirits shall be so found, all the goods of the said traders shall be forfeited, one half to the use of the informer, the other half to the use of the government, his license cancelled, and bond put in suit.

Sec. 3. *And be it further enacted*, That all purchases for and on account of Indians, for annuities, presents, and otherwise, shall be made by the Indian agents and governors of territories acting as superintendents, within their respective districts; and all persons whatsoever, charged or trusted with the disbursement or application of money, goods, or effects, of any kind, for the benefit of Indians, shall settle their accounts annually, at the War Department, on the first day of September; and copies of the same shall be

laid before Congress at the commencement of the ensuing session, by the proper accounting officers, together with a list of the names of all persons to whom money, goods, or effects, had been delivered within the said year, for the benefit of the Indians, specifying the amount and object for which it was intended, and showing who are delinquent, if any, in forwarding their accounts according to the provisions of this act.

Sec. 4. *And be it further enacted*, That, in all trials about the right of property, in which Indians shall be party on one side and white persons on the other, the burthen of proof shall rest upon the white person, in every case in which the Indian shall make out a presumption of title in himself from the fact of previous possession and ownership.

Sec. 5. *And be it further enacted*, That it shall and may be lawful for the President of the United States, from time to time, to require additional security, and in larger amounts, from all persons charged or trusted, under the laws of the United States, with the disbursement or application of money, goods, or effects, of any kind, for the benefit of the Indians.

Sec. 6. *And be it further enacted*, That the President of the United States, by and with the advice and consent of the Senate, may appoint a superintendent of Indian Affairs, to reside at St. Louis, whose powers shall extend to all Indians frequenting that place, whose salary shall be fifteen hundred dollars per annum; and one agent for tribes within the limits of East and West Florida, with a salary of fifteen hundred dollars.

[U.S. Statutes at Large, 3:682-83.]

32. Johnson and Graham's Lessee v. William McIntosh
1823

The plaintiffs in this case claimed title to land in Illinois on the basis of purchase from the Indians; the defendants, on the basis of a grant from the United States. The Supreme Court decided in favor of the defendant and in so doing discussed the nature of the Indian land title under the United States.

. . . The United States, then, have unequivocally acceded to that great and broad rule by which its civilized inhabitants now hold this country. They hold, and assert in themselves, the title by which it was acquired. They maintain, as all others have maintained, that discovery gave an exclusive right to extinguish the Indian title of occupancy, either by purchase or by conquest; and gave also a right to such a degree of sovereignty, as

the circumstances of the people would allow them to exercise.

The power now possessed by the government of the United States to grant lands, resided, while we were colonies, in the crown, or its grantees. The validity of the titles given by either has never been questioned in our Courts. It has been exercised uniformly over territory in possession of the Indians. The existence of this power must negative the existence of any right which may conflict with, and control it. An absolute title to lands cannot exist, at the same time, in different persons, or in different governments. An absolute, must be an exclusive title, or at least a title which excludes all others not compatible with it. All our institutions recognise the absolute right of occupancy, and recognise the absolute title of the crown to extinguish that right. This is incompatible with an absolute and complete title in the Indians.

We will not enter into the controversy, whether agriculturists, merchants, and manufacturers, have a right, on abstract principles, to expel hunters from the territory they possess, or to contract their limits. Conquest gives a title which the Courts of the conqueror cannot deny, whatever the private and speculative opinions of individuals may be, respecting the original justice of the claim which has been successfully asserted. The British government, which was then our government, and whose rights have passed to the United States, asserted a title to all the lands occupied by Indians, within the chartered limits of the British colonies. It asserted also a limited sovereignty over them, and the exclusive right of extinguishing the title which occupancy gave to them. These claims have been maintained and established as far west as the river Mississippi, by the sword. The title to a vast portion of the lands we now hold, originates in them. It is not for the Courts of this country to question the validity of this title, or to sustain one which is incompatible with it.

Although we do not mean to engage in the defence of those principles which Europeans have applied to Indian title, they may, we think, find some excuse, if not justification, in the character and habits of the people whose rights have been wrested from them.

The title by conquest is acquired and

maintained by force. The conqueror prescribes its limits. Humanity, however, acting on public opinion, has established, as a general rule, that the conquered shall not be wantonly oppressed, and that their condition shall remain as eligible as is compatible with the objects of the conquest. Most usually, they are incorporated with the victorious nation, and become subjects or citizens of the government with which they are connected. The new and old members of the society mingle with each other; the distinction between them is gradually lost, and they make one people. Where this incorporation is practicable, humanity demands, and a wise policy requires, that the rights of the conquered to property should remain unimpaired; that the new subjects should be governed as equitably as the old, and that confidence in their security should gradually banish the painful sense of being separated from their ancient connexions, and united by force to strangers.

When the conquest is complete, and the conquered inhabitants can be blended with the conquerors, or safely governed as a distinct people, public opinion, which not even the conqueror can disregard, imposes these restraints upon him; and he cannot neglect them without injury to his fame, and hazard to his power.

But the tribes of Indians inhabiting this country were fierce savages, whose occupation was war, and whose subsistence was drawn chiefly from the forest. To leave them in possession of their country, was to leave the country a wilderness; to govern them as a distinct people, was impossible, because they were as brave and as high spirited as they were fierce, and were ready to repel by arms every attempt on their independence.

What was the inevitable consequence of this state of things? The Europeans were under the necessity either of abandoning the country, and relinquishing their pompous claims to it, or of enforcing those claims by the sword, and by the adoption of principles adapted to the condition of a people with whom it was impossible to mix, and who could not be governed as a distinct society, or of remaining in their neighbourhood, and exposing themselves and their families to the perpetual hazard of being massacred.

Frequent and bloody wars, in which the whites were not always the aggressors, un-

avoidably ensued. European policy, numbers, and skill, prevailed. As the white population advanced, that of the Indians necessarily receded. The country in the immediate neighbourhood of agriculturists became unfit for them. The game fled into thicker and more unbroken forests, and the Indians followed. The soil, to which the crown originally claimed title, being no longer occupied by its ancient inhabitants, was parcelled out according to the will of the sovereign power, and taken possession of by persons who claimed immediately from the crown, or immediately, through its grantees or deputies.

That law which regulates, and ought to regulate in general, the relations between the conqueror and conquered, was incapable of application to a people under such circumstances. The resort to some new and different rule, better adapted to the actual state of things, was unavoidable. Every rule which can be suggested will be found to be attended with great difficulty.

However extravagant the pretension of converting the discovery of an inhabited country into conquest may appear; if the principle has been asserted in the first instance, and afterwards sustained, if a country has been acquired and held under it; if the property of the great mass of the community originates in it, it becomes the law of the land, and cannot be questioned. So, too, with respect to the concomitant principle, that

the Indian inhabitants are to be considered merely as occupants, to be protected, indeed, while in peace, in the possession of their lands, but to be deemed incapable of transferring the absolute title to others. However this restriction may be opposed to natural right, and to the usages of civilized nations, yet, if it be indispensable to that system under which the country has been settled, and be adapted to the actual condition of the two people, it may, perhaps, be supported by reason, and certainly cannot be rejected by Courts of justice. . . .

It has never been contended, that the Indian title amounted to nothing. Their right of possession has never been questioned. The claim of government extends to the complete ultimate title, charged with this right of possession, and to the exclusive power of acquiring that right. . . .

After bestowing on this subject a degree of attention which was more required by the magnitude of the interest in litigation, and the able and elaborate arguments of the bar, than by its intrinsic difficulty, the Court is decidedly of opinion, that the plaintiffs do not exhibit a title which can be sustained in the Courts of the United States; and that there is no error in the judgment which was rendered against them in the District Court of Illinois.

[8 *Wheaton*, 543, 587-92, 603-5.]

33. Creation of a Bureau of Indian Affairs in the War Department

March 11, 1824

Secretary of War John C. Calhoun, without special congressional authorization, set up a "Bureau of Indian Affairs" within his department and assigned the duties of the office to Thomas L. McKenney. McKenney held the office until dismissed by President Jackson in 1830. Congress confirmed the position, then designated "Commissioner of Indian Affairs," in 1832.

Department of War
March 11th, 1824

Sir: To you are assigned the duties [of] the Bureau of Indian Affairs in this Department, for the faithful performance of which you will be responsible. Mr. Hamilton and Mr. Miller are assigned to you, the former as chief, and the latter as assistant clerk.

You will take charge of the appropriations for annuities, and of the current ex-

penses, and all warrants on the same will be issued on your requisitions on the Secretary of War, taking special care that no requisition be issued, but in cases where the money previously remitted has been satisfactorily accounted for, and on estimates in detail, approved by you, for the sum required. You will receive and examine the accounts and vouchers for the expenditure thereof, and will pass them over to the proper

recommenda-tion for their allow-ance or dis-allowance.

The ordinary correspondence with the superintendents, the agents, and sub-agents, will pass through your Bureau.

I have the honor to be,

Your obedient servant,
J. C. Calhoun

Thos. L. McKenney, Esq.

[House Document no. 146, 19th Cong., 1st sess., serial 138, p. 6.]

34. Authorization of Treaties; Trade Regulations

May 25, 1824

Fur traders on the Missouri River experienced hostility from Indians and demanded government action to protect their interests. Congress authorized the president to make treaties of trade and friendship with the tribes beyond the Mississippi and to provide a military escort for the commissioners. The act also included important provisions regarding the Indian trade, especially the designation of specific sites at which the trade had to be conducted.

An Act to enable the President to hold treaties with certain Indian tribes, and for other purposes.

Be it enacted . . . That the sum of ten thousand dollars be, and the same hereby is, appropriated, to defray the expenses of making treaties of trade and friendship with the Indian tribes beyond the Mississippi: and that the said sum shall be paid out of any money in the treasury not otherwise appropriated.

Sec. 2. *And be it further enacted*, That, for the purpose of negotiating said treaties, on the part of the United States, the President shall be, and he hereby is, authorized to appoint suitable persons for commissioners, and to fix their compensation, so as not to exceed what has been heretofore allowed for like services.

Sec. 3. *And be it further enacted*, That the President shall be, and hereby is, authorized to appoint two sub-agents to be employed among the Indian tribes, on the waters of the Upper Missouri, whose annual salary shall be eight hundred dollars each, to be paid out of any money in the treasury not otherwise appropriated.

SEC. 4. *And be it further enacted*, That it shall be the duty of Indian agents to designate, from time to time, certain convenient and suitable places for carrying on trade with the different Indian tribes, and to require all traders to trade at the places thus designated, and at no other place or places.

Sec. 5. *And be it further enacted*, That the superintendent of Indian affairs at St. Louis, and his successors in office, shall possess all the powers, and be subject to all the duties of governors of territories, when exercising the office of superintendents of Indian affairs, and shall exercise a general supervision of the official conduct and accounts of Indian agents within his superintendency.

Sec. 6. *And be it further enacted*, That the sum of ten thousand dollars be, and the same is hereby, appropriated, to be paid out of any money in the treasury not otherwise appropriated, to enable the President of the United States to furnish a competent military escort to the commissioners authorized to be appointed by this act, if, in his opinion, the same shall be necessary.

[U.S. Statutes at Large, 4:35-36.]

35. Message of President Monroe on Indian Removal

January 27, 1825

In the 1820s white pressures against the Indians in the eastern states increased and in the southern states especially created a severe crisis in Indian affairs. Georgia, citing the compact with the federal government of April 24, 1802, in which the United States had agreed to extinguish the Indian land titles in the state as soon as it could be done peaceably and on reasonable terms in exchange for the state's western land claims, insisted demanded the removal of the Indians from within her borders. Although not accepting Georgia's position, President James Monroe proposed a voluntary removal policy as the best solution and urged the policy upon Congress in a special message.

To the Senate and House of Representatives of the United States:

Being deeply impressed with the opinion that the removal of the Indian tribe from the lands which they now occupy within the limits of the several States and Territories to the country lying westward and northward thereof, within our acknowledged boundaries, is of very high importance to our Union, and may be accomplished on conditions and in a manner to promote the interest and happiness of those tribes, the attention of the Government has been long drawn with great solicitude to the object. For the removal of the tribes within the limits of the State of Georgia the motive has been peculiarly strong, arising from the compact with that State whereby the United States are bound to extinguish the Indian title to their lands within it whenever it may be done peaceably and on reasonable conditions. In the fulfillment of this compact, I have thought that the United States should act with a generous spirit; that they should omit nothing which should comport with a liberal construction of the instrument and likewise be in accordance with the just rights of those tribes. From the view which I have taken of the subject I am satisfied that in the discharge of these important duties in regard to both the parties alluded to the United States will have to encounter no conflicting interests with either. On the contrary, that the removal of the tribes from the territory which they now inhabit to that which was designated in the message at the commencement of the session, which would accomplish the object for Georgia, under a well-digested plan for their government and civilization, which should be agreeable to themselves, would not only

shield them from impending ruin, but promote their welfare and happiness. Experience has clearly demonstrated that in their present state it is impossible to incorporate them in such masses, in any form whatever, into our system. It has also demonstrated with equal certainty that without a timely anticipation of and provision against the dangers to which they are exposed, under causes which it will be difficult, if not impossible, to control, their degradation and extermination will be inevitable.

The great object to be accomplished is the removal of these tribes to the territory designated on conditions which shall be satisfactory to themselves and honorable to the United States. This can be done only by conveying to each tribe a good title to an adequate portion of land to which it may consent to remove, and by providing for it there a system of internal government which shall protect their property from invasion, and, by the regular progress of improvement and civilization, prevent that degeneracy which has generally marked the transition from the one to the other state.

I transmit herewith a report from the Secretary of War, which presents the best estimate which can be formed, from the documents in that Department, of the number of Indians within our States and Territories and of the amount of lands held by the several tribes within each; of the state of the country lying northward and westward thereof; within our acknowledged boundaries; of the parts to which the Indian title has already been extinguished, and of the conditions on which other parts, in an amount which may be adequate to the object contemplated, may be obtained. By this report it appears that the

Indian title has already been extinguished to extensive tracts in that quarter, and that other portions may be acquired to the extent desired on very moderate conditions. Satisfied I also am that the removal proposed is not only practicable, but that the advantages attending it to the Indians may be made so apparent to them that all the tribes, even those most opposed, may be induced to accede to it at no very distant day.

The digest of such a government, with the consent of the Indians, which should be endowed with sufficient power to meet all the objects contemplated—to connect the several tribes together in a bond of amity and preserve order in each; to prevent intrusions on their property; to teach them by regular instruction the arts of civilized life and make them a civilized people—is an object of very high importance. It is the powerful consideration which we have to offer to these tribes as an inducement to relinquish the lands on which they now reside and to remove to those which are designated. It is not doubted that this arrangement will present considerations of sufficient force to surmount all their prejudices in favor of the soil of their nativity, however strong they may be. Their elders have sufficient intelligence to discern the certain progress of events in the present train, and sufficient virtue, by yielding to momentary sacrifices, to protect their families and posterity from inevitable destruction. They will also perceive that they may thus attain an elevation to which as communities they could not otherwise aspire.

To the United States the proposed arrangement offers many important advantages in addition to those which have been already enumerated. By the establishment of such a government over these tribes with their consent we become in reality their benefactors. The relation of conflicting interests which has heretofore existed between

them and our frontier settlements will cease. There will be no more wars between them and the United States. Adopting such a government, their movement will be in harmony with us, and its good effect be felt throughout the whole extent of our territory to the Pacific. It may fairly be presumed that, through the agency of such a government, the condition of all the tribes inhabiting that vast region may be essentially improved; that permanent peace may be preserved with them, and our commerce be much extended.

With a view to this important object I recommend it to Congress to adopt, by solemn declaration, certain fundamental principles in accord with those above suggested, as the basis of such arrangements as may be entered into with the several tribes, to the strict observance of which the faith of the nation shall be pledged. I recommend it also to Congress to provide by law for the appointment of a suitable number of commissioners who shall, under the direction of the President, be authorized to visit and explain to the several tribes the objects of the Government, and to make with them, according to their instructions, such arrangements as shall be best calculated to carry those objects into effect.

A negotiation is now depending with the Creek Nation for the cession of lands held by it within the limits of Georgia, and with a reasonable prospect of success. It is presumed, however, that the result will not be known during the present session of Congress. To give effect to this negotiation and to the negotiations which it is proposed to hold with all the other tribes within the limits of the several States and Territories on the principles and for the purposes stated, it is recommended that an adequate appropriation be now made by Congress.

[James D. Richardson, comp., *Messages and Papers of the Presidents*, 2:280-83.]

36. Treaty with the Ponca Indians

June 9, 1825

In response to fur traders' pleas a military expedition was sent up the Missouri River in 1825 under General Henry Atkinson to overawe the Indians and to conclude treaties of peace with them. (See Act of May 25, 1824.) One of the treaties signed was with the Ponca Indians.

For the purposes of perpetuating the friendship which has heretofore existed, as also to remove all future cause of discussion or dissension, as it respects trade and friendship between the United States and their citizens, and the Poncar tribe of Indians, the President of the United States of America, by Brigadier General Henry Atkinson, of the United States' Army, and Major Benjamin O'Fallon, Indian Agent, with full powers and authority, specially appointed and commissioned for that purpose of the one part, and the undersigned Chiefs, Headmen, and Warriors, of the Poncar tribe of Indians, on behalf of said tribe, of the other part, have made and entered into the following articles and conditions, which, when ratified by the President of the United States, by and with the advice and consent of the Senate, shall be binding on both parties—to wit:

ARTICLE 1. It is admitted by the Poncar tribe of Indians, that they reside within the territorial limits of the United States, acknowledge their supremacy, and claim their protection. The said tribe also admit the right of the United States to regulate all trade and intercourse with them.

ARTICLE 2. The United States agree to receive the Poncar tribe of Indians into their friendship, and under their protection, and to extend to them, from time to time, such benefits and acts of kindness as may be convenient, and seem just and proper to the President of the United States.

ARTICLE 3. All trade and intercourse with the Poncar tribe shall be transacted at such place or places as may be designated and pointed out by the President of the United States, through his agents; and none but American citizens, duly authorized by the United States, shall be admitted to trade or hold intercourse with said tribe of Indians.

ARTICLE 4. That the Poncar tribe may be accommodated with such articles of merchandise, &c. as their necessities may demand, the United States agree to admit and license traders to hold intercourse with said tribe, under mild and equitable regulations: in consideration of which, the Poncar tribe bind themselves to extend protection to the persons and the property of the traders, and the persons legally employed under them, whilst they remain within the limits of the Poncar district of country. And the said Pon-

car tribe further agree, that if any foreigner, or other person not legally authorized by the United States, shall come into their district of country, for the purposes of trade or other views, they will apprehend such person or persons, and deliver him or them to some United States' superintendent, or agent of Indian Affairs, or to the Commandant of the nearest military post, to be dealt with according to law. And they further agree to give safe conduct to all persons who may be legally authorized by the United States to pass through their country; and to protect, in their persons and property, all agents or other persons sent by the United States to reside temporarily among them.

ARTICLE 5. That the friendship which is now established between the United States and the Poncar tribe should not be interrupted by the misconduct of individuals, it is hereby agreed, that for injuries done by individuals, no private revenge or retaliation shall take place, but instead thereof, complaints shall be made, by the party injured, to the superintendent or agent of Indian Affairs, or other person appointed by the President; and it shall be the duty of the said Chiefs, upon complaint being made as aforesaid, to deliver up the person or persons against whom the complaint is made, to the end that he or they may be punished agreeably to the laws of the United States. And, in like manner, if any robbery, violence, or murder, shall be committed on any Indian or Indians belonging to said tribe, the person or persons so offending shall be tried, and if found guilty shall be punished in like manner as if the injury had been done to a white man. And it is agreed, that the Chiefs of said Poncar tribe shall, to the utmost of their power, exert themselves to recover horses or other property, which may be stolen or taken from any citizen or citizens of the United States, by any individual or individuals of said tribe; and the property so recovered shall be forthwith delivered to the agents or other person authorized to receive it, that it may be restored to the proper owner. And the United States hereby guaranty to any Indian or Indians of said tribe, a full indemnification for any horses or other property which may be stolen from them by any of their citizens: *Provided*, That the property so stolen cannot be recovered, and that sufficient proof is produced that it was actually

admitted, possessed the power to do, apart from any authority or opposing interference by the general government.

But suppose, and it is suggested, merely for the purpose of awakening your better judgment, that Georgia cannot, and ought not, to claim the exercise of such power. What alternative is then presented? In reply allow me to call your attention for a moment to the grave character of the course, which under a mistaken view of your own rights, you desire this Government to adopt. It is no less than an invitation, that she shall step forward to arrest the constitutional act of an independent State, exercised within her own limits. Should this be done, and Georgia persist in the maintenance of her rights, and her authority, the consequences might be, that the act would prove injurious to us, and in all probability ruinous to you. The sword might be looked to as the arbiter in such an interference. But this can never be done. The President cannot, and will not, beguile you with such an expectation. The arms of this country can never be employed, to stay any state of this Union from the exercise of those legitimate powers which attach, and belong to their sovereign character. An interference to the extent of affording you protection, and the occupancy of your soil is what is demanded of the justice of this Country and will not be withheld, yet in doing this, the right of permitting to you the enjoyment of a separate government, within the limits of a State, and denying the exercise of Sovereignty to that State, within her own limits, cannot be admitted. It is not within the range of powers granted by the states to the general government, and therefore not within its competency to be exercised.

In this view of the circumstances connected with your application, it becomes proper to remark that no remedy can be perceived, except that which frequently, heretofore has been submitted for your consideration, a removal beyond the Mississippi, where, alone, can be assured to you protection and peace. It must be obvious to you, and the President has instructed me again to bring it to your candid and serious consideration, that to continue where you are, within the territorial limits of an independent state, can promise you nothing but interruption and disquietude. Beyond the Mississippi

Respecting the intrusions on your lands, submitted also for consideration, it is sufficient to remark, that of these the Department had already been advised, and instructions have been forwarded to the agent of the Cherokees directing him to cause their

removal; and it is earnestly hoped, that on this matter, all cause for future complaint will cease, and the order prove effectual.

[Office of Indian Affairs, Letter Book no. 5, pp. 408-12, Record Group 75, National Archives.]

40. President Jackson on Indian Removal

December 8, 1829

The executive branch of the federal government was firmly committed to the removal of the eastern tribes to the region west of the Mississippi by President Andrew Jackson. In his First Annual Message to Congress in December 1829 he set forth his views.

... The condition and ulterior destiny of the Indian tribes within the limits of some of our States have become objects of much interest and importance. It has long been the policy of Government to introduce among them the arts of civilization, in the hope of gradually reclaiming them from a wandering life. This policy has, however, been coupled with another wholly incompatible with its success. Professing a desire to civilize and settle them, we have at the same time lost no opportunity to purchase their lands and thrust them farther into the wilderness. By this means they have not only been kept in a wandering state, but been led to look upon us as unjust and indifferent to their fate. Thus, though lavish in its expenditures upon the subject, Government has constantly defeated its own policy, and the Indians in general, retained their savage habits. A portion, however, of the Southern tribes, having mingled much with the whites and made some progress in the arts of civilized life, have lately attempted to erect an independent government within the limits of Georgia and Alabama. These States, claiming to be the only sovereigns within their territories, extended their laws over the Indians, which induced the latter to call upon the United States for protection.

Under these circumstances the question presented was whether the General Government had a right to sustain those people in their pretensions. The Constitution declares that "no new State shall be formed or erected within the jurisdiction of any other State" without the consent of its legislature. If the General government is not permit-

ted to tolerate the erection of a confederate State within the territory of one of the members of this Union against her consent, much less could it allow a foreign and independent government to establish itself there. Georgia became a member of the Confederacy which eventuated in our Federal Union as a sovereign State, always asserting her claim to certain limits, which, have been originally defined in her colonial charter and subsequently recognized in the treaty of peace, she has ever since continued to enjoy, except as they have been circumscribed by her own voluntary transfer of a portion of her territory to the United States in the articles of cession of 1802. Alabama was admitted into the Union on the same footing with the original States, with boundaries which were prescribed by Congress. There is no constitutional, conventional, or legal provision which allows them less power over the Indians within their borders than is possessed by Maine or New York. Would the people of Maine permit the Penobscot tribe to erect an independent government within their State? And unless they did would it not be the duty of the General Government to support them in resisting such a measure? Would the people of New York permit each remnant of the Six Nations within her borders to declare itself an independent people under the protection of the United States? Could the Indians establish a separate republic on each of their reservations in Ohio? And if they were so disposed would it be the duty of this Government to protect them in the attempt? If the principle involved in the obvious answer to these questions be abandoned, it will follow that the objects of this Government

are reversed, and that it has become a part of its duty to aid in destroying the States which it was established to protect.

Actuated by this view of the subject, I informed the Indians inhabiting parts of Georgia and Alabama that their attempt to establish an independent government would not be countenanced by the Executive of the United States, and advised them to emigrate beyond the Mississippi or submit to the laws of those States.

Our conduct toward these people is deeply interesting to our national character. Their present condition, contrasted with what they once were, makes a most powerful appeal to our sympathies. Our ancestors found them uncontrolled possessors of these vast regions. By persuasion and force they have been made to retire from river to river and from mountain to mountain, until some of the tribes have become extinct and others have left but remnants to preserve for a while their once terrible names. Surrounded by the whites with their arts of civilization, which by destroying the resources of the savage doom him to weakness and decay, the fate of the Mohegan, the Narragansett, and the Delaware is fast overtaking the Choctaw, the Cherokee, and the Creek. That this fate surely awaits them if they remain within the limits of the States does not admit of a doubt. Humanity and national honor demand that every effort should be made to avert so great a calamity. It is too late to inquire whether it was just in the United States to include them and their territory within the bounds of new States, whose limits they could control. That step can not be retraced. A State can not be dismembered by Congress or restricted in the exercise of her constitutional power. But the people of those States and of every State, actuated by feelings of justice and a regard for our national honor, submit to you the interesting question whether something can not be done, consistently with the rights

of the States, to preserve this much-injured race.

As a means of effecting this end I suggest for your consideration the propriety of setting apart an ample district west of the Mississippi, and without the limit of any State or Territory now formed, to be guaranteed to the Indian tribes as long as they shall occupy it, each tribe having a distinct control over the portion designated for its use. There they may be secured in the enjoyment of governments of their own choice, subject to no other control from the United States than such as may be necessary to preserve peace on the frontier and between the several tribes. There the benevolent may endeavor to teach them the arts of civilization, and, by promoting union and harmony among them, to raise up an interesting commonwealth, destined to perpetuate the race and to attest the humanity and justice of this Government.

This emigration should be voluntary, for it would be as cruel as unjust to compel the aborigines to abandon the graves of their fathers and seek a home in a distant land. But they should be distinctly informed that if they remain within the limits of the States they must be subject to their laws. In return for their obedience as individuals they will without doubt be protected in the enjoyment of those possessions which they have improved by their industry. But it seems to me visionary to suppose that in this state of things claims can be allowed on tracts of country on which they have neither dwelt nor made improvements, merely because they have seen them from the mountain or passed them in the chase. Submitting to the laws of the States, and receiving, like other citizens, protection in their persons and property, they will ere long become merged in the mass of our population. . . .

James D. Richardson, comp., *Messages and Papers of the Presidents*, 2:456-59.]

41. Senator Frelinghuysen on Indian Removal April 9, 1830

One of the strongest supporters of the Indian opposition to removal was Senator Theodore Frelinghuysen of New Jersey. He presented his arguments in a long speech in the Senate on April 9, 1830, during the debate on the removal bill.

. . . . God, in his providence, planted these tribes on this Western continent, so far as we know, before Great Britain herself had a political existence. I believe, sir, it is not now seriously denied that the Indians are men, endowed with kindred faculties and powers with ourselves; that they have a place in human sympathy, and are justly entitled to a share in the common bounties of a benignant Providence. And, with this conceded, I ask in what code of the law of nations, or by what process of abstract deduction, their rights have been extinguished?

Where is the decree or ordinance that has stripped these early and first lords of the soil? Sir, no record of such measure can be found. And I might triumphantly rest the hopes of these feeble fragments of once great nations upon this impregnable foundation. However mere human policy, or the law of power, or the tyrant's pleas of expediency, may have found it convenient at any or in all times to recede from the unchangeable principles of eternal justice, no argument can shake the political maxim, that, where the Indian always has been, he enjoys an absolute right still to be, in the free exercise of his own modes of thought, government and conduct.

In the light of natural law, can a reason for a distinction exist in the mode of enjoying that which is my own? If I use it for hunting, may another take it because he needs it for agriculture? I am aware that some writers have, by a system of artificial reasoning, endeavored to justify, or rather excuse the encroachments made upon Indian territory; and they denominate these abstractions the law of nations, and, in this ready way, the question is despatched. Sir, as we trace the sources of this law, we find its authority to depend either upon the conventions or common consent of nations. And when, permit me to inquire, were the Indian tribes ever consulted on the establishment of such a law? Whoever represented them or their interests in any congress of nations, to confer upon the public rules of intercourse, and the proper foundations of dominion and property? The plain matter of fact is, that all these partial doctrines have resulted from the selfish plans and pursuits of more enlightened nations; and it is not matter for any great wonder, that they should so largely partake of a mercenary

and exclusive spirit toward the claims of the Indians.

It is, however, admitted, sir, that, when the increase of population and the wants of mankind demand the cultivation of the earth, a duty is thereby devolved upon the proprietors of large and uncultivated regions, of devoting them to such useful purposes. But such appropriations are to be obtained by fair contract, and for reasonable compensation. It is, in such a case, the duty of the proprietor to sell: we may properly address his reason to induce him; but we cannot rightfully compel the cession of his lands, or take them by violence, if his consent be withheld. It is, with great satisfaction that I am enabled, upon the best authority, to affirm, that this duty has been largely and generously met and fulfilled on the part of the aboriginal proprietors of this continent. Several years ago, official reports to Congress stated the amount of Indian grants to the United States to exceed 214 millions of acres. Yes, sir, we have acquired, and now own more land as the fruits of their bounty than we shall dispose of at the present rate to actual settlers in two hundred years. For, very recently, it has been ascertained, on this floor, that our public sales average not more than about one million of acres annually. It greatly aggravates the wrong that is now meditated against these tribes, to survey the rich and ample districts of their territories, that either force or persuasion have incorporated into our public domains. As the tide of our population has rolled on, we have added purchase to purchase. The confiding Indian listened to our professions of friendship: we called him brother, and he believed us. Millions after millions he has yielded to our importunity, until we have acquired more than can be cultivated in centuries—and yet we crave more. We have crowded the tribes upon a few miserable acres on our southern frontier: it is all that is left to them of their once boundless forests: and still, like the horse-leech, our insatiated cupidity cries, give! give!

Before I proceed to deduce collateral confirmations of this original title, from all our political intercourse and conventions with the Indian tribes, I beg leave to pause a moment, and view the case as it lies beyond the treaties made with them; and aside also from all conflicting claims between the

use; we have placed among them instructors in the arts of first necessity; and they are covered with the aegis of the law against aggressors from among ourselves." These, sir, are sentiments worthy of an illustrious statesman. None can fail to perceive the spirit of justice and humanity which Mr. Jefferson cherished towards our Indian allies. He was, through his whole life, the firm unshrinking advocate of their rights, a patron of all their plans for moral improvement and elevation. . . .

I trust, sir, that this brief exposition of our policy, in relation to Indian affairs, estab-

42. Indian Removal Act

May 28, 1830

After bitter debate in Congress and in the public press, Congress passed an act authorizing the president to exchange lands in the West for those held by Indian tribes in any state or territory and appropriated \$500,000 for the purpose. This act enabled President Jackson to proceed with the removal policy and to negotiate removal treaties with the southern tribes.

An Act to provide for an exchange of lands with the Indians residing in any of the states or territories, and for their removal west of the river Mississippi.

Be it enacted . . ., That it shall and may be lawful for the President of the United States to cause so much of any territory belonging to the United States, west of the river Mississippi, not included in any state or organized territory, and to which the Indian title has been extinguished, as he may judge necessary, to be divided into a suitable number of districts, for the reception of such tribes or nations of Indians as may choose to exchange the lands where they now reside, and remove there; and to cause each of said districts to be so described by natural or artificial marks, as to be easily distinguished from every other.

SEC. 2. *And be it further enacted*, That it shall and may be lawful for the President to exchange any or all of such districts, so to be laid off and described, with any tribe or nation of Indians now residing within the limits of any of the states or territories, and with which the United States have existing treaties, for the whole or any part or portion of the territory claimed and occupied by such tribe or nation, within the bounds of any one

upon the payment of such valuation, the improvements so valued and paid for, shall pass to the United States, and possession shall not afterwards be permitted to any of the same tribe.

SEC. 5. *And be it further enacted*, That upon the making of any such exchange as is contemplated by this act, it shall and may be lawful for the President to cause such aid and assistance to be furnished to the emigrants as may be necessary and proper to enable them to remove to, and settle in, the country for which they may have exchanged; and also, to give them such aid and assistance as may be necessary for their support and subsistence for the first year after their removal.

SEC. 6. *And be it further enacted*, That it shall and may be lawful for the President to cause such tribe or nation to be protected, at their new residence, against all interruption or disturbance from any other tribe or nation

of Indians, or from any other person or persons whatever.

SEC. 7. *And be it further enacted*, That it shall and may be lawful for the President to have the same superintendence and care over any tribe or nation in the country to which they may remove, as contemplated by this act, that he is now authorized to have over them at their present places of residence: *Provided*, That nothing in this act contained shall be construed as authorizing or directing the violation of any existing treaty between the United States and any of the Indian tribes.

SEC. 8. *And be it further enacted*, That for the purpose of giving effect to the provisions of this act, the sum of five hundred thousand dollars is hereby appropriated, to be paid out of any money in the treasury, not otherwise appropriated.

[U.S. Statutes at Large, 4:411-12.]

43. Treaty with the Choctaw Indians

September 27, 1830

The first of the removal treaties signed with the southern Indians after passage of the Removal Act of 1830 was that with the Choctaws at Dancing Rabbit Creek. It provided for an exchange of lands, guaranteed protection for the Indians, and specified annuities and other payments or services.

A treaty of perpetual friendship, cession and limits, entered into by John H. Eaton and John Coffee, for and in behalf of the Government of the United States, and the Mingoes, Chiefs, Captains and Warriors of the Choctaw Nation, begun and held at Dancing Rabbit Creek, on the fifteenth of September, in the year eighteen hundred and thirty.

ARTICLE I. Perpetual peace and friendship is pledged and agreed upon by and between the United States and the Mingoes, Chiefs, and Warriors of the Choctaw Nation of Red People; and that this may be considered the treaty existing between the parties all other treaties heretofore existing and inconsistent with the provisions of this are hereby declared null and void.

ARTICLE II. The United States under a grant specially to be made by the President of the U.S. shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple to them

and their descendants, to inure to them while they shall exist as a nation and live on it, beginning near Fort Smith where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian fork; in the limits of the United States, or to those limits; thence due south to Red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning. The boundary of the same to be agreeably to the Treaty made and concluded at Washington City in the year 1825. The grant to be executed so soon as the present Treaty shall be ratified.

ARTICLE III. In consideration of the provisions contained in the several articles of this Treaty, the Choctaw nation of Indians consent and hereby cede to the United States, the entire country they own and possess, east of the Mississippi River; and they agree to move beyond the Mississippi River, early as practicable, and will so arrange their removal, that as many as possible of their people not

lishes, beyond all controversy, the obligation of the United States to protect these tribes in the exercise and enjoyment of their civil and political rights. Sir, the question has ceased to be—What are our duties? An inquiry much more embarrassing is forced upon us: How shall we most plausibly, and with the least possible violence, break our faith? Sir, we repel the inquiry—we reject such an issue—and point the guardians of public honor to the broad, plain . . . [path] of faithful performance, and to which they are equally urged by duty and by interest. . . .

[Register of Debates in Congress, 6:311-16.]

or more of the states or territories, where the land claimed and occupied by the Indians, is owned by the United States, or the United States are bound to the state within which it lies to extinguish the Indian claim thereto.

SEC. 3. *And be it further enacted*, That in the making of any such exchange or exchanges, it shall and may be lawful for the President solemnly to assure the tribe or nation with which the exchange is made, that the United States will forever secure and guaranty to them, and their heirs or successors, the country so exchanged with them; and if they prefer it, that the United States will cause a patent or grant to be made and executed to them for the same: *Provided always*, That such lands shall revert to the United States, if the Indians become extinct, or abandon the same.

SEC. 4. *And be it further enacted*, That if, upon any of the lands now occupied by the Indians, and to be exchanged for, there should be such improvements as add value to the land claimed by any individual or individuals of such tribes or nations, it shall and may be lawful for the President to cause such value to be ascertained by appraisal or otherwise, and to cause such ascertained value to be paid to the person or persons rightfully claiming such improvements. And

a broad sword as an outfit, and for four years commencing with the first of their removal, shall each receive fifty dollars a year, for the trouble of keeping their people at order in settings, and whenever they shall be in military service by authority of the U. S. shall receive the pay of a captain.

ARTICLE XVI. In wagons; and with steam boats as may be found necessary—the U. S. agree to remove the Indians to their new homes at their expense and under the care of discreet and careful persons, who will be kind and brotherly to them. They agree to furnish them with ample corn and beef, or pork for themselves and families for twelve months after reaching their new homes.

It is agreed further that the U. S. will take all their cattle, at the valuation of some discreet person to be appointed by the President, and the same shall be paid for in money after their arrival at their new homes; or other cattle such as may be desired shall be furnished them, notice being given through their Agent of their wishes upon this subject before their removal that time to supply the demand may be afforded.

ARTICLE XVII. The several annuities and sums secured under former Treaties to the Choctaw nation and people shall continue as though this Treaty had never been made.

And it is further agreed that the U. S. in addition will pay the sum of twenty thousand dollars for twenty years, commencing after their removal to the west, of which, in the first year after their removal, ten thousand dollars shall be divided and arranged to such as may not receive reservations under this Treaty.

ARTICLE XVIII. The U. S. shall cause the lands hereby ceded to be surveyed; and surveys may enter the Choctaw Country for that purpose, conducting themselves properly and disturbing or interrupting none of the Choctaw people. But no person is to be permitted to settle within the nation, or the lands to be sold before the Choctaws shall remove. And for the payment of the several amounts secured in this Treaty, the lands hereby ceded are to remain a fund pledged to that purpose, until the debt shall be provided for and arranged. And further it is agreed, that in the construction of this Treaty wherever well founded doubt shall arise, it shall be construed most favorably towards the Choctaws.

the consent of the President of the U. S. but should any prefer it, or omit to take a reservation for the quantity he may be entitled to, the U. S. will on his removing pay fifty cents an acre, after reaching their new homes, provided that before the first of January next they shall adduce to the Agent, or some other authorized person to be appointed, proof of his claim and the quantity of it. Sixth; likewise children of the Choctaw Nation residing in the Nation, who have neither father nor mother a list of which, with satisfactory proof of Parentage and orphanage being filed with Agent in six months to be forwarded to the War Department, shall be entitled to a quarter section of Land, to be located under the direction of the President, and with his consent the same may be sold and the proceeds applied to some beneficial purpose for the benefit of said orphans.

ARTICLE XX. The U. S. agree and stipulate as follows, that for the benefit and advantage of the Choctaw people, and to improve their condition, there shall be educated under the direction of the President and at the expense of the U. S. forty Choctaw youths for twenty years. This number shall be kept at school, and as they finish their education others, to supply their places shall be received for the period stated. The U. S. agree also to erect a Council House for the Nation at some convenient central point, after their people shall be settled; and a House for each Chief, also a Church for each of the three Districts, to be used also as school houses, until the Nation may conclude to build others; and for these purposes ten thousand dollars shall be appropriated; also fifty thousand dollars (viz.) twenty-five hundred dollars annually shall be

given for the support of three teachers of schools for twenty years. Likewise there shall be furnished to the Nation, three Blacksmiths one for each district for sixteen years, and a qualified Mill Wright for five years; Also there shall be furnished the following articles, twenty-one hundred blankets, to each warrior who emigrates a rifle, moulds, wipers and ammunition. One thousand axes, ploughs, hoes, wheels and cards each; and four hundred looms. There shall also be furnished, one ton of iron and two hundred weight of steel annually to each District for sixteen years.

ARTICLE XXI. A few Choctaw Warriors yet survive who marched and fought in the army with General Wayne, the whole number stated not to exceed twenty.

These it is agreed shall hereafter, while they live, receive twenty-five dollars a year; a list of them to be early as practicable, and within six months, made out, and presented to the Agent, to be forwarded to the War Department.

ARTICLE XXII. The Chiefs of the Choctaws have suggested that their people are in a state of rapid advancement in education and refinement, and have expressed a solicitude that they might have the privilege of a Delegate on the floor of the House of Representatives extended to them. The Commissioners do not feel that they can under a treaty stipulation accede to the request, but at their desire, present it in the Treaty, that Congress may consider of, and decide the application. . . .

[Charles J. Kappler, ed., *Indian Affairs: Laws and Treaties*, 2:310-15.]

44. Cherokee Nation v. Georgia 1831

When Georgia extended her laws over the Cherokee lands, the Indians brought suit against the state. The Supreme Court refused to accept jurisdiction because it declared that the Cherokee Nation was not a "foreign nation" in the sense intended by the Constitution. John Marshall, who delivered the opinion, described the Indian tribes as "domestic dependent nations."

. . . . Mr. Chief Justice MARSHALL delivered the opinion of the Court.

This bill is brought by the Cherokee nation, praying an injunction to restrain the state of Georgia from the execution of certain laws of that state, which, as is alleged, go directly to annihilate the Cherokees as a political society, and to seize, for the use of

Georgia, the lands of the nation which have been assured to them by the United States in solemn treaties repeatedly made and still in force.

If Courts were permitted to indulge their sympathies, a case better calculated to excite them can scarcely be imagined. A people once numerous, powerful, and truly independent, found by our ancestors in the quiet and uncontrolled possession of an ample domain, gradually sinking beneath our superior policy, our arts and our arms, have yielded their lands by successive treaties, each of which contains a solemn guarantee of the residue, until they retain no more of their formerly extensive territory than is deemed necessary to their comfortable subsistence. To preserve this remnant, the present application is made.

Before we can look into the merits of the case, a preliminary inquiry presents itself. Has this Court jurisdiction of the cause?

The third article of the constitution describes the extent of the judicial power. The second section closes an enumeration of the cases to which it is extended, with "controversies" "between a state or the citizens thereof, and foreign states, citizens, or subjects." A subsequent clause of the same section gives the Supreme Court original jurisdiction in all cases in which a state shall be a party. The party defendant may then unquestionably be sued in this Court. May the plaintiff sue in it? Is the Cherokee nation a foreign state in the sense in which that term is used in the constitution?

The counsel for the plaintiffs have maintained the affirmative of this proposition with great earnestness and ability. So much of the argument as was intended to prove the character of the Cherokees as a state, as a distinct political society, separated from others, capable of managing its own affairs and governing itself, has, in the opinion of a majority of the judges, been completely successful. They have been uniformly treated as a state from the settlement of our country. The numerous treaties made with them by the United States recognise them as a people capable of maintaining the relations of peace and war, of being responsible in their political character for any violation of their engagements, or for any aggression committed on the citizens of the United States by any individual of their community. Laws have been enacted in

unquestioned right to the lands they occupy, until that right shall be extinguished by a voluntary cession to our government; yet it may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may, more correctly, perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile they are in a state of pupilage. Their relation to the United States resembles that of a ward of his guardian.

They look to our government for protection; rely upon its kindness and its power; appeal to it for relief to their wants; and address the president as their great father. They and their country are considered by foreign nations, as well as by ourselves, as being so completely under the sovereignty and dominion of the United States, that any attempt to acquire their lands, or to form a political connexion with them, would be considered by all as an invasion of our territory, and an act of hostility.

These considerations go far to support the opinion, that the framers of our constitution had not the Indian tribes in view, when they opened the Courts of the union to controversies between a state or the citizens thereof, and foreign states.

In considering this subject, the habits and usages of the Indians, in their intercourse with their white neighbours, ought not to be entirely disregarded. At the time the constitution was framed, the idea of appealing to an American Court of justice for an assertion of right or a redress of wrong, had perhaps never entered the mind of an Indian or of his tribe. Their appeal was to the tomahawk, or to the government. This was well understood by the statesmen who framed the constitution of the United States, and might furnish some reason for omitting to enumerate them among the parties who might sue in the Courts of the union. Be this as it may, the peculiar relations between the United States and the Indians occupying our territory are such, that we should feel much difficulty in considering them as designated by the term foreign state, were there no other part of the

constitution which might shed light on the meaning of these words. But we think that in construing them, considerable aid is furnished by that clause in the eighth section of the third article, which empowers Congress to "regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

In this clause they are as clearly distinguished by a name appropriate to themselves, from foreign nations, as from the several states composing the union. They are designated by a distinct appellation; and as this appellation can be applied to neither of the others, neither can the appellation distinguishing either of the others be in fair construction applied to them. The objects, to which the power of regulating commerce might be directed, are divided into three distinct classes—foreign nations, the several states, and Indian tribes. When forming this article, the convention considered them as entirely distinct. We cannot assume that the distinction was lost in framing a subsequent article, unless there be something in its language to authorize the assumption. . . .

Had the Indian tribes been foreign nations, in the view of the convention, this exclusive power of regulating intercourse with them might have been, and most probably would have been, specifically given in language indicating that idea, not in language contradicting it. The power of regulating intercourse might have been empowered to regulate commerce with foreign nations, including the Indian tribes, and among the several States. . . .

The Court has bestowed its best attention on this question, and, after mature deliberation, the majority is of opinion that an Indian tribe or nation within the United States is not a foreign state in the sense of the constitution, and cannot maintain an action in the Courts of the United States. . . .

If it be true that the Cherokee nation have rights, this is not the tribunal in which those rights are to be asserted. If it be true that wrongs have been inflicted, and that still greater are to be apprehended, this is not the tribunal which can redress the past or prevent the future.

The motion for an injunction is denied. . . .
[5 *Peters*, 15–20.]

Samuel A. Worcester, a missionary among the Cherokees, was imprisoned because he refused to obey a Georgia law forbidding whites to reside in the Cherokee country without taking an oath of allegiance to the state and obtaining a permit. The Supreme Court decided in favor of Worcester, maintaining that the Cherokees were a nation free from the jurisdiction of the state.

... Mr. Chief Justice MARSHALL delivered the opinion of the Court.

This cause, in every point of view in which it can be placed, is of the deepest interest.

The defendant is a state, a member of the Union, which has exercised the powers of government over a people who deny its jurisdiction, and are under the protection of the United States.

The plaintiff is a citizen of the state of Vermont, condemned to hard labour for four years in the penitentiary of Georgia; under colour of an act which he alleges to be repugnant to the Constitution, laws, and treaties of the United States.

The legislative power of a state, the controlling power of the Constitution and laws of the United States, the rights, if they have any, the political existence of a once numerous and powerful people, the personal liberty of a citizen, are all involved in the subject now to be considered. . . .

The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed; and this was a restriction which those European potentates imposed on themselves, as well as on the Indians. The very term "nation," so generally applied to them, means "a people distinct from others." The Constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and consequently admits their rank among those powers who are capable of making treaties. The words "treaty" and "nation" are words

of our own language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well understood meaning. We have applied them to Indians, as we have applied them to the other nations of the earth. They are applied to all in the same sense.

Georgia, herself, has furnished conclusive evidence that her former opinions on this subject concurred with those entertained by her sister states, and by the government of the United States. Various acts of her legislature have been cited in the argument, including the contract of cession made in the year 1802, all tending to prove her acquiescence in the universal conviction that the Indian nations possessed a full right to the lands they occupied, until that right should be extinguished by the United States, with their consent: that their territory was separated from that of any state within whose chartered limits they might reside, by a boundary line, established by treaties: that, within their boundary, they possessed rights with which no state could interfere; and that the whole power of regulating the intercourse with them was vested in the United States. A review of these acts, on the part of Georgia, would occupy too much time, and is the less necessary, because they have been accurately detailed in the argument at the bar. Her new series of laws, manifesting her abandonment of these opinions, appears to have commenced in December, 1828.

In opposition to this original right, possessed by the undisputed occupants of every country; to this recognition of that right, which is evidenced by our history, in every change through which we have passed; is placed the charters granted by the monarch of a distant and distinct region, parcelled out a territory in possession of others whom he could not remove and did not attempt to

remove, and the cession made of his claims by the treaty of peace.

The actual state of things at the time, and all history since, explain these charters; and the King of Great Britain, at the treaty of peace, could cede only what belonged to his crown. These newly asserted titles can derive no aid from the articles so often repeated in Indian treaties; extending to them, first, the protection of Great Britain, and afterwards that of the United States. These articles are associated with others, recognising their title to self-government. The very fact of repeated treaties with them recognises it; and the settled doctrine of the law of nations is, that a weaker power does not surrender its independence—its right to self-government, by associating with a stronger, and taking its protection. A weak state, in order to provide for its safety, may place itself under the protection of one more powerful, without stripping itself of the right of government, and ceasing to be a state. Examples of this kind are not wanting in Europe. "Tributary and tributary states," says Vattel, "do not thereby cease to be sovereign and independent states, so long as self-government and sovereign and independent authority are left in the administration of the state." At the present day, more than one state may be considered as holding its right of self-government under the guarantee and protection of one or more allies.

The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of Congress. The whole intercourse between the United States and this nation, is, by our Constitution and laws, vested in the government of the United States.

The act of the state of Georgia, under which the plaintiff in error was prosecuted, is consequently void, and the judgment a nullity. Can this Court revise and reverse it?

If the objection to the system of legislation, lately adopted by the legislature of Georgia, in relation to the Cherokee nation, was confined to its extra-territorial operation, the objection, though complete, so far as respected mere right, would give this Court no power over the subject. But it goes much

further. If the review which has been taken be correct, and we think it is, the acts of Georgia are repugnant to the Constitution, laws, and treaties of the United States.

They interfere forcibly with the relations established between the United States and the Cherokee nation, the regulation of which, according to the settled principles of our Constitution, are committed exclusively to the government of the Union.

They are in direct hostility with treaties, repeated in a succession of years, which mark out the boundary that separates the Cherokee country from Georgia; guaranty to them all the land within their boundary; solemnly pledge the faith of the United States to restrain their citizens from trespassing on it; and recognise the pre-existing power of the nation to govern itself.

They are in equal hostility with the acts of Congress for regulating this intercourse, and giving effect to the treaties.

The forcible seizure and abduction of the plaintiff in error, who was residing in the nation with its permission, and by authority of the President of the United States, is also a violation of the acts which authorize the chief magistrate to exercise this authority.

Will these powerful considerations avail the plaintiff in error? We think they will. He was seized, and forcibly carried away, while under guardianship of treaties guarantying the country in which he resided, and taking it under the protection of the United States. He was seized while performing, under the sanction of the chief magistrate of the Union, those duties which the humane policy adopted by Congress had recommended. He was apprehended, tried, and condemned, under colour of a law which has been shown to be repugnant to the Constitution, laws, and treaties of the United States. Had a judgment, liable to the same objections, been rendered for property, none would question the jurisdiction of this Court. It cannot be less clear when the judgment affects personal liberty, and inflicts disgraceful punishment, if punishment could disgrace when inflicted on innocence. The plaintiff in error is not less interested in the operation of this unconstitutional law than if it affected his property. He is not less entitled to the protection of the Constitution, laws, and treaties of his country. . . .

It is the opinion of this Court that the judgment of the Superior Court for the county of Gwinnett, in the state of Georgia, condemning Samuel A. Worcester to hard labour in the penitentiary of the state of Georgia, for four years, was pronounced by

46. Authorization of a Commissioner of Indian Affairs

July 9, 1832

In 1832 Congress at last provided for an official specifically charged with the direction and management of Indian affairs. The commissioner succeeded the head of the Indian Office that had been established by the secretary of war in 1824. The same act absolutely prohibited the introduction of ardent spirits into the Indian country.

An Act to provide for the appointment of a commissioner of Indian Affairs, and for other purposes.

Be it enacted . . . , That the President shall appoint, by and with the advice and consent of the Senate, a commissioner of Indian affairs, who shall, under the direction of the Secretary of War, and agreeably to such regulations as the President may, from time to time, prescribe, have the direction and management of all Indian affairs, and of all matters arising out of Indian relations, and shall receive a salary of three thousand dollars per annum.

Sec. 2. And be it further enacted, That the Secretary of War shall arrange or appoint to the said office the number of clerks necessary therefor, so as not to increase the number now employed; and such sum as is necessary to pay the salary of said commissioner for the year one thousand eight hundred and thirty-two, shall be, and the same hereby

that Court under colour of a law which is void, as being repugnant to the Constitution, treaties, and laws of the United States, and ought, therefore, to be reversed and annulled. . . .

[6 *Peters*, 534-36, 558-63.]

is, appropriated out of any money in the treasury.

Sec. 3. And be it further enacted, That all accounts and vouchers for claims and disbursements connected with Indian affairs, shall be transmitted to the said commissioner for administrative examination, and by him passed to the proper accounting officer of the Treasury Department for settlement; and all letters and packages to and from the said commissioner, touching the business of his office, shall be free of postage.

Sec. 4. And be it further enacted, That no ardent spirits shall be hereafter introduced, under any pretence, into the Indian country.

Sec. 5. And be it further enacted, That the Secretary of War shall, under the direction of the President, cause to be discontinued the services of such agents, sub-agents, interpreters, and mechanics, as may, from time to time, become unnecessary, in consequence of the emigration of the Indians, or other causes.

[*U.S. Statutes at Large*, 4:564.]

47. Indian Commissioner Herring on the Indian Race
Extract from the *Annual Report of the Commissioner of Indian Affairs*.

November 22, 1832

The first man to hold the office of commissioner of Indian affairs authorized by Congress in 1832 was Elbert Herring. In his first report to the secretary of war he urged that the Indians be brought within the social system of the whites, especially in regard to private ownership of property.

. . . Some of the Indian tribes have proceeded to hostile acts, in the course of the year past, against each other, and conflicts have ensued, in which blood has been spilt in defiance of the obligation imposed by the guarantee of the United States, for the

preservation of peace and tranquillity among them. The instigators of such unwarrantable proceedings, as well as the chief actors in every instance of ascertained outrage, are justly considered responsible to the Government for the transgression, and are invariably required to be given up to its authority to answer for the offences.

It is difficult to restrain such aggressions, growing out of ancient feuds, prompted by an unchecked spirit of rapine, and a thirst for warlike distinction, and, particularly, when probable impunity furnishes an additional incentive. To prevent outrage is, however, far better than to punish the offenders; nor should the expense attendant on the remedy to be found in the employment of a sufficient body of mounted rangers preclude its exercise. A display of military force, and the certainty of speedy punishment, can alone prevent a ready resort to rapine and bloodshed on the part of those who recognize no restraint on plunder, no bounds to the gratification of revenge.

On the whole, it may be matter of serious doubt whether, even with the fostering care and assured protection of the United States, the preservation and perpetuity of the Indian race are at all attainable, under the form of government and rude civil regulations subsisting among them. These were perhaps well enough suited to their condition, when hunting was their only employment, and war gave birth to their strongest excitements. The unrestrained authority of their chiefs, and the irresponsible exercise of power, are of the

48. Trade and Intercourse Act

June 30, 1834

The final codification of the trade and intercourse acts was passed by Congress in 1834. It offered no sharp break with the past but embodied, sometimes in modified form, the principles that had developed through the preceding decades. The House Committee on Indian Affairs, which drew up the bill, relied heavily on a report submitted in 1829 by Lewis Cass and William Clark.

An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers.

Be it enacted . . . , That all that part of the United States west of the Mississippi, and not within the states of Missouri and

simplest elements of despotic rule; while the absence of the *metem* and *tuum* in the general community of possessions, which is the grand conservative principle of the social state, is a perpetual operating cause of the *vis inertiae* of savage life. The stimulus of physical exertion and intellectual exercise, contained in this powerful principle, of which the Indian is almost entirely void, may not unjustly be considered the parent of all improvements, not merely in the arts, but in the profitable direction of labor among civilized nations. Among them it is the source of plenty; with the Indians, the absence of it is the cause of want, and consequently of decrease of numbers. Nor can proper notions of the social system be successfully inculcated, nor its benefits be rightly appreciated, so as to overcome the habits and prejudices incident to savage birth, and consequent associations of maturer years, except by the institution of separate and secure rights in the relations of property and person. It is therefore suggested, whether the formation of a code of laws on this basis, to be submitted for their adoption, together with certain modifications of the existing political system among them, may not be of very salutary effect, especially as co-operating with the influences derivable from the education of their youth, and the introduction of the doctrines of the christian religion; all centering in one grand object—the substitution of the social for the savage state. . . .

[*House Executive Document* no. 2, 22d Cong., 2d sess., serial 233, p. 163.]

Louisiana, or the territory of Arkansas, and also, that part of the United States east of the Mississippi river, and not within any state to which the Indian title has not been extinguished, for the purposes of this act, be taken and deemed to be the Indian country.

Sec. 2. And be it further enacted, That no

for the execution of the duties. And where any of the tribes are, in the opinion of the Secretary of War, competent to direct the employment of their blacksmiths, mechanics, teachers, farmers, or other persons engaged for them, the direction of such persons may be given to the proper authority of the tribe.

SEC. 10. [Compensation, travel allowances, etc.]

SEC. 11. *And be it further enacted*, That the payment of all annuities or other sums stipulated by treaty to be made to any Indian tribe, shall be made to the chiefs of such tribe, or to such person as said tribe shall appoint; or if any tribe shall appropriate their annuities for the purpose of education, or to any other specific use, then to such person or persons as such tribe shall designate.

SEC. 12. *And be it further enacted*, That it shall be lawful for the President of the United States, at the request of any Indian tribe to which any annuity shall be payable in money, to cause the same to be paid in goods, purchased as provided in the next section of this act.

SEC. 13. *And be it further enacted*, That all merchandise required by any Indian treaty for the Indians, payable after making of such treaty, shall be purchased under the direction of the Secretary of War, upon proposals to be received, to be based on notices previously to be given; and all merchandise required at the making of any Indian treaty shall be purchased under the order of the commissioners, by such person as they shall appoint, or by such person as shall be designated by the President for that purpose. And all other purchases on account of the Indians, and all payments to them of money or goods, shall be made by such person as the President shall designate for that purpose. And the superintendent, agent, or sub-agent, together with such military officer as the President may direct, shall be present, and certify to the delivery of all goods and money required to be paid or delivered to the Indians. And the duties required by any section of this

act, of military officers, shall be performed without any other compensation than their actual travelling expenses. . . .

SEC. 14. *And be it further enacted*, That no person employed in the Indian department shall have any interest or concern in any trade with the Indians, except for, and on account of, the United States; and any person offending herein, shall forfeit the sum of five thousand dollars, and upon satisfactory information of such offence being laid before the President of the United States, it shall become his duty to remove such person from the office or situation he may hold.

SEC. 15. *And be it further enacted*, That the President shall be, and he is hereby, authorized to cause any of the friendly Indians west of the Mississippi river, and north of the boundary of the Western territory, and the region upon Lake Superior and the head of the Mississippi, to be furnished with useful domestic animals and implements of husbandry, and with goods, as he shall think proper: *Provided*, That the whole amount of such presents shall not exceed the sum of five thousand dollars.

SEC. 16. *And be it further enacted*, That the President be, and he is hereby, authorized to cause such rations as he shall judge proper, and as can be spared from the army provisions without injury to the service, to be issued, under such regulations as he shall think fit to establish, to Indians who may visit the military posts or agencies of the United States on the frontiers, or in their respective nations, and a special account of these issues shall be kept and rendered.

SEC. 17. *And be it further enacted*, That the President of the United States shall be, and he is hereby, authorized to prescribe such rules and regulations as he may think fit, for carrying into effect the various provisions of this act, and of any other act relating to Indian affairs, and for the settlement of the accounts of the Indian department. . . .

[U.S. Statutes at Large, 4:735-38.]

50. President Jackson on Indian Removal
December 7, 1835

President Andrew Jackson held firm in favor of Indian removal. In his annual message to Congress in December 1835 he renewed his arguments for the removal policy.

... The plan of removing the aboriginal people who yet remain within the settled portions of the United States to the country west of the Mississippi River approaches its consummation. It was adopted on the most mature consideration of the condition of this race, and ought to be persisted in till the object is accomplished, and prosecuted with as much vigor as a just regard to their circumstances will permit, and as fast as their consent can be obtained. All preceding experiments for the improvement of the Indians have failed. It seems now to be an established fact that they can not live in contact with a civilized community and prosper. Ages of fruitless endeavors have at length brought us to a knowledge of this principle of intercommunication with them. The past we can not recall, but the future we can provide for. Independently of the treaty stipulations into which we have entered with the various tribes for the usufructuary rights they have ceded to us, no one can doubt the moral duty of the Government of the United States to protect and if possible to preserve and perpetuate the scattered remnants of this race which are left within our borders. In the discharge of this duty an extensive region in the West has been assigned for their permanent residence. It has been divided into districts and allotted among them. Many have already removed and others are preparing to go, and with the exception of two small bands living in Ohio and Indiana, not exceeding 1,500 persons, and of the Cherokees, all the tribes on the east side of the Mississippi, and extending from Lake Michigan to Florida, have entered into engagements which will lead to their transplantation.

The plan for their removal and reestablishment is founded upon the knowledge we have gained of their character and habits, and has been dictated by a spirit of enlarged liberality. A territory exceeding in extent that relinquished has been granted to each tribe. Of its climate, fertility, and capacity to support an Indian population the representations are highly favorable. To these districts the Indians are removed at the expense of the United States, and with certain supplies of clothing, arms, ammunition, and other indispensable articles; they are also furnished gratuitously with provisions for the period of a year after their arrival at their new homes.

In that time, from the nature of the country and of the products raised by them, they can subsist themselves by agricultural labor, if they choose to resort to that mode of life; if they do not they are upon the skirts of the great prairies, where countless herds of buffalo roam, and a short time suffices to adapt their own habits to the changes which a change of the animals destined for their food may require. Ample arrangements have also been made for the support of schools; in some instances council houses and churches are to be erected, dwellings constructed for the chiefs, and mills for common use. Funds have been set apart for the maintenance of the poor; the most necessary mechanical arts have been introduced, and blacksmiths, gunsmiths, wheelwrights, millwrights, etc., are supported among them. Steel and iron, and sometimes salt, are purchased for them, and plows and other farming utensils, domestic animals, looms, spinning wheels, cards, etc., are presented to them. And besides these beneficial arrangements, annuities are in all cases paid, amounting in some instances to more than \$30 for each individual of the tribe, and in all cases sufficiently great, if justly divided and prudently expended, to enable them, in addition to their own exertions, to live comfortably. And as a stimulus for exertion, it is now provided by law that "in all cases of the appointment of interpreters or other persons employed for the benefit of the Indians a preference shall be given to persons of Indian descent, if such can be found who are properly qualified for the discharge of the duties."

Such are the arrangements for the physical comfort and for the moral improvement of the Indians. The necessary measures for their political advancement and for their separation from our citizens have not been neglected. The pledge of the United States has been given by Congress that the country destined for the residence of this people shall be forever "secured and guaranteed to them." A country west of Missouri and Arkansas has been assigned to them, into which the white settlements are not to be pushed. No political communities can be formed in that extensive region, except those which are established by the Indians themselves or by the United States for them and with their concurrence. A barrier has thus been raised for

their protection against the encroachment of our citizens, and guarding the Indians as far as possible from those evils which have brought them to their present condition. Summary authority has been given by law to destroy all ardent spirits found in their country, without waiting the doubtful result and slow process of a legal seizure. I consider the absolute and unconditional interdiction of this article among these people as the first and great step in their melioration. Halfway measures will answer no purpose. These can not successfully contend against the cupidity of the seller and the overpowering appetite of the buyer. And the destructive effects of the traffic are marked in every page of the history of our Indian intercourse.

Some general legislation seems necessary for the regulation of the relations which will exist in this new state of things between the

Government and people of the United States and these transplanted Indian tribes, and for the establishment among the latter, and with their own consent, of some principles of intercommunication which their juxtaposition will call for; that moral may be substituted for physical force, the authority of a few and simple laws for the tomahawk, and that an end may be put to those bloody wars whose prosecution seems to have made part of their social system.

After the further details of this arrangement are completed, with a very general supervision over them, they ought to be left to the progress of events. These, I indulge the hope, will secure their prosperity and improvement, and a large portion of the moral debt we owe them will then be paid. . . .

[James D. Richardson, comp., *Messages and Papers of the Presidents*, 3:171-73.]

51. Indian Commissioner Crawford on Indian Policy

Extract from the *Annual Report of the Commissioner of Indian Affairs*

November 25, 1838

Commissioner of Indian Affairs T. Hartley Crawford had strong views on Indian policy, which he expressed in his annual reports. In 1838 he wrote, among other things, about manual labor schools, allotment of Indian lands to individual Indians, and confederation of the Indians in the West.

. . . . The principal lever by which the Indians are to be lifted out of the mire of folly and vice in which they are sunk is education. The learning of the already civilized and cultivated man is not what they want now. It could not be advantageously ingrafted on so rude a stock. In the present state of their social existence, all they could be taught, or would learn, is to read and write, with a very limited knowledge of figures. There are exceptions, but in the general the remark is true, and perhaps more is not desirable or would be useful. As they advance, a more liberal culture of their minds may be effected, if happily they should yield to the influences that, if not roughly thrust back, will certainly follow in the wake of properly directed efforts to improve their understanding. To attempt too much at once is to insure failure. You must lay the foundations broadly and deeply, but gradually, if you would succeed. To teach a savage man to read, while he continues a

a plan, based upon the idea suggested, for establishing a large central school for the education of the Western Indians. Into their scheme enter a farm, and shops for teaching the different mechanic arts. Experience, they say, has shown them, after much opportunity for judging correctly, that separate schools for the respective tribes, though productive of much good, are not so useful as one common school for the benefit of all would be. They assert truly that a knowledge of the English language is necessary, and they think that it can be best acquired in an establishment of the latter description. I would not hazard a different opinion; and yet it may not be improper to state that the funds which have been set apart for education purposes belong to the several tribes, without whose consent the Government could not devote them to a general school; and this the society admits. There is no disposition to discourage the efforts of those who choose to labor in this work of benevolence. On the contrary, there is, as there should be, an eagerness to meet any advance which promises greater facilities for improving the mind and morals of the Indian. Upon success in this department hangs every hope. All that can be done to encourage and cheer on those who have devised this scheme of goodness and charity, I think, should be done. But, whatever reform may be deemed advisable in the direction and economy of the separate schools, it appears to me that if the proposed central school shall be established, they should be kept up too.

They may, perhaps, be more numerous than is necessary or advantageous; they may be too expensively conducted, or more scholars ought to be taught for the money expended, or they may be badly located; but each, or all, of these objections may be obviated, and the schools improved. For such minor institutions, would not the central school be able to furnish teachers? Could not the Government, in consideration of any pecuniary aid it might render, exact, as a condition, that a certain number of young Indians of capacity should yearly leave the central school qualified to be instructors, who shall make compensation for their own education by teaching as long as might be thought a suitable return? After such a plan had been in operation three or four years there would be an annual supply. . . .

There is one measure that, in my judgment, is of great importance; it has heretofore attracted the attention of Congress, and I hope will meet with favor. As any plan for the government of the western tribes of Indians contemplates an interior police of their own, in each community, and that their own laws shall prevail, as between themselves, for which some of their treaties provide, this, as it seems to me, indispensable step to their advancement in civilization cannot be taken without their own consent. Unless some system is marked out by which there shall be a separate allotment of land to each individual whom the scheme shall entitle to it, you will look in vain for any general casting off of savagism. Common property and civilization cannot co-exist. The few instances to be found in the United States and other countries of small abstracted communities, who draw their subsistence and whatever comforts they have from a common store, do not militate against this position. Under a show of equality, the mass work for two or three rulers or directors, who enjoy what they will, and distribute what they please. The members never rise beyond a certain point, (to which they had reached, generally, before they joined the society,) and never will while they remain where they are. But if they should, these associations are so small and confined as to place their possessions in the class of individual estates. At the foundation of the whole social system lies individuality of property. It is, perhaps, nine times in ten the stimulus that manhood first feels. It has produced the energy, industry, and enterprise that distinguish the civilized world, and contributes more largely to the good morals of men than those are willing to acknowledge who have not looked somewhat closely at their fellow-beings. With it comes all the delights that the word home expresses; the comforts that follow fixed settlements are in its train, and to them belongs not only an anxiety to do right that those gratifications may not be forfeited, but industry that they may be increased. Social intercourse and a just appreciation of its pleasures result, when you have civilized, and, for the most part, moral men. This process, it strikes me, the Indians must go through, before their habits can be materially changed, and they may, after what many of them have seen and know,

58. Treaty of Fort Laramie
September 17, 1851

As emigrants crossed the plains in large numbers, diplomatic as well as military measures were undertaken to preserve peace with the Indians. A treaty established formal relations with the northern plains tribes at Fort Laramie in 1851 and sought to gain security for the over-land travelers. The treaty set boundaries for the various tribes, authorized the United States to build roads and military posts, and provided restitution for damages to white travelers. A similar treaty was signed with the southern plains tribes at Fort Atkinson in July 1853.

Articles of a treaty made and concluded at Fort Laramie, in the Indian Territory, between D. D. Mitchell, superintendent of Indian affairs, and Thomas Fitzpatrick, Indian agent, commissioners specially appointed and authorized by the President of the United States, of the first part, and the chiefs, headmen, and braves of the following Indian nations, residing south of the Missouri River, east of the Rocky Mountains, and north of the lines of Texas and New Mexico, viz, the Sioux or Dakhotalas, Cheyennes, Arripahoes, Crowes, Assinaboines, Gros-Venture Mandans, and Arrikaras, parties of the second part, on the seventeenth day of September, A.D. one thousand eight hundred and fifty-one.

on the people of the United States, whilst lawfully residing in or passing through their respective territories.

ARTICLE 5. The aforesaid Indian nations do hereby recognize and acknowledge the following tracts of country, included within the metes and boundaries hereinafter designated, as their respective territories [descriptions of the boundaries]. . . .

It is, however, understood that, in making this recognition and acknowledgement, the aforesaid Indian nations do not hereby abandon or prejudice any rights or claims they may have to other lands; and further, that they do not surrender the privilege of hunting, fishing, or passing over any of the tracts of country heretofore described.

ARTICLE 6. The parties to the second part of this treaty having selected principals or head-chiefs for their respective nations, through whom all national business will hereafter be conducted, do hereby bind themselves to sustain said chiefs and their successors during good behavior.

ARTICLE 7. In consideration of the treaty stipulations, and for the damages which have or may occur by reason thereof to the Indian nations, parties hereto, and for their maintenance and the improvement of their moral and social customs, the United States bind themselves to deliver to the said Indian nations the sum of fifty thousand dollars per annum for the term of ten years, with the right to continue the same at the discretion of the President of the United States for a period not exceeding five years thereafter, in provisions, merchandise, domestic animals, and agricultural implements, in such proportions as may be deemed best adapted to their condition by the President of the United States, to be distributed in proportion to the population of the aforesaid Indian nations.

ARTICLE 8. It is understood and agreed that should any of the Indian nations, parties to this treaty, violate any of the provisions thereof, the United States may withhold the whole or a portion of the annuities mentioned in the preceding article from the

59. Indian Commissioner Lea on the Civilization of the Indians
Extract from the *Annual Report of the Commissioner of Indian Affairs*

November 27, 1851

The United States government's goal of incorporating the Indians into white civilization was expressed by Commissioner Luke Lea at the end of his annual report in 1851.

. . . The civilization of the Indians within the territory of the United States is a cherished object of the government. It undoubtedly merits all the consideration bestowed upon it, and the employment of all the means necessary for its accomplishment. There are not wanting those, who, judging from the apparent little success which in some instances has attended the instrumentalities employed, doubt the practicability of the measure. It should be remembered, however, that to change a savage people from their barbarous habits to those of civilized life, is, in its nature, a work of time, and the results already attained, as evinced in the improved condition of several of our tribes, are sufficient to silence the most skeptical, and warrant the assurance that perseverance in the cause will achieve success.

The history of the Indian furnishes abundant proof that he possesses all the elements essential to his elevation; all the powers, instincts and sympathies which appertain to his white brother; and which only need the proper development and direction to enable him to tread with equal step and dignity the walks of civilized life. He is intellectual, proud, brave, generous; and in his devotion to his family, his country, and the graves of his fathers, it is clearly shown that the kind affections and the impulses of patriotism animate his heart. That his inferiority is a necessity of his nature, is neither taught by philosophy nor attested by experience. Prejudice against him, originating in error of opinion on this subject, has doubtless been a formidable obstacle in the way of his improvement; while,

nation so offending, until, in the opinion of the President of the United States, proper satisfaction shall have been made. . . .

[Charles J. Kappler, ed., *Indian Affairs: Laws and Treaties*, 2:594-95.]

on the other hand, it is equally certain that his progress has been retarded by ill conceived and misdirected efforts to hasten his advance. It is even questionable whether the immense amounts paid to them in the way of annuities have not been, and are not now, all things considered, a curse to them rather than a blessing. Certain it is, there has not at all times been the most wise and beneficial application of their funds. To arouse the spirit of enterprise in the Indian, and bring him to realize the necessity of reliance upon himself, in some industrial pursuit, for his support and comfort is, generally, if not universally, the initiative step to his civilization, which he is often prevented from taking by the debasing influence of the annuity system. But the system is fastened upon us, and its attendant evils must be endured.

On the general subject of the civilization of the Indians, many and diversified opinions have been put forth; but, unfortunately, like the race to which they relate, they are too wild to be of much utility. The great question, How shall the Indians be civilized? yet remains without a satisfactory answer. The magnitude of the subject, and the manifold difficulties inseparably connected with it, seem to have bewildered the minds of those who have attempted to give it the most thorough investigation. The remark of the late Attorney General Legaré, is not more striking than true, that "there is nothing in the whole compass of our laws so anomalous, so hard to bring within any precise definition, or any logical and scientific arrangement of principles, as the relation in which the

also; to some extent they serve as a check upon each other: neither are slow to point to the mistakes and abuses of the other. It is therefore proper that they should be independent of each other, receive their appointments from and report to different heads of departments. Weighing this matter and all the arguments for and against the proposed change, your committee are unanimously of the opinion that the Indian Bureau should remain where it is.

BOARDS OF INSPECTION.

Fifth. In our Indian system, beyond all doubt, there are evils, growing out of the nature of the case itself, which can never be remedied until the Indian race is civilized or shall entirely disappear.

The committee are satisfied that these evils are sometimes greatly aggravated, not so much by the system adopted by the government in dealing with the Indian tribes, as by the abuses of that system.

As the best means of correcting those abuses and ameliorating those evils, the committee recommend the subdivision of the

68. Creation of an Indian Peace Commission

July 20, 1867

The outbreak of wars on the plains in the mid-1860s convinced Congress that a serious peace offensive was in order. It authorized a Peace Commission, which was to determine the reasons for Indian hostilities and at its discretion to make treaty arrangements and to select reservations for the tribes.

An Act to establish Peace with certain Hostile Indian Tribes.

Be it enacted . . ., That the President of the United States be, and he is hereby, authorized to appoint a commission to consist of three officers of the army not below the rank of brigadier general, who, together with N. G. Taylor, Commissioner of Indian Affairs, John B. Henderson, Chairman of the Committee of Indian Affairs of the Senate, S. F. Tappan, and John B. Sanborn, shall have power and authority to call together the chiefs and headmen of such bands or tribes of Indians as are now waging war against the United States or committing depredations upon the people thereof, to ascertain the alleged reasons for

mountains, not now peacefully residing on permanent reservations under treaty stipulations, to which the government has the right of occupation or to which said commissioners can obtain the right of occupation, and in which district or districts there shall be sufficient tillable or grazing land to enable the said tribes, respectively, to support themselves by agricultural and pastoral pursuits. Said district or districts, when so selected, and the selection approved by Congress, shall be and remain permanent homes for said Indians to be located thereon, and no person[s] not members of said tribes shall ever be permitted to enter thereon without the permission of the tribes interested, except officers and employees of the United States: *Provided*, That the district or districts shall be so located as not to interfere with travel on highways located by authority of the United States, nor with the route of the Northern Pacific Railroad, the Union Pacific Railroad, or the proposed route of the Atlantic and Pacific Railroad by the way of Albuquerque.

Sec. 3. And be it further enacted, That the following sums of money are hereby appropriated out of any moneys in the treasury, to wit: To carry out the provisions of the preceding sections of this act, one hundred and fifty thousand dollars; to enable the Secretary of the Interior to subsid such friendly Indians as may have separated or may hereafter separate

themselves from the hostile bands or tribes and seek the protection of the United States, three hundred thousand dollars.

Sec. 4. And be it further enacted, That the Secretary of War be required to furnish transportation, subsistence, and protection to the commissioners herein named during the discharge of their duties.

Sec. 5. And be it further enacted, That if said commissioners fail to secure the consent of the Indians to remove to the reservations and fail to secure peace, then the Secretary of War, under the direction of the President, is hereby authorized to accept the services of mounted volunteers from the Governors of the several States and Territories, in organized companies and battalions, not exceeding four thousand men in number, and for such term of service as, in his judgment, may be necessary for the suppression of Indian hostilities.

Sec. 6. And be it further enacted, That all volunteers so accepted shall be placed upon the same footing, in respect to pay, clothing, subsistence, and equipment, as the troops of the regular army.

Sec. 7. And be it further enacted, That said commissioners report their doings under this act to the President of the United States, including any such treaties and all correspondence as well as evidence by them taken.

[*U.S. Statutes at Large*, 15:17-18.]

69. Report of the Indian Peace Commission

January 7, 1868

The Peace Commission, in its initial report of January 7, 1868, reviewed the causes of Indian hostilities and severely indicted white treatment of the Indians. It urged bringing the Indians into white civilization and made formal recommendations of means to that end.

. . . In making treaties it was enjoined on us to remove, if possible, the causes of complaint on the part of the Indians. This would be no easy task. We have done the best we could under the circumstances, but it is now rather late in the day to think of obliterating from the minds of the present generation the remembrance of wrong. Among civilized men war usually springs from a sense of injustice. The best possible way then to avoid war is to do no act of injustice. When

we learn that the same rule holds good with Indians, the chief difficulty is removed. But, it is said our wars with them have been almost constant. Have we been uniformly unjust? We answer, unhesitatingly, yes! We are aware that the masses of our people have felt kindly toward them, and the legislation of Congress has always been conceived in the best intention, but it has been erroneous in fact or perverted in execution. Nobody pays any attention to Indian matters. This is a deplorable

fact. Members of Congress understand the negro question, and talk learnedly of finance, and other problems of political economy, but when the progress of settlement reaches the Indian's home, the only question considered is, "how best to get his lands." When they are obtained the Indian is lost sight of. While our missionary societies and benevolent associations have annually collected thousands of dollars from the charitable, to be sent to Asia and Africa for purposes of civilization, scarcely a dollar is expended or a thought bestowed on the civilization of Indians at our very doors. Is it because the Indians are not worth the effort at civilization? Or is it because our people, who have grown rich in the occupation of their former lands—too often taken by force or procured in fraud—will not contribute? It would be harsh to insinuate that covetous eyes have possibly been set on their remaining possessions, and extermination harbored as a means of accomplishing it. As we know that our legislators and ninetenths of our people are actuated by no such spirit, would it not be well to so regulate our future conduct in this matter as to exclude the possibility of so unfavorable an inference?

We are aware that it is an easy task to condemn the errors of former times, as well as a very thankless one to criticize those of the present; but the past policy of the government has been so much at variance with our ideas of treating this important subject, that we hope to be indulged in a short allusion to it.

The wave of our population has been from the east to the west. The Indian was found on the Atlantic seaboard, and thence to the Rocky mountains lived numerous distinct tribes, each speaking a language as incomprehensible to the other as was our language to the interior. As our settlements penetrated some Indian tribe. The white and Indian must mingle together and jointly occupy the country, or one of them must abandon it. If they could have lived together, the Indian by this contact would soon have become civilized and war would have been beneficial to All admit this would have been beneficial to the Indian. Even if we thought it would not have been hurtful to the white man, we would not venture on such an assertion, for we know too well his pride of race. But suppose it

to the spread of our settlements and the rapid construction of the railroads will be removed. To maintain peace with the Indian, let the frontier settler treat him with humanity, and railroad directors see to it that he is not shot down by employes in wanton cruelty. In short, if settlers and railroad men will treat Indians as they would treat whites under similar circumstances, we apprehend but little trouble will exist. They must acquaint themselves with the treaty obligations of the government, and respect them as the highest law of the land. Instead of regarding the Indian as an enemy, let them regard him as a friend, and they will almost surely receive his friendship and esteem. If they will look upon him as an unfortunate human being, deserving their sympathy and care, instead of a wild beast to be feared and detested, then their own hearts have removed the chief danger.

We were also required to suggest some plan for the civilization of Indians. In our judgment, to civilize is to remove the causes of war, and under that head we suggested a plan for civilizing those east of the mountains. But as it is impracticable to bring within the two districts named all the Indians under our jurisdiction, we beg the privilege to make some general suggestions, which may prove beneficial to the service.

1. We recommend that the intercourse laws with the Indian tribes be thoroughly revised. They were adopted when the Indian bureau was connected with the War Department. Since that time the jurisdiction has been transferred to the Interior Department. This was done by simply declaring that the authority over this subject, once exercised by the Secretary of War, should now be exercised by the Secretary of the Interior. Some of the duties enjoined by these laws are intimately connected with the War Department, and it is questionable whether they were intended to be transferred to the Secretary of the Interior. If they were so transferred, the military officers insist that the command of the army is, *pro tanto*, withdrawn from them. If not transferred, the Indian department insists that its powers are insufficient for its own protection in the administration of its affairs. Hence the necessity of clearly defining the line separating the rights and duties of the two departments.

2. This brings us to consider the much

mooted question whether the bureau should belong to the civil or military department of the government. To determine this properly we must first know what is to be the future treatment of the Indians. If we intend to have war with them the bureau should go to the Secretary of War. If we intend to have peace it should be in the civil department. In our judgment, such wars are wholly unnecessary, and hoping that the government and the country will agree with us, we cannot now advise the change. It is possible, however, that, despite our efforts to maintain peace, war may be forced on us by some tribe or tribes of Indians. In the event of such occurrence it may be well to provide, in the revision of the intercourse laws or elsewhere, at what time the civil jurisdiction shall cease and the military jurisdiction begin. If thought advisable, also, Congress may authorize the President to turn over to the military the exclusive control of such tribes as may be continually hostile or unmanageable. Under the plan which we have suggested the chief duties of the bureau will be to educate and instruct in the peaceful arts—in other words, to civilize the Indians. The military arm of the government is not the most admirably adapted to discharge duties of this character. We have the highest possible appreciation of the officers of the army, and fully recognize their proverbial integrity and honor; but we are satisfied that not one in a thousand would like to teach Indian children to read and write, or Indian men to sow and reap. These are emphatically civil, and not military, occupations. But it is insisted that the present Indian service is corrupt, and this change should be made to get rid of the dishonest. That there are many bad men connected with the service cannot be denied. The records are abundant to show that agents have pocketed the funds appropriated by the government and driven the Indians to starvation. It cannot be doubted that Indian wars have originated from this cause. The Sioux war, in Minnesota, is supposed to have been produced in this way. For a long time these officers have been selected from partisan ranks, not so much on account of honesty and qualification, as for devotion to party interests and their willingness to apply the money of the Indian to promote the selfish schemes of local politicians. We do not doubt that some such men may

be in the service of the bureau now, and this leads us to suggest:

3. That Congress pass an act fixing a day (not later than the 1st of February, 1869) when the offices of all superintendents, agents, and special agents shall be vacated. Such persons as have proved themselves competent and faithful may be reappointed. Those who have proved unfit will find themselves removed without an opportunity to divert attention from their own unworthiness by professions of party zeal.

4. We believe the Indian question to be one of such momentous importance, as it respects both the honor and interests of the nation, as to require for its proper solution an undivided responsibility. The vast and complicated duties now devolved upon the Secretary of the Interior leave him too little time to examine and determine the multiplicity of questions necessarily connected with the government and civilization of a race. The same may be said of the Secretary of War. As things now are, it is difficult to fix responsibility. When errors are committed the civil department blames the military; the military retort by the charge of inefficiency or corruption against the officers of the bureau. The Commissioner of Indian Affairs escapes responsibility by pointing to the Secretary of the Interior, while the Secretary may well respond that, though in theory he may be responsible, practically he is governed by the head of the bureau. We, therefore, recommend that Indian affairs be committed to an independent bureau or department. Whether the head of the department should be made a member of the President's cabinet is a matter for the discretion of Congress and yourself, and may be as well settled without any suggestions from us.

5. We cannot close this report without alluding to another matter calling for the special attention of Congress. Governors of Territories are now *ex officio* superintendents of Indian affairs within their respective jurisdictions. The settlements in the new Territories are generally made on Indian lands before the extinguishment of the Indian title. If difficulties ensue between the whites and Indians, the governor too frequently neglects the rights of the red man, and yields to the demands of those who have votes to promote his political aspirations in the organization

of the forthcoming State. Lest any acting governor may suppose himself alluded to, we take occasion to disclaim such intention. We might cite instances of gross outrage in the past, but we prefer to base the recommendation upon general principles, which can be readily understood.

And in this connection we deem it of the highest importance that—

6. No governor or legislature of States or Territories be permitted to call out or equip troops for the purpose of carrying on war against Indians. It was Colorado troops that involved us in the war of 1864-'65 with the Cheyennes. It was a regiment of hundred-day men that perpetrated the butchery at Sand creek, and took from the treasury millions of money. A regiment of Montana troops, last September, would have involved us in an almost interminable war with the Crows but for the timely intervention of the military authorities. If we must have Indian wars, let them be carried on by the regular army, whose officers are generally actuated by the loftiest principles of humanity, and the honor of whose profession requires them to respect the rules of civilized warfare.

7. In reviewing the intercourse laws it would be well to prescribe anew the conditions upon which persons may be authorized to trade. At present every one trades with or without the authority of the bureau officers, on giving a bond approved by a judge of one of the district courts. Corrupt and dangerous men thus find their way among the Indians, who cheat them in trade, and sow the seeds of dissension and trouble.

8. New provision should be made authorizing and positively directing the military authorities to remove white persons who persist in trespassing on Indian reservations and unceded Indian lands.

9. The Navajo Indians in New Mexico were for several years held as prisoners of war at the Bosque Redondo, at a very great expense to the government. They have now been turned over to the Interior Department, and must be subsisted as long as they remain there. We propose that a treaty be made with them, or their consent in some way obtained, to remove at an early day to the southern district selected by us, where they may soon be made self-supporting.

10. We suggest that the President may, at

times, appoint some person or persons in the distant territories, either civilians or military men, to make inspection of Indian affairs, and report to him.

11. A new commission should be appointed, or the present one be authorized to meet the Sioux next spring, according to our agreement, and also to arrange with the Navajoes for their removal. It might be well, also, in case our suggestions are adopted in

70. Treaty of Fort Laramie

April 29, 1868

A treaty with the Sioux and their allies was drawn up by the Indian Peace Commission at Fort Laramie in 1868. It recognized hunting rights of the Indians in the Powder River area, closed the Bozeman Trail and withdrew the military posts built to protect it, and established a Sioux reservation west of the Missouri in what became the state of South Dakota.

Articles of a treaty made and concluded by and between Lieutenant-General William T. Sherman, General William S. Harney, General Alfred H. Terry, General C. C. Augur, J. B. Henry, Nathaniel G. Taylor, John B. Sanborn, and Samuel F. Tappan, duly appointed commissioners on the part of the United States, and the different bands of the Sioux Nation of Indians, by their chiefs and head-men, whose names are hereto subscribed, they being duly authorized to act in the premises.

ARTICLE 1. From this day forward all war between the parties to this agreement shall forever cease. The Government of the United States desires peace, and its honor is hereby pledged to keep it. The Indians desire peace, and they now pledge their honor to maintain it.

If bad men among the whites, or among other people subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington City, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also re-imburse the injured person for the loss sustained.

If bad men among the Indians shall commit a wrong or depredation upon the person or property of any one, white, black, or In-

regard to selecting Indian territories, to extend the powers of the commission, so as to enable us to conclude treaties or agreements with tribes confessedly at peace, looking to their concentration upon the reservations indicated....

[House Executive Document no. 97, 40th Cong., 2d sess., serial 1337, pp. 15-17, 20-22.]

dian, subject to the authority of the United States, and at peace therewith, the Indians herein named solemnly agree that they will, upon proof made to their agent and notice by him, deliver up the wrong-doer to the United States, to be tried and punished according to its laws; and in case they wilfully refuse so to do, the person injured shall be re-imbursed for his loss from the annuities or other moneys due or to become due to them under this or other treaties made with the United States. And the President, on advising with the Commissioner of Indian Affairs, shall prescribe such rules and regulations for ascertaining damages under the provisions of this article as in his judgment may be proper. But no one sustaining loss while violating the provisions of this treaty or the laws of the United States shall be re-imbursed therefor.

ARTICLE 2. The United States agrees that the following district of country, to wit: viz: commencing on the east bank of the Missouri River where the forty-sixth parallel of north latitude crosses the same, thence along low-water mark down said east bank to a point opposite where the northern line of the State of Nebraska strikes the river, thence west across said river, and along the northern line of Nebraska to the one hundred and fourth degree of longitude west from Greenwich, thence north on said meridian to a point where the forty-sixth parallel of north latitude intercepts the same, thence due east

along said parallel to the place of beginning; and in addition thereto, all existing reservations on the east bank of said river shall be, and the same is, set apart for the absolute and undisturbed use and occupation of the Indians herein named, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit amongst them; and the United States now solemnly agrees that no persons except those herein designated and authorized so to do, and except such officers, agents, and employes of the Government as may be authorized to enter upon Indian reservations in discharge of duties enjoined by law, shall ever be permitted to pass over, settle upon, or reside in the territory described in this article, or in such territory as may be added to this reservation for the use of said Indians, and henceforth they will and do hereby relinquish all claims or right in and to any portion of the United States or Territories, except such as is embraced within the limits aforesaid, and except as hereinafter provided.

ARTICLE 3. If it should appear from actual survey or other satisfactory examination of said tract of land that it contains less than one hundred and sixty acres of tillable land for each person who, at the time, may be authorized to reside on it under the provisions of this treaty, and a very considerable number of such persons shall be disposed to commence cultivating the soil as farmers, the United States agrees to set apart, for the use of said Indians, as herein provided, such additional quantity of arable land, adjoining to said reservation, or as near to the same as it can be obtained, as may be required to provide the necessary amount.

ARTICLE 4. The United States agrees, at its own proper expense, to construct at some place on the Missouri River, near the center of said reservation, where timber and water may be convenient, the following buildings, to wit: a warehouse, a store-room for the use of the agent in storing goods belonging to the Indians, to cost not less than twenty-five hundred dollars; an agency-building for the residence of the agent, to cost not exceeding three thousand dollars; a residence for the physician, to cost not more than three thousand dollars; and five other buildings, for a carpenter, farmer, blacksmith, miller, and en-

name of the person selecting it, with a certificate endorsed thereon that the same has been recorded, shall be delivered to the party entitled to it, by the agent, after the same shall have been recorded by him in a book to be kept in his office, subject to inspection, which said book shall be known as the "Sioux Land-Book."

The President may, at any time, order a survey of the reservation, and, when so surveyed, Congress shall provide for protecting the rights of said settlers in their improvements, and may fix the character of the title held by each. The United States may pass such laws on the subject of alienation and descent of property between the Indians and their descendants as may be thought proper. And it is further stipulated that any male Indians, over eighteen years of age, of any band or tribe that is or shall hereafter become a party to this treaty, who now is or who shall hereafter become a resident or occupant of any reservation or Territory not included in the tract of country designated and described in this treaty for the permanent home of the Indians, which is not mineral land, nor reserved by the United States for special purposes other than Indian occupation, and who shall have made improvements thereon of the value of two hundred dollars or more, and continuously occupied the same as a homestead for the term of three years, shall be entitled to receive from the United States a patent for one hundred and sixty acres of land including his said improvements, the same to be in the form of the legal subdivisions of the surveys of the public lands. Upon application in writing, sustained by the proof of two disinterested witnesses, made to the register of the local land-office when the land sought to be entered is within a land district, and when the tract sought to be entered is not in any land district, then upon said application and proof being made to the Commissioner of the General Land-Office, and the right of such Indian or Indians to enter such tract or tracts of land shall accrue and be perfect from the date of his first improvements thereon, and shall continue as long as he continues his residence and improvements, and no longer. And any Indian or Indians receiving a patent for land under the foregoing provisions, shall thereby and from thenceforth become and be a citizen of the United States, and be entitled

to all the privileges and immunities of such citizens, and shall, at the same time, retain all his rights and benefits accruing to Indians under this treaty.

ARTICLE 7. In order to insure the civilization of the Indians entering into this treaty, the necessity of education is admitted, especially of such of them as are or may be settled on said agricultural reservations, and they therefore pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school; and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with; and the United States agrees that for every thirty children between said ages who can be induced or compelled to attend school, a house shall be provided and a teacher competent to teach the elementary branches of an English education shall be furnished, who will reside among said Indians, and faithfully discharge his or her duties as a teacher. The provisions of this article to continue for not less than twenty years.

ARTICLE 8. When the head of a family or lodge shall have selected lands and received his certificate as above directed, and the agent shall be satisfied that he intends in good faith to commence cultivating the soil for a living, he shall be entitled to receive seeds and agricultural implements for the first year, not exceeding in value one hundred dollars, and for each succeeding year he shall continue to farm, for a period of three years more, he shall be entitled to receive seeds and implements as aforesaid, not exceeding in value twenty-five dollars.

And it is further stipulated that such persons as commence farming shall receive instruction from the farmer herein provided for, and whenever more than one hundred persons shall enter upon the cultivation of the soil, a second blacksmith shall be provided, with such iron, steel, and other material as may be needed.

ARTICLE 9. At any time after ten years from the making of this treaty, the United States shall have the privilege of withdrawing the physician, farmer, blacksmith, carpenter, engineer, and miller herein provided for, but in case of such withdrawal, an additional sum thereafter of ten thousand dollars per annum shall be devoted to the education of said Indians, and the Commissioner of

Indian Affairs shall, upon careful inquiry into their condition, make such rules and regulations for the expenditure of said sum as will best promote the educational and moral improvement of said tribes.

ARTICLE 10. In lieu of all sums of money or other annuities provided to be paid to the Indians herein named, under any treaty or treaties heretofore made, the United States agrees to deliver at the agency-house on the reservation herein named, on or before the first day of August of each year, for thirty years, the following articles, to wit:

For each male person over fourteen years of age, a suit of good substantial woolen clothing, consisting of coat, pantaloons, flannel shirt, hat, and a pair of home-made socks.

For each female over twelve years of age, a flannel skirt, or the goods necessary to make it, a pair of woolen hose, twelve yards of calico, and twelve yards of cotton domestics.

For the boys and girls under the ages named, such flannel and cotton goods as may be needed to make each a suit as aforesaid, together with a pair of woolen hose for each.

And in order that the Commissioner of Indian Affairs may be able to estimate properly for the articles herein named, it shall be the duty of the agent each year to forward to him a full and exact census of the Indians, on which the estimate from year to year can be based.

And in addition to the clothing herein named, the sum of ten dollars for each person entitled to the beneficial effects of this treaty shall be annually appropriated for a period of thirty years, while such persons roam and hunt, and twenty dollars for each person who engages in farming, to be used by the Secretary of the Interior in the purchase of such articles as from time to time the condition and necessities of the Indians may indicate to be proper. And if within the thirty years, at any time, it shall appear that the amount of money needed for clothing under this article can be appropriated to better uses for the Indians named herein, Congress may, by law, change the appropriation to other purposes; but in no event shall the amount of this appropriation be withdrawn or discontinued for the period named. And the President shall annually detail an officer of the Army to be present and attest the delivery of all the goods herein named to the Indians, and he shall

be up built along the Platte River and westward to the Pacific Ocean, and they will not in future object to the construction of railroads, wagon-roads, mail-stations, or other works of utility or necessity, which may be ordered or permitted by the laws of the United States.

But should such roads or other works be constructed on the lands of their reservation, the Government will pay the tribe whatever amount of damage may be assessed by three disinterested commissioners to be appointed by the President for that purpose, one of said commissioners to be a chief or head-man of the tribe.

7th. They agree to withdraw all opposition to the military posts or roads now established south of the North Platte River, or that may be established, not in violation of treaties heretofore made or hereafter to be made with any of the Indian tribes.

ARTICLE 12. No treaty for the cession of any portion or part of the reservation herein described which may be held in common shall be of any validity or force as against the said Indians, unless executed and signed by at least three-fourths of all the adult male Indians, occupying or interested in the same; and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his rights to any tract land selected by him, as provided in article 6 of this treaty.

ARTICLE 13. The United States hereby agrees to furnish annually to the Indians the physician, teachers, carpenter, miller, engineer, farmer, and blacksmiths as herein contemplated, and that such appropriations shall be made from time to time, on the estimates of the Secretary of the Interior, as will be sufficient to employ such persons.

ARTICLE 14. It is agreed that the sum of five hundred dollars annually, for three years from date, shall be expended in presents to the ten persons of said tribe who in the

judgment of the agent may grow the most valuable crops for the respective year.

ARTICLE 15. The Indians herein named agree that when the agency-house or other buildings shall be constructed on the reservation named, they will regard said reservation their permanent home, and they will make no permanent settlement elsewhere; but they shall have the right, subject to the conditions and modifications of this treaty, to hunt, as stipulated in Article 11 hereof.

ARTICLE 16. The United States hereby agrees and stipulates that the country north of the North Platte River and east of the summits of the Big Horn Mountains shall be held and considered to be unceded Indian territory, and also stipulates and agrees that no white person or persons shall be permitted to settle upon or occupy any portion of the same; or without the consent of the Indians first had and obtained, to pass through the States; and it is further agreed by the United States that within ninety days after the conclusion of peace with all the bands of the Sioux Nation, the military posts now established in the territory in this article named shall be abandoned, and that the road leading to them and by them to the settlements in the Territory of Montana shall be closed.

ARTICLE 17. It is hereby expressly understood and agreed by and between the respective parties to this treaty that the execution of this treaty and its ratification by the United States Senate shall have the effect, and shall be construed as abrogating and annulling all treaties and agreements heretofore entered into between the respective parties hereto, so far as such treaties and agreements obligate the United States to furnish and provide money, clothing, or other articles of property to such Indians and bands of Indians as become parties to this treaty, but no further. . . .

[Charles J. Kappler, ed., *Indian Affairs: Laws and Treaties*, 2:998-1003.]

71. House Debate on Treaty-Making Power

June 18, 1868

When the commissioner of Indian affairs negotiated a treaty with the Osage Indians in Kansas in 1868, by which a railroad corporation was to receive the lands ceded by the Indians, members of the House of Representatives strongly objected. They argued that such alienation of lands instead of returning them to the public domain was wrong. They further denied that the treaty-making power could be used for such purposes. It

was in large part this kind of opposition on the part of the House that led in 1871 to the end of treaty making with the Indians. Debate by Congressmen Sidney Clarke of Kansas and Glenni W. Scofield of Pennsylvania on June 18, 1868, is printed here.

... Mr. CLARKE, of Kansas. Mr. Speaker, this is one of the most remarkable transactions that has ever occurred in the whole history of this Government, one which, in my judgment, demands the earnest, serious consideration of this House. It is neither more nor less than the transfer of eight million acres of land, which properly belong to the public domain of the United States, which belong to the landless millions in all parts of the country, into the hands of a railroad corporation, to be subjected to their supreme and unlimited control.

It will be my purpose, in the brief time I shall occupy the attention of the House, to state, as well as I may, the main facts connected with this proposed speculation. This most remarkable treaty now before the Senate, and being pressed upon their attention by the most remarkable and unjustifiable means, was made and framed in all its details and in all its essential features between the high contracting parties here in the city of Washington long before it was transmitted by the commission appointed by the President to the Indian country; it was so framed several months before it was sent to the Indian country by the commission appointed by the President; in fact, it was not made by the commission at all, but by the parties in interest, who design to absorb eight million acres of land which properly belong to the public domain of the United States. . . .

Sir, the people of Kansas are anxious to have an outlet upon the Gulf of Mexico. In this anxiety I fully share. But, sir, notwithstanding that, I have abundant evidence in extracts from newspapers and letters that they earnestly protest against this treaty in its present obnoxious form. My constituents demand protection from all systems of land monopoly. They protest against injustice in all its forms. They ask, if this land is to be used for the benefit of railroads, that provision be made to open it to immediate settlement at a stated price per acre, and that the profits accruing be used to construct at least eight hundred miles of different railroads, instead of one hundred and

and the Senate could not give that consent to the alienation of this large body of land belonging to the public; that we could not carve out a tract of eight million acres of land, as large as the States of Massachusetts, Connecticut, and Rhode Island all together, and put it under the control of a few speculators. They may be very good men, and we have no objection to their making a fortune legitimately, but we do object to putting this land beyond the control of the United States and closing it to the right of settlement. The question now is, will the House consent that the control over this vast domain shall, under a wrong interpretation of the treaty-making power, be confined to the hands of a few men, who have in the first place got the consent of the Indian department and of the President, then the consent of a committee of the Senate, and lastly, the consent of the Senate itself. Shall this land belong to the nation or to these men?

Sir, for myself I intend never to give my consent to allowing the treaty-making power to add to or diminish the domain of this country. It has no power either to cede away the State of Maine to Great Britain or to acquire new territory on the Northwest, or to exercise exclusive control of the House of Representatives over the limits of this country either to contract or enlarge them. . . .

Mr. CLARKE, of Kansas. . . . Now, sir, it seems to me that the action proposed by the committee on Indian Affairs, to whom this subject has been referred, is just and proper. It seems to me that the House ought not to sit idly by and see eight million acres of the public domain of the United States transferred

by treaty into the hands of a corporation or of one individual, this House, representing the people, exercising no control or supervision over the matter whatever. The time has come here and now for us to exercise the prerogatives which properly belong to us, to put a stop to this outrage, this wrong, which is being inflicted upon the people of this country by transactions of this character, which of late have been far too frequent.

This treaty is not alone involved in a proper decision of this question. There are other treaties at this moment pending in the Senate proposing to transfer other Indian reserves—in fact other Indian reserves have been transferred into the hands of railway companies and private parties to the detriment of the interests of the people. And if this House shall, by refusing to exercise its power, by refusing to express its opinion, sanction this course of proceeding, how long will it be before the whole public domain of the United States will be absorbed by these unjustifiable means, and it will be beyond our reach to arrest this great wrong.

The Committee on Indian Affairs have thought proper to report these resolutions and to ask for them the favorable consideration of this House to assert the power which we properly possess in this matter, expressing our opinion as one of the coordinate branches of Congress, presuming that the Senate will respect that opinion, and hesitate before they give their sanction to this flagrant injustice. . . .

[*Congressional Globe*, 40th Cong., 2d sess., pp. 3261-64.]

72. Resolutions of the Indian Peace Commission

October 9, 1868

After a renewal of hostilities on the plains in the summer of 1868, the Peace Commission met again in Chicago in October. It took a strong stand against the hostile Indians and, in a reversal of its earlier position, now recommended the transfer of the Bureau of Indian Affairs to the War Department.

The PRESIDENT of the United States:

At a meeting of the Indian peace commission held this day the following resolutions, embodying the views of the commission, were adopted, to wit:

Resolved, That this commission recom-

mend to the President of the United States and Congress that full provisions be at once made to feed, clothe, and protect all Indians of the Crow, Blackfeet, Piegan, Gros Ventres, Sioux, Ponca, Cheyenne, Arapahoe, Apache, Kiowa, and Comanche nations of Indians,

who now have located or may hereafter locate permanently on their respective agricultural reservations.

Resolved, That the treaties of said tribes with United States, whether ratified or not, should be considered to be and remain in full force as to all Indians of such tribes as now have or may hereafter have their homes upon the agricultural reservations described in their respective treaties, and no others.

Resolved, That in the opinion of this commission the time has come when the government should cease to recognize the Indian tribes as "domestic dependent nations," except so far as it may be required to recognize them as such by existing treaties, and by treaties made but not yet ratified; that hereafter all Indians should be considered and held to be individually subject to the laws of the United States, except where and while it is otherwise provided in said treaties, and that they should be entitled to the same protection from said laws as other persons owing allegiance to the government enjoy.

Resolved, That the recent outrages and

73. Secretary of War Schofield on Transfer of the Indian Bureau
Extract from the *Annual Report of the Secretary of War*
November 20, 1868

The arguments of military men in favor of transferring the Bureau of Indian Affairs from the Department of the Interior to the War Department were well stated by Secretary of War J. M. Schofield in his annual report for 1868.

... I believe it manifest that an important change should be made in our mode of dealing with the Indians. While good faith and sound policy alike require us to strictly observe existing treaties so long as the Indians maintain like good faith, when any tribe has violated its treaty it should no longer be regarded as a nation with which to treat, but as a *dependent uncivilized people*, to be cared for, fed when necessary, and governed.

It is manifest that any branch of the public service cannot be efficiently and economically managed by two departments of the government. If the Interior Department can alone manage Indian affairs, and thus save the large expense of the army in the Indian country, very well. But if the army must be kept there for the protection of railroads

degradations committed by the Indians of the plains justify the government in abrogating those clauses of the treaties made in October, 1867, at Medicine Lodge creek, which secure to them the right to roam and hunt outside their reservations; that all said Indians should be requested to remove at once to said reservations and remain within them, except that after peace shall have been restored, hunting parties may be permitted to cross their boundaries with written authority from their agent or superintendent. And

Resolved further, That military force should be used to compel the removal into said reservations of all such Indians as may refuse to go, after due notice has been given to them that provision has been made to feed and protect them within the same.

Resolved, That in the opinion of this commission the Bureau of Indian Affairs should be transferred from the Department of the Interior to the Department of War....

[*House Executive Document* no. 1, 40th Cong., 3d sess., serial 1366, pp. 831-32.]

of justice to the Indians, I recommend that the management of Indian affairs be returned to the War Department, with authority to make regulations for their govern-

74. Indian Commissioner Taylor on Transfer of the Indian Bureau
Extract from the *Annual Report of the Commissioner of Indian Affairs*
November 23, 1868

The proposal, advanced strongly in the late 1860s and again a decade later, to transfer the Bureau of Indian Affairs from civilian control under the Interior Department to military control under the War Department brought a spirited attack from Commissioner Nathaniel G. Taylor. He admitted, however, that affairs had not been well handled under the Interior Department, and he recommended the creation of a separate department of Indian affairs.

THE QUESTION OF THE TRANSFER OF THE
INDIAN BUREAU TO THE WAR DEPARTMENT

It will be seen, by recurring to the proceedings of the peace commission at its late meeting at Chicago, that a resolution was adopted recommending to Congress the transfer of the Indian Bureau to the War Department. In view of probable action upon that recommendation, and impelled by solemn convictions of duty, I feel called upon to offer some facts and arguments, for the consideration of Congress, in opposition to the proposed transfer, and to give some views, suggested by nearly two years' intimate official connection with the Indian service, with regard to the best method for the future conduct of Indian affairs.

In 1849, Congress, upon the creation of the Department of the Interior, incorporated the Bureau of Indian Affairs in that department, giving to its head the supervisory and appellate powers theretofore exercised over Indian affairs by the Secretary of War. It is now proposed to re-transfer the bureau to the War Office.

It is presumed the question for legislative solution will be three-fold: Shall the bureau be transferred to the War Department; or shall it remain under the direction of the Secretary of the Interior; or shall it be erected into an independent department, upon an equal footing in all respects with the other departments, as recommended, unanimously, by the peace commission in their report to the President of 7th January last.

I shall endeavor to present some reasons

ment and for their protection against lawless whites....

[*House Executive Document* no. 1, 40th Cong., 3d sess., serial 1367, pp. xvii-xviii.]

against the transfer. These I proceed to offer, assuming all the time that the transfer means that in future all our Indian affairs are to be administered by the army, under the direction of the War Office.

My reasons in opposition are—

1. *That the prompt, efficient, and successful management and direction of our Indian affairs is too large, onerous, and important a burden to be added to the existing duties of the Secretary of War.*

There is a limit to human capacity and endurance, and when either is taxed beyond that limit, it must fail in the performance of its functions, and the result must be disappointment, and most probably disaster, to the service.

The business of the War Department, in all its varied and complex ramifications, is sufficient already, if properly transacted, to employ all the faculties of the most accomplished head, even with all the aids he may summon to his assistance; and there are few men living, if any, who can give the requisite attention to its demands, and at the same time discharge properly and with requisite promptness the delicate, important, and numerous duties the care of Indian affairs would superadd.

None can deny that the safe and successful management of the military affairs of a republic of 40,000,000 of people, demands the constant and exclusive exercise of all the powers of an accomplished and experienced statesman.

A little investigation, and even a superficial

promptly and faithfully executed, so that the Indians may not have cause of complaint, or reason to violate their obligations by acts of violence and robbery.

While it may not be expedient to negotiate treaties with any of the tribes hereafter, it is no doubt just that those made within the past year, and now pending before the

United States Senate, should be definitely acted upon. Some of the parties are anxiously waiting for the fulfillment of the stipulations of these compacts and manifest dissatisfaction at the delay. . . .

[*House Executive Document* no. 1, 41st Cong., 2d sess., serial 1414, p. 448.]

81. President Grant's Peace Policy

Extract from Grant's Second Annual Message to Congress

December 5, 1870

In an attempt to eliminate abuses in the Indian service occasioned by political appointments, President Grant authorized the assignment of the Indian agencies to religious denominations, who would select the agents and other personnel. Grant explained and justified the action in his message to Congress in 1870.

. . . . Reform in the management of Indian affairs has received the special attention of the Administration from its inauguration to the present day. The experiment of making it a missionary work was tried with a few agencies given to the denomination of Friends, and has been found to work most advantageously. All agencies and superintendencies not so disposed of were given to officers of the Army. The act of Congress reducing the Army renders army officers ineligible for civil positions. Indian agencies being civil offices, I determined to give all the agencies to such religious denominations as had heretofore established missionaries among the Indians, and perhaps to some other denominations who would undertake the work on the same terms—*i. e.*, as a missionary work. The societies selected are allowed to name their own agents, subject to the approval of the Executive, and are

expected to watch over them and aid them as missionaries, to Christianize and civilize the Indian, and to train him in the arts of peace. The Government watches over the official acts of these agents, and requires of them as strict an accountability as if they were appointed in any other manner. I entertain the confident hope that the policy now pursued will in a few years bring all the Indians upon reservations, where they will live in houses, and have schoolhouses and churches, and will be pursuing peaceful and self-sustaining avocations, and where they may be visited by the law-abiding white man with the same impunity that he now visits the civilized white settlements. I call your special attention to the report of the Commissioner of Indian Affairs for full information on this subject. . . .

[James D. Richardson, comp., *Messages and Papers of the Presidents*, 7:109-10.]

82. Cherokee Tobacco Case

December 1870

Cherokees Elias C. Boudinot and Stand Watie refused to pay taxes required by the Internal Revenue Act of 1868 on tobacco manufactured in the Cherokee Nation because they claimed the Cherokee treaty of 1866 exempted them from such taxation. The Supreme Court decided against them on the grounds that a law of Congress can supersede the provisions of a treaty.

. . . . The second section of the fourth article of the Constitution of the United States declares that "this Constitution and

the laws of the United States which shall be made in pursuance thereof, and all treaties which shall be made under the authority of

the United States, shall be the supreme law of the land."

It need hardly be said that a treaty cannot change the Constitution or be held valid if it be in violation of that instrument. This results from the nature and fundamental principles of our government. The effect of treaties and acts of Congress, when in conflict, is not controlled by the Constitution. But the question is, not involved in any doubt as to its proper solution. A treaty may supersede a prior act of Congress, and an act of Congress may supersede a prior treaty. In the cases referred to these principles were applied to treaties with foreign nations. Treaties with Indian nations within the jurisdiction of the United States, whatever considerations of humanity

and good faith may be involved and require their faithful observance, cannot be more obligatory. They have no higher sanctity; and no greater inviolability or immunity from legislative invasion can be claimed for them. The consequences in all such cases give rise to questions which must be met by the political department of the government. They are beyond the sphere of judicial cognizance. In the case under consideration the act of Congress must prevail as if the treaty were not an element to be considered. If a wrong has been done by the power of redress is with Congress not with the judiciary, and that body, upon being applied to, it is to be presumed, will promptly give the proper relief. . . .

[11 *Wallace*, 616, 620-21.]

83. Abolition of Treaty Making

March 3, 1871

Because of humanitarian attacks upon the treaty system and the objections of the House of Representatives to the concentration of authority for dealing with the Indians in the hands of the Senate through its treaty-making power, Congress in 1871, in an obscure rider to the Indian appropriation bill, outlawed further treaty making with Indian tribes.

An Act making Appropriations for the current and contingent Expenses of the Indian Department. . . .

. . . *Yankton Tribe of Sioux.* . . . For insurance and transportation of goods for the Yanktons, one thousand five hundred dollars: *Provided*, That hereafter no Indian nation or tribe within the territory of the United States

shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty: *Provided, further*, That nothing herein contained shall be construed to invalidate or impair the obligation of any treaty heretofore lawfully made and ratified with any such Indian nation or tribe. . . .

[*U.S. Statutes at Large*, 16:566.]

84. Indian Commissioner Walker on Indian Policy

Extract from the *Annual Report of the Commissioner of Indian Affairs*

November 1, 1872

Commissioner of Indian Affairs Francis A. Walker spoke bluntly in his report of 1872 about the relationship of the federal government to the Indians. It was a harsh, practical statement, made by a man who later won renown as a statistician, economist, and educator.

THE INDIAN POLICY

The Indian policy, so called, of the Government, is a policy, and it is not a policy, or rather it consists of two policies, entirely distinct, seeming, indeed, to be mutually in-

consistent and to reflect each upon the other: the one regulating the treatment of the tribes which are potentially hostile, that is, whose hostility is only repressed just so long as, and so far as, they are supported in idleness by the Government; the other regulating the treat-