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difficult to comprehend the proposition, that the inhabitants of either quarter of the globe could have rightful original claims of dominion over the inhabitants of the other, or over the lands they occupied; or that the discovery of either by the other should give the discoverer rights in the country discovered which annul the pre-existing rights of its ancient possessors.

After lying concealed for a series of ages, the enterprise of Europe, guided by nautical science, conducted some of her adventurous sons into this Western world. They found it in possession of a people who had made small progress in agriculture or manufacture, and whose general employment was war, hunting, & fishing.

Did these adventurers, by sailing along the coast, and occasionally landing on it, acquire for the several Governments to whom they belonged, or by whom they were commissioned, a rightful property in the soil, from the Atlantic to the Pacific; or rightful dominion over the numerous people who occupied it? Or has nature, or the great Creator of all things, conferred their rights over hunters and fisherman, or agriculturists and manufacturers?

But power, war, conquest, give rights which, after possession, are conceded by the world, which can never be controverted by those on whom they descend. We proceed then, to the actual state of things, having glanced at their origin; because, holding it in our recollection, might shed some light on existing pretensions.

The great maritime powers of Europe discovered and visited different parts of this continent at nearly the same time. The object was too immense for any one of them to grasp the whole, and the claimants were too powerful to submit to the exclusive or unreasonable pretensions of any single potentate. To avoid bloody conflicts, which might terminate disastrously to all, it was necessary for the nations of Europe to establish some principle which all would acknowledge, and which should decide their respective rights as between themselves. This principle, suggested by the actual state of things, was that discovery gave title to the Government by whose subjects or by whose authority it was made against all other European Governments, which title might be consummated by possession."

This principle, acknowledged by all Europeans, because it was the interest of all to acknowledge it, gave to the nation making the discovery, as its inevitable consequence, the sole right of acquiring the soil, and making settlements on it. It was an exclusive principle, which shut out the right of competition among those who had agreed to it; not one which could annul the previous rights of those who had not agreed to it. It regulated the right given by discovery among the European discoverers but could not affect the rights of those already in possession, either as aboriginal occupiers, or as occupants by virtue of a discovery made before the memory of man. It gave the exclusive right to purchase, but did not find that right on a denial of the right of the possessor to sell.

The relation between the Europeans and the natives was determined in each case, by the particular Government which asserted and could maintain this pre-emptive privilege in the particular place. The United States succeeded to all the claims of Great Britain, both territorial and political; but no attempt, so far as is known, has been made to enlarge them. So far as they existed merely in theory, or were in their nature only exclusive of the claims of other European nations, they still retain their original character, and remain dormant. So far as they have been practically exerted, they exist in fact, are understood by both parties, are asserted by the one, and admitted by the other.

Soon after Great Britain determined on planting colonies in America, the king granted charters to companies of his subjects, who associated for the purpose of carrying the views of the crown into effect, and of enriching themselves. The first of these charters was made before the possession was taken of any part of the country. They purport generally, to convey

the soil, from the Atlantic to the South Sea. This soil was occupied by numerous and warlike nations, equally willing, and able to defend their possessions. The extravagant and absurd idea, that the feeble settlements made on the sea coast, or the companies under whom they were made, acquired legitimate power by their right to govern the people, or occupy the lands from sea to sea, did not enter the mind of any man. They were well understood to convey the title, which, according to the common law of European sovereigns respecting America, they might rightfully convey, and no more. This was the exclusive right of purchasing such lands as the natives were willing to sell. The crown could not be understood to grant what the crown did not affect to claim, nor was it so understood.

The power of making war is conferred by these charters on the colonies, but *defensive* war alone seems to have been contemplated. In the first charter to the first and second colonies, they are empowered, "for their several defences to encounter, expel, repel, and resist, all persons who shall, without license," attempt to inhabit "within the said precincts for their friendship, or commerce, or that shall enterize, or attempt, at any time hereafter, the least detriment or annoyance of the said several colonies or plantations."

The charter to Connecticut concedes a general power to make defensive war with these terms: "and upon just cause to invade and destroy the natives, or other enemies of the said colony."

The same power, in the same words, is conferred on the Government of Rhode Island.

This power to repel invasion, and upon just cause, to invade and destroy the natives, authorizes offensive as well as defensive war, but only "on just cause." The very terms imply the existence of a country to be invaded, and of an enemy who has given just cause of war.

The charter to William Penn contains the following recital: "and because, in a remote country, near so many barbarous nations, the incursions 'as well of the savages themselves as of other enemies, pirates, and robbers, may probably be feared, therefore we have given," &c. The instrument then confers the power of war.

These barbarous nations whose incursions were feared, and to repel whose incursions the power to repel war was given, were surely not considered as the subjects of Penn, or occupying his lands during his pleasure.

The same clause is introduced to the charter to Lord Baltimore.

The charter to George professes to be granted for the charitable purpose of enabling poor subjects to gain a comfortable subsistence by cultivating lands in the American provinces, "at present waste and desolate." It recites, "and whereas our provinces in North America have been frequently ravaged by Indian enemies more especially that of South Carolina, which, in the late war, by the neighbouring savages, was laid waste by fire and sword, and great numbers of the English inhabitants miserably massacred; & our loving subjects who now inhabit there, by reason of the smallness of their numbers, will, in case of any new war, be exposed to the like calamities, inasmuch as the whole Southern frontier continueth unsettled, and little open to the said savages."

These motives for planting the new colony are incompatible with the lawless idea of granting the soil, and all its inhabitants, from sea to sea. They demonstrate the truth, that these grants asserted a title against Europeans only, and were considered as blank paper, so far as the rights of the natives were concerned. The power of war is given only for defence, not for conquest.

The charters contain passages, showing one of their objects to be the civilization of the Indians, and their conversion to Christianity—objects to be accomplished by conciliating conduct, and good example; not by extermination.

The actual state of things, and the practice of European nations, on so much of the American continent as lies between the Mississippi and the Atlantic, explain their claims and the charters they granted. They pre-

tend to exclude each other; though the discovery of any other, the extent of whose was admitted by all to exclude the claim of any other, the extent of that discovery was the subject of unceasing contest. Bloody conflicts between them, which gave importance and severity to the neighboring nations. Fierce and warlike in their character, they might form formidable enemies, or effective friends. Instead of rousing their resentments, by asserting claims to their lands, or to dominate over their persons, their alliances might be sought by flattery, professions, and purchased by rich presents. The English, the French, and the Spaniards, were equally competitive for their friendship and alliance, by the exact meaning of words, not by the material whether they were called the subjects, or the children of their father in Europe; laying in profession of duty, and affection, in return for the rich presents they received; so long as their actual independence was untouched, and their right to self-government acknowledged, they were willing to profess dependence on the Power which furnished supplies of which they were in absolute need, and restrained dangerous intruders from entering their country; and this was probably the sense in which the term was understood by them.

Certain it is, that our first forefathers, for example, from the first establishment of our country, of an attempt, on the part of the crown, to interfere with the internal affairs of the Indians, rather than to keep out the agents of foreign powers, who as traders or otherwise, might seduce them into foreign alliances. The King purchased their lands when they were willing to sell, at a price they were willing to take; but never coerced a surrender of them. He also purchased their alliance and dependence by subsidies; but never intruded into the interior of their affairs, or interfered with their self-government, so far as respected themselves only.

The general views of Great Britain, with regard to the Indians, were detailed by Mr. Stewart, superintendent of Indian affairs. In a speech delivered at Mobile, in a speech of several persons of distinction, soon after the peace of 1763. Towards the conclusion he says, "I inform you that it is the King's order to all his Governors and subjects to treat the Indians with justice and humanity, and to forbear all encroachments on the territories allotted to them; accordingly all individuals are prohibited from purchasing any of your lands; but as you know, that your white brethren cannot feed you when you visit them, unless you give them grounds to plant, it is expected that you will cede lands to the King for that purpose. But, whenever you shall be pleased to surrender any of your territories to his majesty, it must be done, for the future, at a public meeting of the nation, when the Governor of the province, or the superintendent shall be present, and obtain the consent of all your people. The boundaries of your hunting grounds will be accurately fixed, and no settlement permitted to be made upon them—As you may be assured that all treaties with you will be faithfully performed, so it is expected that you also will be careful strictly to observe them."

The proclamation issued by King of Great Britain, in 1763, soon after the ratification of the articles of peace, forbids the governors of any of the colonies to grant warrants of survey, or pass patents upon any lands whatever, which not having been ceded to, or purchased by us (the King as aforesaid are reserved to the said Indians, or any of them.)

The proclamation proceeds, "and we do further declare it to be our royal will and pleasure, for the preservation of our aforesaid, to reserve, under our sovereignty, protection, and dominion, or the use of the said Indians, all the lands and territories" lying to the westward of the sources of the rivers which fall into the sea, from the west and northwesterly as aforesaid; and we do hereby strictly forbid, on pain of displeasure, all our loving subjects from making any purchases or settlements whatever, or taking possession of any of the lands above reserved, without our special leave and licence for that purpose first obtained."

"4th. For the better security of the peace and friendship now entered into by the contracting parties against all infractions of the same by the citizens of either party, to the prejudice of the other, neither party shall proceed to the infliction of punishments on the citizens of the other, otherwise than by securing the offender or offenders, by imprisonment, or any other competent means, till a fair and impartial trial can be had by judges or juries of both parties, as near as can be to the laws, customs, and usages of the contracting parties, and natural justice, &c.

5th. The fifth article regulates the trade between the contracting parties, in a manner entirely equal.

6th. The sixth article is entitled to peculiar attention, as it contains a disclaimer of design, which were at that time, ascribed to the United States, by their enemies, and from the imputation of which Congress was the peculiarly anxious to free the Government. It is in these words: "Whereas the enemies of the United States have endeavored, by every artifice in their power, to possess the Indians in general with an opinion that it is the design of the States aforesaid to extirpate the Indians, and take possession of their country: To obviate such false suggestion the United States do engage to guarantee to the aforesaid nation of Delaware, and their heirs, all their territorial rights, as it hath been bounded by former treaties, as long as the said Delaware nation shall abide by, and hold fast, the chain of friendship now entered into."

The parties further agree, that other tribes, friendly to the interest of the United States, may be invited to form a State, whereof the Delaware nation shall be the head, and have a representation in Congress.

This treaty, in its language, and in its provisions, is formed, as near as may be, on the model of treaties between the crowned heads of Europe.

The sixth article shows how Congress then treated the injurious calling of cherishing designs unfriendly to the political and civil rights of the Indians.

During the war of the Revolution, the Cherokees took part with the British. After its termination, the United States, though desirous of peace, did not feel its necessity so strongly as while the war continued. Their political situation being changed, they might very well think it advisable to assume a higher tone, and to impress on the Cherokees the same respect for congress which was before felt for the King of Great Britain. This may account for the language of the treaty of Hopewell. There is more reason for supposing that the Cherokee chiefs were not very critical judges of the language, from the fact that every one makes his mark; no chief was capable of signing his name. It is probable the treaty was interpreted to them.

The treaty is introduced with the declaration, that "The commissioners plenipotentiary of the United States do give peace to all the Cherokees, and receive them into the favor and protection of the United States of America, on the following conditions."

When the United States gave peace, did they not also receive it? Were not both parties desirous of it? If we consult the history of the day, does it not inform us that the United States were at least as anxious to obtain it as the Cherokees? We may ask, further: Did the Cherokees come to the seat of the American Government to solicit peace; or, did the American commissioners go to them to obtain it? The treaty was made at Hopewell, not at New York. The word *given*, then, has no real importance attached to it.

The first and second articles stipulate for the mutual restoration of prisoners, and are of course equal.

The third article acknowledges the Cherokees to be under the protection of the United States of America, and of no other Power.

This stipulation is found in Indian treaties, generally. It was introduced into their treaties with Great Britain; and may probably be found in those with other European Powers. Its origin may be traced to the nature of their connexion with those Powers; and its true meaning is discerned in their relative situation.

The general law of European sovereigns, respecting their claims in America, limited the intercourse of Indians, in a great degree, to the particular potentate, whose ultimate right of domain was acknowledged by the others. This was the general state of things in time of peace. It was sometimes changed in war. The consequence was, that their supplies were derived chiefly from that nation, and their trade confined to it. Goods, indispensable to their comfort, in the shape of presents, were received from the same hand. What was of

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