

The Meaning of Article 13 of the Treaty of Washington, March 28, 1836

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the article suggests at first blush that the government's concern was with the preemptionists' intrusions into the recently ceded lands. These intrusions could not prevent, according to Butler, Indians from using the lands. Butler's interpretation of the article, however, is creative. Instead of protecting Indian rights until the land is actually settled, as required by the treaty, he protects those rights only until it would be actually "disposed of, to individuals." In his view, preemptionists, as "actual settlers," did not disrupt Indian rights, but purchasers of public lands, who might not be settlers at all, did bring an end to such rights. Butler, like Schoolcraft, favored private property over both squatters and retained Indian rights. He neglected the property Indians (noncitizens) had in those rights.

It is my opinion that Butler and Schoolcraft, like the established citizens of the Grand River area, had intentions in this matter that can be honored. They were concerned to preserve the peace and to maintain an orderly northward expansion of the American settlements. They also were interested in protecting Indians from the squatters' unjust taking of the Indians' improvements. It is also true, however, that Schoolcraft had by this time embraced the view that Indians would be better off if kept at a great distance from ordinary settlers, who would only corrupt them or otherwise damage them. It must be added that he had much Jacksonian company in holding to this view. He grew worried that soon, as settlements pressed northward in the lower parts of the Lower Peninsula, lawlessness might prevail. His fears stemmed in part from the general national debate over Indian removal, a policy he had come to advocate and one that saw great controversy in the 1830's. The episodes of 1836-1837 that surrounded the Attorney General's opinion were occurring, it should be recalled, at the very time that the United States was deploying troops to ensure the brutal and deadly removal of the Cherokees from their



Georgia and Tennessee homelands. It was also at this time that the United States' efforts to remove the Seminoles were meeting a resistance that would cost the United States Army almost as many lives as the later Mexican War, not to mention an unknowable number of Seminole deaths. Keeping the frontier in order and peace was a major concern for any dutiful agent of the Office of Indian Affairs or other federal office. Bending the meaning of a treaty article was certainly worth doing if it maintained peace and order at the expense of squatters, and dishonest squatters taking Indian property, at that.

But then, there were laws against squatting, and even if they were poorly enforced, they could have been turned against the preemptionists. The turn to Article 13, originating with the citizens of Grand Rapids, suggests a powerful urge to establish clear rights to private property, in the face of both squatters and an Indian treaty that might muddy those rights. It is my opinion that Schoolcraft and Butler reinterpreted the article in the context of unfolding events and in the presence of propertied citizens.

The truly injured party in all of this, the Ottawas at Grand River whose improvements were being taken over or destroyed, strikingly expressed no concern about possible violations of Article 13. The Ottawas do not mention the article in the documents that convey their concerns. Instead, they fixed on the events as a violation of Article 8, which promised them compensation for their improvements. Slater reported that the Ottawas of the Grand River area were wondering "What they are to do in regard to their property? Is it possible to have their property appraised soon?"<sup>18</sup> From the Indians' perspective, what was most alarming was the destruction or appropriation of improvements at a time when the government had promised them compensation.

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<sup>18</sup> Leonard Slater to HRS, Barry, Jan 18, 1837, in HRS to C.A. Harris, Detroit, 24 Jan, 1837, NAM1R37 143.