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How to Buy a Continent: The Protocols of Indian Treaties as Developed by Benjamin Franklin and Other Members of the American Philosophical Society

Abstract

In 1743, when Benjamin Franklin announced the formation of an American Philosophical Society for the Promotion of Useful Knowledge, it was important for the citizens of Pennsylvania to know more about their American Indian neighbors. Beyond a slice of land around Philadelphia, three quarters of the province were still occupied by the Delaware and several other Indian tribes, loosely gathered under the wing of an Indian confederacy known as the Six Nations. Relations with the Six Nations and their allies were being peacefully conducted in a series of so-called “Indian Treaties” that dealt with the fur trade, threats of war with France, settlement of grievances, and the purchase of land.

Disciplines

Diplomatic History | Religion | United States History

How to Buy a Continent: The Protocol of Indian Treaties as Developed by Benjamin Franklin and Other Members of the American Philosophical Society^a

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In 1743, when Benjamin Franklin announced the formation of an American Philosophical Society for the Promotion of Useful Knowledge, it was important for the citizens of Pennsylvania to know more about their American Indian neighbors. Beyond a slice of land around Philadelphia, three quarters of the province were still occupied by the Delaware and several other Indian tribes, loosely gathered under the wing of an Indian confederacy known as the Six Nations. Relations with the Six Nations and their allies were being peacefully conducted in a series of so-called “Indian Treaties” that dealt with the fur trade, threats of war with France, settlement of grievances, and the purchase of land.

FRANKLIN’S TREATIES

Franklin played an important part in Indian affairs in colonial and early federal America, particularly with regard to Indian treaties. The minutes of 13 of these treaties, from 1736 to 1762, amounting to about 300 pages, were printed in folio by Benjamin Franklin’s press. A magnificent volume of facsimile reproductions under the title *Indian Treaties Printed by Benjamin Franklin* was issued in 1938 by the

a Read on 8 November 2014 by Martin Levitt.

b Anthony F. C. Wallace died on 5 October 2015.

Historical Society of Pennsylvania, using copies of the treaties provided by several institutions, including the American Philosophical Society, which held the largest number. It was edited by Julian P. Boyd, who would become the first editor of the papers of Thomas Jefferson and later President of the Society (1973–6). These treaty pamphlets might be regarded as the first items acquired for the ethnological collections of the Society. They are the 18th century equivalents of 21st century videotapes, capturing, as Carl Van Doren, Pulitzer-prize winning author of the classic biography of Franklin and also a member of the Philosophical Society, observed in his appreciation of the treaties as a literary genre, the reality of live events in a bygone age. Franklin remarked more pragmatically that the treaties should be of public interest because they showed “the method of doing business with these barbarians.”¹

I have a vision of the first Indian treaty in which, however, it is the English who are the barbarians. I see a group of Indians, standing on the shore of what we now know as the Atlantic Ocean, staring eastward at some Unidentified Floating Objects (UFOs) rising up from the waters that surround the world. These vessels come closer and disgorge small boats, and from them strange human beings land, with hairy faces and funny clothes, speaking to each other in an incomprehensible language. What to do with these aliens? Let’s light a fire and sit down and try to talk with them and somehow find out who they are and what they are doing here. So they gather around a council fire and the Indian spokesman says calmly, in Mohawk, “We are Haudenosaunee. What is your Nation? Perhaps we are Cousins.” The White Captain stands up, stabs his sword into the sand, and yells into the sky, in English, “I claim this land in the name of His Christian Majesty, King James.” Then he turns to the Indian speaker and says, “Who’s in charge around here?” This was a meeting between an egalitarian society based on kinship and a hierarchical society based on authority. As time went on, there were more and more close encounters between the British visitors and the Six Nations, sometimes friendly, sometimes not, and both sides realized that there had to be a better way to communicate. The “treaty” was the mode in which the Indians and the Europeans learned to talk to each other.

PROTOCOL

By Franklin’s time, a treaty protocol had been developed that both sides generally accepted. This protocol was based on the British definition of Indian tribes as sovereign nations governed by central councils of chiefs. The concept of “Indian nation” was the most critical, and

ultimately the most vulnerable, element of the protocol. Indispensable also were the use of bilingual interpreters and a mutually respectful sharing of diplomatic etiquettes. Shared protocol made possible agreements on substantive issues, including the highly profitable fur trade; the settlement of grievances; the purchase of Indian land; and, as always, the firming up of the indispensable alliance between the Six Nations and the British colonies in the persistent conflict with the French in Canada.² Pennsylvania's version of treaty protocol was derived from mid-17th century New York, which on behalf of all the British colonies treated exclusively with the Six Nations Confederacy and, through that body, their tributary nations. It was Iroquois custom that shaped the proceedings in conformity with their traditional manner of conducting "publick Transactions with other Nations."³

Printing the Indian treaty of 1736, and subsequent Pennsylvania treaties, was a public service of Franklin's, attendant upon his service as clerk and, after 1751, as a member of the provincial Assembly. The developing confrontation between French and English interests in the Ohio country directed public attention to the need to better understand the government of the Six Nations. Franklin's *Treaties* were, in their time, the most extensive presentation in English of Iroquois political practices and no doubt served as a guide to protocol for colonial officials engaged in Indian affairs. After the Lancaster Treaty of 1744, which was required to settle a bloody skirmish between Iroquois warriors and Virginia frontiersmen before a general frontier war broke out, Thomas Lee of Virginia wrote to Conrad Weiser, the Pennsylvania interpreter asking for background information about the Iroquois. Weiser's correspondence with Lee, outlining Iroquois customs in religion, war, and marriage were published in part in Virginia and in Pennsylvania by a German language newspaper. Weiser's sketches of Iroquois ethnology came to the attention of Benjamin Franklin, who published an excerpt. But Weiser's account of the structure and procedures of the Confederacy was brief.

And there was not much else yet in print, except for Franklin's *Treaties*, in the way of useful knowledge. A friend and associate of Franklin's, Lewis Evans, published several reasonably accurate maps of Indian tribal locations in the British colonies, accompanied by a survey of the province of Pennsylvania that contained some information on Indians. The details were probably provided by Weiser and another Philadelphia scientist, John Bartram, who accompanied Weiser on trips to Indian country and later published a book on the subject. William Penn himself had published, as early as 1683, an account of the Indians of his province, but the description of political matters was limited to

treaties for the purchase of land from local Delaware (Lenni Lenape) "Kings." Cadwallader Colden, an experienced Indian commissioner for New York, had published his celebrated *History of the Five Nations of Indians* in 1727, but it dealt mostly with the Iroquois wars with the French, and although it presented some treaty proceedings, it did not provide a cultural analysis of Iroquois polity. Franklin met Colden in New York in 1742 and included him as one of the early members of the Philosophical Society. No doubt Franklin learned more about the League of the Iroquois from Colden. An even earlier, and more sophisticated, account of Iroquois kinship and political institutions had been published in Paris in 1709, written by Father Joseph-Francois Lafitau, a Jesuit missionary among the Mohawk. It was probably not accessible in Philadelphia in the middle of the 18th century and was not translated into English until William Fenton and Elizabeth Moore's edition appeared in 1974–7. Thomas Jefferson picked up a copy during his tour as minister to France in the 1780's following in the footsteps of Franklin. But Jefferson was unable to appreciate the sophisticated and intimate ethnography of kinship and council affairs, being distracted by Lafitau's comparison of the American Indian egalitarian cultures with the democracy of ancient Greece. In replying to a letter from John Adams asking for a general book on the Indians, Jefferson dismissed Lafitau's work in disparaging terms as being filled with "falsehoods" and "absurdities." Jefferson's own *Notes on the State of Virginia* (Paris 1785) had much good to say about the Indians' personal virtues but did not discuss the organization of the Confederacy. Franklin himself, while he was in France in the 1780's, wrote a sketch of Indian manners and customs titled "Remarks Concerning the Savages of North America," published in French (and English) for the salons of Paris. It depended in part on his treaty experiences and on conversations with Conrad Weiser.

These Indian treaties were public events usually held in White trading posts, forts, towns, and cities; they lasted for days, sometimes weeks, and were attended by hundreds of people, both White and Indian. (For instance, more than 500 Indians attended the treaty at Easton in 1758, and more than 2,000 attended at Fort Niagara in 1764). Indian visitors—men, women, and children—were housed in special dormitories. The delegations were led in person by the highest officials—on the White side by representatives of the Crown, the governors, and superintendents of Indian affairs of the relevant colonies (later the territories of the United States); and on the Indian side by sachem chiefs from the Grand Council of the Six Nations and from chiefs' councils of other nations and tribal factions. The treaty commonly began with a

formal evening, European-style, dinner, and the next day, a welcoming address was given by the host (if White, the Governor, if Indian, the Firekeeper). Both sides then performed a special ceremony of condolence for their counterparts, taken from the Six Nations Condolence Ceremony for deceased chiefs. The bloody seats of the bereaved would be wiped clean, and the Three Bare Words of the Requicking Address were uttered (Eyes, Ears, and Throat), drying the mourners' eyes of tears, opening the ears, and clearing the throat, so that they could see daylight again, hear speech, deliver words, and attend to business. The graves of the dead were symbolically covered with fur blankets or trade goods. There followed, day after day, alternating speeches by both sides, translated by interpreters, formally addressing the issues that brought them together. The interpreters probably did not provide simultaneous translation but rather verbal summaries of the speeches; such summaries would be written down in English later.

Under the guidance of the interpreters, White spokesmen, like their Indian counterparts, repeatedly alluded to the enduring friendship of their nations, using the Iroquois metaphors of the Fire, the Road, and the Great Chain of Friendship. These metaphors were a formal terminology that denoted abstract concepts. The Fire was the permanent council fire, lit for the occasion by the party issuing the invitation, on either side of which the parties sat, peaceably reasoning with one another. The Road was the path of trade and communication between the two peoples, often beset by all sorts of impediments: rocks and fallen trees, noisy birds in the bushes spreading vile rumors, the bodies of innocent travelers killed by bad men. The Great Chain of Friendship tied together the Six Nations and the English colonies (acting always in the name of the British Crown) in trade and in defense against aggression by the French and their Indian allies, a chain, however, that if neglected was subject to rust, calling for efforts to polish and brighten the Chain in treaties that renewed old agreements and joined old friends together with new partners in a changing world. When a White speaker had concluded his message, the Indians often requested permission to delay their response until the following day so their councils of chiefs and clan mothers could discuss the White man's words and formulate their own, collective answer. Significant points were emphasized by the delivery of wampum by both sides: sometimes single strings of tubular shell beads were presented, or, accompanying major pronouncements, large belts woven of wampum strings, several feet long, bearing figurative designs of humans and animals or abstract metaphors such as the Two Row wampum belt. Dozens of these belts and strings could be presented by the speakers in any one treaty. These

exchanges of wampum served as evidence of the sincerity of the speaker, and the importance of the subject (such as agreement to a military alliance or a cession of land), and as a physical record of the transaction, comparable to the White man's written documents. The Indian nations preserved these strings and belts of wampum in a kind of official archive, entrusted to a reliable person, and spokesmen were expected to visit these collections regularly to refresh their memories of international events and commitments. Rum was not allowed during these days of formal meeting. The treaty would end with a ceremonial dinner, the presentation of trade goods, and, often, whiskey, as gifts or as payment for land ceded by the treaty.

The Franklin text of an Indian treaty essentially contained three elements: identification of participants; a narrative of events; and minutes of the exchange of speeches, wampum, and other Native memorials, and trade goods. The Native speeches were rendered into English, of course, from an edited fair copy of notes and recollections made by secretaries on the scene who listened to the translations and explanations of meaning provided by the "interpreters," both White and Indian. Manuscript copies of some of these notes survive. The language of these speeches was brought to its often elegant final form in many instances by the Penns' agents Richard Peters and James Logan, who attended the treaties. Although errors and intentional omissions do blur the record, these minutes are supplemented and at times corrected in contemporaneous journals and correspondence of participants.

A central role in these proceedings was played by the person, or persons, identified in the minutes as "Interpreter."⁴ Interpreters were men, occasionally women, who had learned the language and customs of the other side by living with members of the alien community as traders, often as a member of a family, over a period of years. Such individuals might have been sent as children to live in the other community for the purpose of preparing them to serve as interpreters later on, as was the case with the famous Pennsylvania interpreter, Franklin's friend, Conrad Weiser. Weiser's parents were German immigrants who settled in New York before moving to the Pennsylvania-Dutch region and who boarded Conrad as a child with a Mohawk foster family so he could learn the Mohawk language. In addition to advising their principals on the protocol of treaties and translating their speeches, interpreters were needed to obviate, as best they could, various impediments to understanding. Internal politics and personal conflicts lurked behind the scene, such that interpreters were needed to verify the legitimacy of representatives and ensure that invitations were issued to all the nations and colonies with an interest in treaty issue. What the

interpreters could not do was prevent the following three fatal flaws, flaws that brought about the end of the treaty system in 1871: (1) White manipulation of frontier conflicts to coerce Indians to sell land in order to have peace; (2) the intrusion of fraud, misrepresentation, and incompetence during treaty proceedings; and (3) the failure of both sides to fulfill commitments after the treaty because of an inability to control their own people.

Underlying these difficulties was a fundamental difference between the Indian and European side, a difference of civilizations that was a potential source of misunderstanding in all treaty negotiations. This was the cultural divide between an Indigenous egalitarian society, in which mutual rights and duties were based on kinship, and a hierarchical society, in which mutual rights and duties were based on authority. There was a fundamental difference of civilizations. The difference lay in basic assumptions about society and the moral values—the ethos—that enabled it to function. Whites brought up in the European tradition saw human institutions as being naturally ordered in what has come to be called a “table of organization.” The Indians thought of society in terms of kinship.

The White schema is familiar as a chart depicting the administrative structure of all sorts of enduring enterprises, including centralized governments, standing armies, economic companies, schools, and religious denominations. At the top of the chart is a supreme authority (whether an individual or a group), and lines of command and control, duty and obedience, specialization and rank descend downward in the form of a pyramid, to a base-level of common citizen, enlisted man, unskilled laborer, parishioner, freshman, etc. Franklin himself had a penchant for designing the administrative structures of various institutions that served the public welfare. Examples include the system of fire companies in Philadelphia; the Pennsylvania Hospital; the Philadelphia College (later the University of Pennsylvania); a Philadelphia militia, the postal service of the northern colonies; and, to be discussed later, his 1754 “Albany Plan of Union” of all the colonies, which anticipated the 1787 Constitution of the United States. Although the table of organization of even the smallest of these institutions required that somebody be in charge, participation was voluntary. In such a rank and file world, individual identity is one’s place in this hierarchy, signaled by a title indicating rank (such as “President,” “General,” “Sergeant,” “Professor”) before one’s name and/or a suffix of initials indicating education and honors (“R.N.,” “Ph.D.,” “S.J.”). In the Franklin treaties, the official White delegates are listed with titles and suffixes, such as “The Honorable

Proprietor Thomas Penn,” “Lieutenant-Governor George Thomas,” “Benjamin Franklin, Esq.,” “Conrad Weiser, Interpreter.”

From this vantage point, Native American political structure appeared to be extremely disjointed, as a result of the Indigenous ethos of freedom of individuals to choose their own course of conduct. Franklin’s friend Lewis Evans put the White view succinctly—there are no Indian Kings, no “monarchical Government:”

They are all Republicks in The strictest Sense; every Nation has a general Council, whither deputies are sent from every Village; & by a majority of Votes every Thing is determined there. What is most singular in American Government is no such thing as coercive power in any Nation: nor does the Government ever interfere between party & party: but let every one be judge & Executioner in his own Case. Tho the National Councils have Power of War & peace they can neither raise men nor appoint Officers: but leave it to such as of their own Accord united & chuse their own war Captain, nor has this Captain any Power to compel his Men, or to punish them for neglect of duty & yet no Officer on earth is more strictly obey’d, so strongly are they influenced by The principle of doing their Duty uncompelled.

It is impossible not to digress from the subject of treaties and consider the dichotomy of triangle and circle more generally. I am reminded that the pyramid is a 3-dimensional triangle that as a symbol of national unity and progress has been depicted since 1782 on the Great Seal of the United States: an unfinished pyramid of 13 steps, surmounted by the all-seeing Eye of Providence in a triangle at the top, with Latin inscriptions hailing the new order of the ages and invoking the blessing of the Almighty on the American enterprise. Its image appears today on the one-dollar bill. Franklin was chair of the first committee to design the Great Seal. He introduced the concept of the omniscient Eye, conveying, perhaps, Franklin’s view of scientific knowledge as a guide in human affairs superior to government. But the final design was prepared by William Barton and Charles Thomson (both members of the American Philosophical Society).

In treaty minutes, however, Indians are identified by name and only occasionally by a title, conferred by the White scribes, such as “Chief,” “Speaker,” or “Interpreter,” denoting their role in the conference as seen by the Whites, but not necessarily corresponding to any permanent title in the Native community back home. A Western style of hierarchical relationships was sparingly employed in northeastern Indian cultures and usually was temporary, as in the command-and-control

structure of temporary war parties and the conduct of discussion and communication centered in "councils." Group decisions, as in meetings of a Chiefs' Council, required consensus and were rarely treated as binding on the women and warriors; they were regarded as recommendations rather than as rule of law. For these Indians of the Northeast, each nation was and still is a kinship system, in which everyone is related to everyone else by links of consanguinity and affinity, and a table of organization for any institution or enterprise can be mapped onto the genealogical chart of this system. The genealogical chart is conceptualized not as a triangle, or a pyramid, but as a circle. As a tribal genealogist explained it to me rather forcefully, the genealogical chart of a clan is *not* a triangle as I visualized it, which implies hierarchy, but a circle, which implies equality. The clan is an endless cycle of beings, each bearing a name belonging to the clan that is formally conferred on the young, coming from beneath the ground, living, and returning to earth, releasing the name. In effect, a circular, egalitarian kinship system, in which the rule is voluntary reciprocity rather than duty, *is* the table of organization.

Each of the Six Nations was composed of several matrilineal clans, each of which was named for an important species, such as Turtle, Bear, or Snipe. (White observers often referred to these clans by the word "tribe.") With respect to clan, and therefore to membership in the nation, the rule was, "You are what your mother is." The clans were exogamous, so that husbands and wives had to be of different clans. Each clan had a "clan-mother," who nominated one or two male members of the clan to represent the clan for life in a council (the "chiefs' council"). The council could deputize its own members, or other individuals of merit, to carry out missions, such as serving as "speaker" to represent the council's views faithfully and elegantly in "treaties" with other nations. There was no king or supreme ruler.

The Six Nations conceived of the relations between nations in the same terms as relations between individuals within the nation, referring to each other by the same kinship terminology. Within the Six Nations, there were two moieties: the Elder Brothers (Mohawk, Onondaga, and Seneca) and the Younger Brothers (Oneida, Cayuga, and Tuscarora) In the case of a chief's death, the grieving moiety would be consoled by the other, who would raise up a new chief as part of the Condolence Ceremony, the major ritual of the Confederacy. Nations affiliated with the Confederacy addressed each other, and the Six Nations, by kinship terms, and the Six Nations referred to tributary members of the Confederacy as "Cousins," and referred to (and addressed) the representatives of the European monarchies (French and

British) as "Father." These terms all recognize some sort of positive relationship, but the finer meanings remain obscure. Father was a somewhat distant relationship because one's biological father necessarily (from the rule of clan exogamy) belonged to a different clan; one's mother's brother, Uncle, was more like a father in the European sense. Brothers were older and younger, the younger properly deferring to the elder. And English "cousins" were, in Iroquois usage, divided into "Brothers" and "Sisters" (parallel cousins, children of one's mother's sister, who was "Mother," and father's brother, who was "Father") and into "Cousins" (cross-cousins, children of one's mother's brother and father's sister) of different clans.

For patrilineally trained White negotiators, further complicating the concept of "chief" was the Iroquois rule of matrilineal succession. A man's son could not succeed his father as chief in his father's clan because he belonged to a different clan from his father; that father's successor as chief could be his sister's son, i.e. his maternal nephew, or another member of his own clan. But the Algonkian allies of the Six Nations in the Ohio Valley were patrilineal in reckoning descent, including clan membership; their kinship system was the opposite of the matrilineal Iroquois. At Carlisle, for instance, the wife of the late Piankeshaw chief had to make a special appeal, through an Iroquois speaker, for the White people and the Six Nations to recognize her husband's son as the future chief. Failure to pay attention to cultural differences in rule of consanguinity and affinity could lead to mistakes in recognizing the presence or lack of valid credentials of those claiming authority to represent their nations.

An even more troubling semantic problem was attached to the word "Chief." White officials usually did not grasp the status of all the Indian participants in the treaty proceedings. Back home in Iroquoia, the equivalent of the English term "chief" was *royaner*. The Grand Council was composed of fifty *royaner*, each of whom was the representative of a particular clan. Once the antlers of office had been placed on the Chief's head, he inherited a name that had been held by all previous representatives and would be held by his successors and thus was, in effect, a title for that position. The *royaner* were nominated by the clan mothers of their respective clans. These were the true chiefs. They could, and did, however, put forward men of merit as speakers, head warriors, and men to do business, who might play an important role at treaties but were not authorized to make binding commitments, such as military alliances and cessions of land. The chiefs themselves, indeed, could not make such commitments individually, only when a group was authorized by a consensus of the council. Failure of White

officials to realize these constraints upon the delegates to a treaty could lead to cessions of land by unauthorized "chiefs" and to future land claims by embittered Indian descendants, claims that continue to this day. White negotiators wanted to find the "King," but in an egalitarian society, there is no "King" and the Speaker at a treaty could not commit all of the members of his own nation or the confederacy, let alone the sprawling alliance of the Ohio tribes, to the policy favored by the Grand Council at Onondaga. Council decisions within nations, and in the Grand Council, were reached by consensus, not a majority vote. The Council might reach a consensus to recommend peace with the Cherokees but a few bereaved family members might nevertheless initiate a "mourning war" to avenge a fellow clansman. White civilizations considered "factions," whose members refused to obey a law or edict as binding, to be treasonous; Indians recognized that regional interests might impel a sub-group to travel a different path and exercised forbearance.

THE DOCTRINE OF DISCOVERY

Franklin's publication of the Indian treaties was in itself an important event in development of relations between the Indian nations and the British colonies. In addition to giving information about Native American customs and values, these treaty minutes provided a model for the future conduct of negotiations, and particularly negotiations over the cession of land. They put forward the Pennsylvania system as the basis of the future policy for acquiring Indian land by the United States.

The Pennsylvania system recognized that the Crown had acquired an absolute sovereignty over its colonial territory by right of the Doctrine of Discovery. This sovereignty included not only political sovereignty but also ownership of the land, not only including eminent domain and mineral rights, but also the right of soil. When King James gave the province of Pennsylvania to William Penn, the charter made no mention of Indian inhabitants or their rights. Penn chose to recognize a right of soil held by the Indians of Pennsylvania, an aboriginal title that could be conveyed not by war but only by purchase or other voluntary conveyance by the Indian owners. But what made the case of Pennsylvania unique was that the Penns, as Proprietors, chose not to delegate or sell the right to purchase to other White, British individuals or companies, but to become themselves the single purchaser of Indian lands. Prospective settlers then had to buy or lease land directly from the Penns. Furthermore, the Penns considered that the Indians had owned, and the Proprietors had bought, only surface rights. Mineral rights remained as

part of the proprietary estate and thus belonged to the State of Pennsylvania, an issue of great importance in the next century after coal, iron, and oil became central to the state's industrial economy.

The Pennsylvania model for acquiring Indian land stood in sharp contrast with the practice of other British colonies. To the north, in New York and Massachusetts, aboriginal title was recognized, but the right to purchase was given, or sold, to individuals and companies, who received a patent and then proceeded to buy a specified tract from Indian owners, sometimes in formal treaty, sometimes in private agreements. To the south, at first in Virginia, and later in other colonies, the initial assumption was that the Indians had no right of soil, purchase was not necessary, and land could be occupied by force or informal agreement. Further complicating inter-colonial differences was an overlapping of claims, the result of boundaries being set by different "discoverers" on behalf of the same or different kings. Virginia, for instance, laid claim to a vast swath of territory north of the Ohio River and west to the "South Sea" (Pacific Ocean). Pennsylvania's grant had a specific western limit, but Connecticut claimed some of Pennsylvania's land in the Susquehanna Valley. New York and Massachusetts both claimed the same land from the Hudson River to Lake Erie.

Competing with Britain in the rush to appropriate the Indian land of North America were France and Spain, who like Britain founded their territorial claims on the Doctrine of Discovery. In the years 1452, 1454, and 1493, Popes Nicholas V and Alexander VI issued papal bulls that together form the original text of what has been called "the Doctrine of Discovery." The age of expansion and exploration by the Christian nations of Europe was just beginning. Spain and Portugal were driving the Muslims ("Saracens") out of the Iberian peninsula; trade with infidel peoples in Africa and Asia was on the increase, in part because Genoese innovations in ship-building now made more extended ocean voyages possible. It was time to launch a new crusade, this one to recover the lands lost to the Moslems and go on to conquer the whole world for Christ.

The first bull, *Dum Diversas*, was addressed to King Alfonso of Portugal:

We grant to you full and free power, through the Apostolic authority of this edict, to invade, conquer, fight, subjugate the Saracens and pagans and other infidels and other enemies of Christ and wherever established their Kingdoms, Duchies, Royal Palaces, Principalities and other dominions . . . and any other possessions . . . and to lead their persons in perpetual servitude and to apply and appropriate realms, duchies, royal palaces, principalities, and other

dominions, possessions, or goods of this kind to you and your successors the kings of Portugal.

In the bull *Romanus Pontifex* 2 years later, the Pope extended to other “Catholic kings and princes” of Europe the same authority to invade and conquer non-Christian lands, reduce their inhabitants to slavery, and appropriate all their possessions to their own use. Restrictions on trade were imposed to prevent the pagan nations from acquiring European technology. And the King of Portugal was given exclusive rights to those lands that he had already acquired.

On the return of Columbus from the New World, the next Pope, Alexander VI, issued a bull, *Inter Caetera*, recognizing the rights of Ferdinand and Isabella to the lands that Columbus had discovered and granting Spain an exclusive charter to trade with or invade all lands 100 leagues west of the Azores, the line to run from the Arctic to the Antarctic pole. (The Vatican knew the 1,000-year-old “Geography” of the Greek cartographer Claudius Ptolemy, who described the world as a sphere, measured by lines of latitude and longitude.) But Spain could not claim lands already appropriated by another Christian nation, thus establishing in international law (as construed by Christian Europeans) the same rights of exclusive sovereignty in the New World as applied to the same nations in Europe.

In effect, this Doctrine of Discovery meant that the captain of a ship could stab his sword into the sand of an unknown shore and declare in the name of God that a territory from sea to sea, any number of leagues north and south, now belonged to his king (but only so far as the land had not already been “discovered” by another captain working for another king). The declaration might have been merely a vacuous announcement, in a meaningless language, by beings from UFOs, to the native inhabitants of the territory, if it had not been followed by the landing of boatloads of Europeans carrying arms, establishing trading posts and forts, building villages and planting farms, and eventually driving the Indigenous people off their lands or forcing them to surrender to colonial authorities. The Doctrine of Discovery became the law of the land.

It is easy to read the Doctrine of Discovery as simply a license to greedy European monarchs to conquer and exploit the Indigenous peoples of the world. That it was. But it is important, in an inquiry into the ethnography of war, to understand how the popes, and the Catholic kings, perceived the circumstances of their time. Two major political processes were under way in the Mediterranean world of the 15th century: the Portuguese and Spanish inquisitions; and the rise of the Ottoman Empire.

The Inquisition was part of the thrust to drive the Moors (Muslims) out of the Iberian peninsula and cleanse the region of Jews and other heretics. Many Jews and Moors had converted to Christianity, some of them occupying high places in church, the royal bureaucracy, and the banking industry, but their sincerity was often questioned. The Inquisition was managed by the kings, and apostasy was a political crime. While these infidels were being expelled or burned at the stake, another, even more serious, threat to Christendom was growing along the eastern Mediterranean. The Ottoman Empire was expanding by military and diplomatic means out of Turkey into the Middle East, Egypt, and the Balkans. Constantinople, the center of the Eastern Orthodox branch of Christianity, fell to the Turks in 1453. Vienna itself was besieged in 1529 and 1532. And the Ottomans controlled the lucrative land trade routes to Asia.

From the standpoint of Pope Nicholas V, the fate of Christendom itself was threatened by the presence of Jews and Moors in Spain and Portugal; the Ottoman followers of Mohammed were enemies at the gates of European nations. Nicholas sought to revive the intellectual stature of Europe by supporting the new Renaissance humanism; he founded the Vatican Library. But he also sought to counter the economic, military, and religious power of the Islamic world by calling for a new Crusade against the Turks. And his encouragement of Portuguese and Spanish conquests of infidel nations in Africa and India would bring the whole apparatus of the Church of Christ into the new lands.

But it is also clear that Nicholas envisaged that bypassing the old land routes to Asia would lead to the development of a world system of trade and commerce dominated by European powers. European nations would be able to use their own technological superiority to control world trade by control of the seas, breaking out beyond the Mediterranean into the Atlantic and Indian oceans. European navigators knew that the world was round and were aware of the measurable spaces of latitude and longitude. European ship builders employed new, superior methods of wooden sheathing; they were able to make long voyages out of sight of land. European armies had horses, cannons, wheeled carts, and iron and steel armor and swords, enabling a small force to overwhelm lightly armed resistance. The Pope was aware of the need to maintain technological superiority and the importance of withholding information and materials from the infidels. The bull of 1454 prohibited the sale of "iron instruments, wood to be used for construction, cordage, ships, or any kinds of armor" or the teaching of "the art of navigation, whereby they [those infidels] would become more powerful . . ." The importance of this embargo on technological transfer

was so important that the Pope declared that violators would suffer, in addition to legal penalties, “the sentence of excommunication,” to be levied upon not only guilty individuals but whole communities.

Thus, in the following centuries, European trade and arms were able to overwhelm the entire regions of Africa, North and South America, and Australia, as well as India and much of southeast Asia, Indonesia, and Oceania. In the course of this economic and military conquest, and the accompanying ravages of disease and starvation, they were able to colonize not only hunters, gatherers, and village farmers, but also the sophisticated civilizations of Mexico, Central America, the Andes, North Africa, and India. The Doctrine of Discovery had been advanced to justify the military and economic colonization of most of the planet by European powers, including North America, South America, Africa, Australia, Indonesia, and Oceania, as well as most of Asia except China and Japan. The contemporary world system of core and peripheral nations was founded upon the Doctrine of Discovery.

Needless to say, the Indigenous peoples of the world have questioned the legitimacy of the Doctrine of Discovery. In the past two centuries, many of the colonies have won at least nominal independence. A few years ago, the Indigenous movement, led in part by the Six Nations, achieved the passage, by the United Nations General Assembly, of a Declaration of the Rights of Indigenous Peoples. The late John Mohawk, a Seneca friend of mine, drafted the earliest version. I regret to say that the United States was one of only four countries to decline at first to vote for the Declaration.

In Franklin’s time, the Doctrine of Discovery was interpreted differently by France and Spain from English practice. Neither nation recognized Indian nations as having aboriginal title to their lands. From the outset, the Catholic monarchs assumed absolute unlimited title, including the underlying right of eminent domain, mineral rights below ground, and ownership of the soil in fee simple. In the case of Spain, the monarchs also assumed an obligation to save native souls by conversion to Catholicism and a duty to protect their Indian subjects from injury by Whites and other Indians by assigning them to what in effect were reservations (i.e., the *encomienda* system), governed by some combination of native and European administrators. France also assumed absolute title to Indian land, the recompense being conversion to Christian faith by the devoted Jesuit and other missionary orders. France, however, in contrast to French and English segregationist policies, welcomed Christian Indians as equal subjects of the Crown and encouraged biracial communities. The overlapping land claims of the European powers, and the different styles of racial interaction and

loyalty, set the stage for the diplomatic, trade, and military maneuverings that led to the French and Indian War.

THE ALBANY PLAN OF UNION

Anticipating the outbreak of open war (the “French and Indian War”), the colonies in 1754 joined in a conference at Albany to concert plans for the common defense against attack by Indian allies of the French. Franklin was becoming known as the Pennsylvania Assembly’s leading authority on Indian affairs and he was one of the delegates. He was chosen to prepare a draft of a proposal for a confederation of the colonies, the famous “Albany Plan of Union.” Franklin’s Plan recommended a centralized government for the 13 colonies, with its own President and Grand Council (i.e., legislature), subject only to the authority of the Crown. He articulated these principles in some detail, utilizing his penchant for drawing up tables of organization. This central government should, using established treaty protocol, “make all purchases from the Indians for the crown of all lands not within the bounds of particular colonies,” obviating the chaos of different procedures among the colonies, and should make all laws regulating Indian trade, including the sale of rum, which Franklin deplored, regarding it as a means of genocide. It provided that all of the English colonies recognize the Indian nations’ sovereignty and aboriginal title to their land, which could only be acquired by fair, open treaty according to the Pennsylvania protocol. Further, any purchases beyond the charter limits of the original colonies would be made by a single purchaser, the Union itself, on behalf of the Crown itself. After the Revolution, the Crown’s rights were transferred to the United States itself, which became the single purchaser on its own behalf. Although the Albany Plan of Union was not accepted by the 13 colonies or the Crown, the single purchaser principle became the governing concept later in provisions under the British Proclamation Line of 1763, the American Northwest Ordinance and the Articles of Confederation of 1784, and the Constitution after 1787. His statement of a general policy for the acquiring of Indian lands in formal treaties by a single purchaser and for the regulation of the fur trade so as to cut off the destructive sale of rum was Franklin’s most important contribution to Indian affairs.⁵

These views were based in part on his admiration for the political wisdom of the Six Nations. He had in earlier years come to admire the Iroquois ability to form a union of disparate political entities. Perhaps he took to heart the admonition of the Onondaga speaker Canasetego,

who at Lancaster in 1744 (during a treaty printed by Franklin) counseled the colonies to form a union:

We have one Thing further to say, and that is, We heartily recommend Union and a good Agreement between you our Brethren. Never disagree, but preserve a strict Friendship for one another, and thereby you, as well as we, will become the stronger. Our wise Forefathers established Union and Amity between the *Five Nations*; this has made us formidable; this has given us great Weight and Authority with our neighbouring Nations. We are a powerful Confederacy; and, by your observing the same Methods our wise Forefathers have taken, you will acquire fresh Strength and Power; therefore whatever befalls you, never fall out with one another.

In a letter to a friend in 1751, Franklin later observed, "It would be a very strange thing if six nations of ignorant savages could be capable of forming such a union . . . and yet that a like union should be impracticable for ten or a dozen English colonies, to whom it is more necessary."

The requirement that a single purchaser make all purchases of land from any Indian nation in future territories outside the existing colonies was the most significant element of his Indian policy, and although not enacted into law at that time, it became the governing concept later in provisions under the Northwest Territory Ordinance and the application of the Constitution. The need for a single purchaser principle came from the chaotic mixture of existing practice. In New York, for example, individual persons or company could approach Indians who seemed to occupy a desirable tract and buy the land from them, then carry the deed of sale to the governor, who issued a "patent" (in effect, a title). The possibility of malpractice in such an arrangement was obvious, not only fraud by White purchasers but irresponsibility by Indian sellers. Different White purchasers could easily obtain "title" to the same land by buying from different Indians. The Indians could be persuaded to sign while in a drunken stupor. In most such transactions, there was no formal treaty with legitimate members of the Council of the Indian nation. In Pennsylvania, however, all purchases were made by the proprietors and private individuals, who later sold them to companies. But the proprietary agents preferred to buy from the Six Nations, attributing Indian title to the most powerful entity, but perhaps failing to satisfy the interests of the occupants of the soil, as in the Walking Purchase. Furthermore, colonial charters were sometimes loosely phrased, allowing for overlap in claims of the right to acquire land from the Indians. Thus, Connecticut claimed land in Pennsylvania, Massachusetts claimed land in New York, and Virginia claimed everything from the Appalachian Mountains to the Pacific Ocean.

During the Indian treaty proceedings at Albany, Mohawk speakers complained about this unsatisfactory state of affairs. One bone of contention was the still-controversial “Kayaderosera Patent,” granted by Queen Anne in 1701 to a group of 10 speculators of 800,000 acres along the Hudson River in what is now Saratoga and adjoining counties. It was not surveyed, however, for 70 years, as a result of objections by the Mohawk, who claimed that the three Mohawks who “sold” the land were not authorized to do so. Although they were members of the three Mohawk clans (Turtle, Bear, and Wolf), each clan comprised several lineages, each of which was represented on the Mohawk Council by three sachems, and there were no records of the Council as a whole being consulted. A settlement with the Mohawk Nation was not concluded until 1761.

Franklin included under “Indian Trade” the need for a regulation of the destructive commerce in whiskey, which “through the bad conduct of traders who cheat the Indians after making them drunk” cost the existing colonies “great expence . . . in blood and treasure.” In this he reiterated the plea he and the other commissioners had made at Carlisle the year before. In his *Autobiography*, written decades later, he recollected the drunken orgy of the Indians, after the conclusion of that treaty (whose proceedings had been “orderly”), as a scene from Hell:

They [the Indians] were near one hundred men, women, and children, and were lodg’d in temporary cabins, built in the form of a square, just without the town. In the evening, hearing a great noise among them, the commissioners walk’d out to see what was the matter, We found that they had made a great bonfire in the middle of the square; they were all drunk, men and women quarreling and fighting. Their dark-colour’d bodies, half naked, seen only by the gloomy light of the bonfire, running and beating one another with firebrands, accompanied by their horrid yellings, form’d a scene the most resembling our ideas of hell that could well be imagined . . .

He added, “If it be the design of Providence to extirpate these savages in order to make room for cultivators of the soil, it seems not improbable that rum may be the appointed means.” Franklin was not a tee-totaling temperance man; he provided his troops with rum at Gnadenhuetten, but he believed in moderation in the use of alcohol for Whites as well as Indians. His condemnation of the whiskey trade in the Albany Plan was emphatic: “. . . they are supplied with Rum by the traders in vast and almost incredible quantities... they often wound and murder one another in their Liquor, and to avoid Revenge flee to the French . . .”

The principles of Franklin's Indian policy grew out of a European Enlightenment view of world history. The basic elements of this perspective, as interpreted by British officials in Franklin's time, were:

1. Natural law justifies, and the idea of progress predicts, the replacement of "savage" hunters and gatherers and village gardeners, who subsist on land that yields them a slender harvest, by agriculturists who farm intensively by advanced methods and thereby can support larger numbers of "civilized" people.
2. It is preferable, because it is more just and more economical, for civilized countries to acquire Indigenous land by peaceful means rather than by war.
3. Indigenous land is owned collectively by its aboriginal occupants, who are recognized as self-governing sovereign nations, that may sell land voluntarily.
4. Indigenous land may be sold only to a single purchaser (in the case of the English colonies, the Crown, and later the government of the United States).
5. The concept of "single purchaser" is derived from the 15th century papal Doctrine of Discovery, which gave exclusive rights of access to the first Christian nation to "discover" a new land.
6. Purchase must be done in formal treaties between sovereign nations, conducted without coercion or fraud, according to traditional protocol, combining both Indian and White diplomatic etiquette, as exemplified by the British-Six Nations treaties.⁶

The importance of Franklin's Indian land cessions policy, as expressed in his Albany Plan, cannot be over-estimated, and the respect in which he was held as an authority on Indian affairs was widely recognized. At the outset of the Revolution, Franklin was a member of the First Continental Congress. In July 1775, the Congress established a committee to manage Indian affairs, consisting of three departments: one for the Six Nations, one for the Indians of the Ohio country, and one for the southern tribes. Benjamin Franklin and the jurist James Wilson represented Pennsylvania in Congress, Patrick Henry represented Virginia in the middle department, and Franklin served as the chairman of the whole Committee, earning him recognition, in the 21st century by the Bureau of Indian Affairs as their first commissioner. Under Franklin's leadership, the new Congress sought to win the Indian nations to their side, holding the Treaty of Fort Pitt to urge western allies of the Six Nations to remain neutral. At Albany, the Commissioners in fulsome rhetoric called for peace and friendship between the Six Nations and the colonists, employing the Iroquois metaphor of the Confederacy's universal tree of peace:

Brothers! We live upon the same ground with you. The same island is our common birth-place. We desire to sit down under the same tree of peace with you: let us water its roots and cherish its growth until the large leaves and flourishing branches shall extend to the setting sun and reach the skies.

Franklin did not remain long as Indian Committee chairman, however, sailing off to become minister to France a year later in October 1776. But in a partial adoption of Franklin's "policies, the single purchaser principle had already become the governing concept in the provisions of the British Indian policy.

In a partial adoption of Franklin's "single-purchaser" protocol, the Crown declared in 1763 the famous Proclamation Line. This Proclamation of 1763 prohibited the purchase of Indian lands west of the Appalachian Mountains and recognized the Indian right of soil. West of that line, title to Indian lands acquired by seizure, private purchase, or private purchase under provincial license (i.e., "patent"), would no longer be recognized as legal. Before any cession of land could be accomplished, a *royal* patent would have to be issued by the Crown or its agents (in the north, Sir William Johnson) and the purchase confirmed in a fair and open treaty. Despite much objection by colonists, the Proclamation and its revision at the Treaty of Fort Stanwix (1768), provided an opportunity for Benjamin Franklin and other notable colonial entrepreneurs (such as Washington and Patrick Henry) to secure royal patents and conduct purchases without the encumbrance of overlapping land claims from provinces such as Virginia and Pennsylvania.

From 1767 until 1775, Franklin associated himself with several such land speculations, seeking patent rights directly from the Crown to purchase (or validate previous purchases of) Indian land in the Ohio country. Franklin was for a time in England in the 1770s a prominent shareholder, among other powerful men, in an enterprise called the Grand Ohio Company that claimed to have assembled a vast estate in present Indiana, Illinois, and Kentucky, originally purchased by the Illinois and Wabash land companies from various Indian tribes, amounting to nearly 90,000 square miles, approximately the size of Great Britain. The plan was to form a new Crown colony, to be named Vandalia, in honor of Caroline, queen-consort of George III, who was descended from the Germanic tribe that had conquered Rome. Although Franklin lobbied successfully before the Privy Council for its approval of a royal patent to recognize the validity of the purchase, the project lapsed during the Revolution. But it did not die. Citing forged documents, heirs of the old Wabash Company were able after 60 years to bring a claim of

ownership before the United States Supreme Court in the celebrated case of *Johnson v. M'Intosh*. In denying the Wabash claim, Chief Justice Marshall, as was noted, affirmed the single-purchaser principle and cited the Doctrine of Discovery as its source.⁷

INDIAN WARS

After the failure of the Albany Plan, there followed a series of Indian wars. White negotiators were unable to accept native conceptions of nationhood and held to a persistent view of the Six Nations as an authoritarian state that could be persuaded to coerce its tributaries to comply with British demands in matters of trade and alliance against the French. One case of the failure to understand the limits of Iroquois "imperial" power was the infamous Walking Purchase. Franklin's enduring concern for preserving friendship with Pennsylvania's Indians may have been awakened by that contentious issue, which ran throughout his series of published treaties. A Pennsylvania company headed by James Logan, the Penns' agent in Indian affairs, planned to locate an iron furnace on land occupied by some Delaware Indians, land allegedly purchased long before in an obscure 17th century treaty, the original copy of which had unfortunately been lost. A Delaware occupant protested, claiming that no such sale had been made and that he had inherited the tract from his father. The land was surveyed by White speed walkers covering more ground in the specified "day and a half" than the Indians said had been intended. A Six Nations speaker, solicited by the Penns, expounded the Iroquois concept of land tenure as ownership by the nation as a whole and asserted that the Six Nations had acquired an underlying ownership to the land in question by conquest. Canasatego denounced their "cousins" the Delaware, who had occupancy rights but should have included the Six Nations when they ceded the tract, and who anyway did not really have a central council fire of their own and were "women," cousins who could not sell land.⁸

The Walking Purchase issue and related Delaware grievances eventually embroiled Franklin in military combat. In 1751, he was elected to a seat in the Pennsylvania Assembly. Here he identified himself with the anti-proprietary party, which opposed the Penn family in England, who refused to pay taxes on the vast proprietary estates. This "Quaker" party blamed the alienation of the Delaware Indians on the fraudulent Walking Purchase, which allegedly was contributing to the migration of many Delaware to the upper Susquehanna valley at Wyoming, as ordered by Canasatego, and to the defection of some to the French interest in the looming war. Thomson, a signer of the Declaration of

Independence, Secretary of the Continental Congress from 1774 to 1789, and a hot patriot, had been a close friend of Franklin's in Indian affairs. He and Franklin were leaders in the anti-proprietary party in Pennsylvania during the era of the French and Indian War. Thomson in particular had taken up the cause of the Delaware in blaming the proprietary for the outbreak of violence on the frontier. He served as secretary and advisor to the Delaware "chief" Teedyuscung at the treaty at Easton in 1758 (printed and probably attended by Franklin). In 1759, he published a celebrated book, *The Causes of the Alienation of the Delaware and Shawanese Indians from the British Interest*, which blamed the proprietors and their Walking Purchase. Although historians, including myself, have discounted Thomson's argument that the Walking Purchase was the primary cause of the alienation, the event serves to represent the pattern of Indian grievances over the loss of their land to greedy speculators and hostile settlers.

After Braddock's defeat in July 1755, the Pennsylvania frontier came under attack. In November 1755, hostile warriors assaulted the Moravian community of Gnadenhuetten, a cooperative venture of White Moravian and Christian Delaware farm families, killing at least 10 Whites and putting the Indian converts to flight. This community had been located at the northwest corner of the Walking Purchase, up the Lehigh River from Bethlehem, where the main Moravian town in the Purchase had been placed in 1743. In anticipation of such attacks, Franklin had written an act, passed by the Assembly, for the creation of a Pennsylvania militia regiment to defend the frontiers. He detailed the organization of the unit and accepted a commission as Colonel in command. With 560 volunteer soldiers, he marched north in January 1756 to Gnadenhuetten to begin the building of a line of forts. After burying the dead settlers, his troops constructed the palisades and firing platforms of four such forts.⁹

A frequent breach of treaty agreements was caused by the inability of colonial and, later, the federal government to prevent outbreaks of violence against Indians by frontier Whites. An egregious example that also involved Franklin was the Conestoga massacre. A mob of "Paxton boys" slaughtered several peaceful, Christian, Indian families living at Lancaster near the Susquehanna River in accordance with understandings with the Six Nations, their "uncle." This event occurred in December 1763, near the end of the Pontiac Rebellion. Then a mob of Paxton boys and their supporters marched on Philadelphia to confront the allegedly "pro-Indian" government of the province and murder a community of Christian Indians from the Moravian settlements at Bethlehem seeking refuge in the city. They were only stopped by British troops and local militiamen, including Franklin, again

carrying a gun. He had already published a pamphlet condemning the massacre, asking, "If an Indian injures me, does it follow that I may revenge that injury on all Indians?" Ten years later, the famous Logan "the Great Mingo," a former neighbor of the Conestoga, took his own revenge for that massacre and the murder of his kinfolk in Lord Dunmore's War, the first of a series of wars for control of Indian land in the Ohio country, which did not end until after the War of 1812. Jefferson immortalized the events leading to Lord Dunmore's War in his publication of "Logan's Lament."

During the wars for the Northwest Territory, the United States sought to dissuade the Six Nations from supporting the Western Confederacy. This diplomatic effort led to the landmark Treaty of Canandaigua in 1794, negotiated by Timothy Pickering (who the following year was elected to membership in the American Philosophical Society). In this treaty, The United States recognized the Six Nations as a sovereign political entity that held aboriginal title to its lands in New York State. When and if the Six Nations freely chose to sell land, the United States would be the sole and only purchaser. A perpetual friendship between the two nations was established. The Canandaigua Treaty put into effect the principles that Benjamin Franklin had articulated at Albany 40 years before.

BUYING THE NORTHWEST TERRITORY

It was not until 1795 that a comprehensive peace was accomplished at the landmark Treaty of Greenville, which extended the provisions of the Canandaigua agreement to the nations west of the Appalachians. This treaty observed some of the orderly, mutually respectful protocol of Franklin's treaties, including an exchange of condolences for slain warriors. A line of property was drawn between Lake Erie and the Ohio River, west of which lay Indian land, encompassing the rest of the Northwest Territory (today's Ohio, Indiana, Illinois, Michigan, and Wisconsin). The language of the treaty recognized Indian ownership of land, declared the United States to be the exclusive purchaser when Indians wished to sell, and committed the United States to be the protector of the Indians, promising that the U.S. government would hear Indian complaints and see that justice was done:

The Indian tribes who have a right to those lands, are quietly to enjoy them, hunting, planting, and dwelling thereon so long as they please, without any molestation from the United States; but when those tribes, or any of them, shall be disposed to sell their lands, or any part of them, they are to be sold only to the United States

And the said Indian tribes again acknowledge themselves to be under the protection of the United States and no other power whatsoever.¹⁰

Attorneys bringing land claims cases before the Indian Claims Commission in the 1950s relied on Greenville and the Trade and Intercourse Acts as the laws under which to sue the United States for failing to protect the Indian nations, as their guardian, from injury in land cession treaties.

The Greenville treaty, making the United States the legal guardian of Indian interests, was the legal capstone of the post-Revolution Indian policy, based on principles agreed on by President George Washington and his Secretary of War, Henry Knox. These principles were articulated in two measures, the Trade and Intercourse Act of 1790 and the system of federal trading posts, called "factories." The Trade and Intercourse Act of 1790 (and re-enacted in subsequent years) explicitly required that the purchase of Indian land be conducted "at some public treaty, held under the authority of the United States," and carried out in a fair manner to ensure justice to the Indians. The factory system would, hopefully, prevent private traders from flooding the Indian country with alcohol. The factory system was opposed by traders and terminated in 1822. But the Trade and Intercourse Acts remained in place. Washington and Knox were implementing the same principles that Franklin had asserted in his Albany Plan of Union of 1754. And, needless to say, both Washington and Knox were members of the American Philosophical Society.

For 50 years following Greenville, the United States pursued a steady policy of acquiring Indian land in the Northwest Territory, the South, and the Louisiana Purchase. The federally appointed Superintendents of Indian Affairs (who were often the Governors) of each of the successive federal territories arranged the purchases. The first goal was to usher the Indians to places west of the Mississippi, culminating in the Removal Act of 1830. By the 1840s, about one third of the territory of the present United States had been acquired in a series of treaties. But in these treaties, there were two departures from pre-Revolution colonial protocol. Land would be purchased from individual Indian nations, not from confederacies. Thus at Fort Stanwix in 1784, peace was "given" to, and land was ceded by, the individual nations, not the Six Nations as a unit. After Greenville, treaties would not be held with the Northwest Confederacy but with the individual nations. There would no negotiations with the confederacy as the "single-seller." And again unlike the colonial practice, the "Indian reservations" west of the Greenville line were not tracts chosen by the Indian owners and

reserved from sale, as was and still is the case with Six Nations reserves in New York, but rather parcels of public lands of the United States on which Indians agreed, or were assigned, to live, in some cases far from their original homelands.

Implementation and rationalization of this policy after Greenville fell into the hands of seven men. They were Thomas Jefferson, Vice President of the United States 1797–1801 and President 1801–9, and longtime President of the American Philosophical Society; William Henry Harrison (“Mr. Jefferson’s Hammer”), Governor of the Northwest Territory 1800–12 and later the Indiana territory, and President of the United States in 1841; Meriwether Lewis and William Clark (leaders of “The Corps of Discovery” of the Louisiana Purchase), Governors and Superintendents of Indian Affairs, Louisiana Territory, 1806–38; Lewis Cass (“The Last Jeffersonian”), Secretary of War 1831–36, and ethnologist Henry Schoolcraft, both Governors and Superintendents of Indian Affairs, Michigan Territory 1813–41; and John Marshall, Chief Justice of the Supreme Court until his death in 1838, who affirmed the principle that the United States, not individual colonies, had acquired underlying title to any and all of the territories claimed by Great Britain south of Canada and thereby became the sole purchaser of Indian land, thus enshrining the Doctrine of Discovery into U.S. constitutional law. Four of these men joined Jefferson as members of the American Philosophical Society (Meriwether Lewis, Lewis Cass, Henry Schoolcraft, and John Marshall), and a fifth (William Clark) was trained along with Lewis by members of the American Philosophical Society in Philadelphia in preparation for their exploration of the Louisiana Purchase. Clark’s journals of the expedition reside in the Society’s Library. Harrison’s father, from Virginia, was a signer of the Declaration of Independence, and young Harrison, before his military career and years as Governor of the Indiana Territory, had studied medicine in Philadelphia and lived with the family of Robert Morris, another member of the Philosophical Society and the purchaser of most of the remaining Seneca lands for the Holland Land Company at the Treaty of Big Tree in 1797. Harrison’s experience with Indian treaties began at Greenville as aide to the commander in chief, General Anthony Wayne, another APS member. It appears that the buying of America from the Indians was in considerable part concerted, up to the time of the Mexican War in 1848, by a group of men associated with the American Philosophical Society.

Two members of this group, in addition to Lewis and Clark, also played a part in the development, under Jefferson’s guidance, of the Society’s policy of encouraging systematic, planned research on American Indian languages and cultures and the collection of written records and

artifacts. Jefferson's collection of vocabularies led to the work on Indian languages by two early members: John Heckewelder, Moravian missionary to the Delaware, and Peter Stephen Du Ponceau, who helped launch comparative linguistics. Lewis Cass circulated a formal questionnaire on Indian customs and history among well-informed persons in his Michigan Superintendency, and his protégé Henry Schoolcraft produced comprehensive works on the Indians, partly to provide information for the guidance of policy makers.¹¹

The purchase of Indian land in the old Northwest Territory left a troubled legacy. Although the treaties of cession were ostensibly conducted according to protocol, they were often defective. Some treaties were held under coercion, Indian signatories were not always legitimate authorized representatives, tribes sold each other's land, land changed occupants over the years resulting in duplicate purchases of the same tracts, boundaries were vaguely described before being surveyed, financial details were misrepresented, and the language of crucial articles was often ambiguous and subject to differing interpretations. Misunderstanding of the 1804 treaty with the Sac and Fox eventually led to the Black Hawk War of 1832, in which the regular Army of the United States was mobilized to repel, and eventually destroy, an "invasion" by several hundred Sac men, women, and children seeking to re-occupy a village on the Rock River in Illinois that they believed still belonged to them. Indian complaints about these old treaties continued for generations, long after the tribes had been removed to the Indian Territory in Oklahoma.

In recognition of the service of so many American Indians in the armed services of the United States during World War II, in 1946 Congress created an Indian Claims Commission to settle hundreds of civil suits against the United States. The Commission was not authorized to overturn the treaties themselves, which were statutes at law, but it could award financial compensation on the ground that the United States as their legal guardian had failed to protect the interests of its Indian wards in cessions of land. A Joint Efforts Group of law firms representing plaintiffs originally from the old Northwest Territory (Ohio, Indiana, Illinois, Michigan, and Wisconsin) was formed by Felix Cohen, author of the government's *Handbook of Federal Indian Law*. I was employed in the 1950s by firms in the group to do ethno-historical research on the location of villages and hunting grounds, qualifications of Indian signatories, and circumstances surrounding the treaties, and to testify before the Commission as an expert witness. My files on these cases are in the Society's Library.

The Commission found that many of the Indian nations had been paid an "unconscionable consideration" for their lands. One of my

cases (Docket 83) involved the Sac and Fox cession of the northwestern third of Illinois, plus part of Wisconsin and Missouri north of St. Louis, at the questionable Black Hawk War treaty negotiated in 1804 by Harrison (who was pro-tem Governor of the Louisiana District while Lewis and Clark were still exploring the West). The Commission found that the United States had paid the Sac and Fox about one-half a cent per acre for land worth, on the market at that time, about 54 cents per acre. In 1973, 20 years after the Commission heard the case, the Sac and Fox were awarded nearly \$2,000,000 for the difference in value in 1804. Inflation and 150 years' worth of interest were not counted.¹²

THE END OF TREATIES

By the 1840s in America, a transformation was occurring in popular sentiment regarding Indian affairs. No longer were policy and practice in the hands of Jeffersonian deists espousing the political philosophy of the Enlightenment. A new breed of public official took charge, many of them military officers, responsive to the rising tide of evangelical Christianity, impatient with Indian treaties that became statutes binding on all citizens, willing to use military force to transform pagan hunters into Christian farmers. The old "single-purchaser" protocol was compromised in land cessions that specified the assignment of tracts of public land to railroad companies before the public had a chance to buy it from the government. After the annexation of Texas, California, and Mexican lands in the Southwest in the 1840s and the Civil War, in which some of the southern tribes fought for the Confederacy, there developed an endless round of Indian wars on the western frontier. Neither the United States nor the Sioux and other tribal groups were able to prevent their warriors from violating treaties that had established boundaries after questionable cessions of land.

In this atmosphere of deep mistrust, the era of Indian treaties came to an end. In March 1871, Congress passed a law providing that "no treaties shall hereafter be negotiated with any Indian tribe within the United States as an independent nation or people." There might indeed be consultations and "agreements," but decisions about cessions of land, location of reservations, and tribal governance were thereafter made either by act of Congress or by executive order of the President.¹³

It is an ironic twist of fate that this law ending the treaty period was passed while a Seneca Indian, Ely Parker, a sachem chief in the Grand Council of the Six Nations, held office as head of the Bureau of Indian Affairs. Parker had been a Union General during the Civil War and was General Grant's aide during Lee's surrender at Appomatox. Parker supported President Grant's Peace Policy. He believed that to

avert extinction, the western Indians had to end armed resistance and adopt the White man's ways, proposing the old plan, suggested in the 1830s, of eventually admitting an Indian Territory as a state. To curb rampant corruption in the Indian service, he recommended that clergymen be appointed as agents in the field. He even recommended ending the treaty system, viewing it as inappropriate to the actual situation, in which the Indians were no longer sovereign nations with central governments but loosely organized tribes dependent for survival on the United States. But Christian zealots in Congress regarded Parker as an untrustworthy Indian, a barbarian, too tolerant of native religious beliefs, a member of the Masonic order. Parker, in an emergency situation, bent the rules in hastily purchasing food for starving Sioux. In retaliation, he was charged with misappropriation of funds and subjected to a Congressional investigation.

Parker can be thought of as a Native American Hamlet, prince of an indigenous Denmark that he sought to save, entangled in a web of intrigue and moral ambivalences. On the one hand, he favored the peace-and-civilization vision of the Indians' future, even if it had to be supported by military force; he himself had served in an army fought against Indians in the west. He criticized the current perverted practice of Indian treaties, observing that recent treaties often worked to the Indians' disadvantage. The Indian tribes were not really sovereign, their chiefs' councils lacking the power to enforce compliance on dissenting factions, whose forays simply led to massacres by the United States army. And the treaties themselves were "like the handle to a jug. The advantages and the power of execution are all on one side."

No doubt the groundwork for this opinion had been formed by his experience with the Seneca treaties of Buffalo Creek of 1838 and 1842, in which a minority of chiefs and hangers-on, some made drunk, some bribed, had signed away all of the Seneca reservations in New York in exchange for promised lands in Kansas. As a result, the Seneca nation split in two, the Tonawanda band remaining a member of the Confederacy, and the southern reserves abandoning the system of clan chiefs for an electoral process. Parker, and his friend Morgan and Quaker allies, had lobbied in Washington to have the second treaty modified to save Tonawanda (whose chiefs had not signed the treaties). His own farm, managed by his sister Caroline, was not spared. Eventually the Tonawanda band was able to preserve a reduced reservation by buying land back from the Ogden Land Company with money obtained by abandoning claim to their trust land in Kansas.

More immediate crises must also have prompted his criticism of treaties. On taking office, he was confronted by reports of a massacre

of nearly 200 Piegan (Blackfoot) men, women, and children in a peaceful village. In the summer of 1869, he invited the Sioux chief Spotted Tail to meet with the president in Washington. Spotted Tail rejected the Treaty of Fort Laramie (1868), in which the United States purchased (or so it claimed) a large swath of Sioux territory in return for a reservation along the Missouri River. Spotted Tail asserted that the treaty document was a forgery and that the Sioux had not accepted such a reservation. The Sioux wars, symbolized in history by Custer's "Last Stand" (1876) and the massacre at Wounded Knee (1890), were an outcome of the collapse of the old treaty protocol.

Assailed by racist enemies in Washington, threatened with death by Seneca traditionalists, and exhausted by days of Congressional testimony, Parker suffered a medical crisis and was bed-ridden for weeks. Although Congress exonerated him, he resigned his post in August 1871, 6 months after the anti-treaty law was passed. He left public life, lived on in straitened circumstances, and was buried in prestigious Forest Lawn Cemetery in Buffalo, next to Red Jacket. He lies on land torn from the Seneca by the infamous Treaty of Buffalo Creek, which in his youth he had fought to overturn. Some of Parker's papers, including a draft of his letter of resignation, now rest in the Society's Library.¹⁴

ENDNOTES

1. Julian P. Boyd, ed., *Indian Treaties Printed by Benjamin Franklin, 1736-1762* (Philadelphia: Historical Society of Pennsylvania, 1938). Another published edition of the treaties is Susan Kalter, ed., *Benjamin Franklin, Pennsylvania, and the First Nations: The Treaties of 1736-1762* (Urbana, IL: University of Illinois Press, 2006). The Boyd edition contains facsimiles; the Kalter edition is reformatted and annotated. Both editions include introductions that review the historical context of the treaties, Boyd more sympathetic to colonial authorities, Kalter more critical.
2. For a detailed overview of the history of Indian treaty-making, see Francis P. Prucha, *American Indian Treaties: The History of a Political Anomaly* (Berkeley: University of California Press, 1994). A useful synopsis of treaties after the colonial period is Charles C. Royce, *Indian Land Cessions in the United States* (Washington: 18th Annual Report, Bureau of American Ethnology, 1899). Treaties from 1789 to the present are published in *United States Statutes at Large* and in a compilation by Charles J. Kappler, *Indian Affairs: Laws and Treaties*, 5 vols. (Washington: Government Printing Office, 1904-41).
3. Cadwallader Colden, *The History of the Five Indian Nations of Canada, 1727, 1747* (Gutenberg E-book).
4. There is a considerable literature on interpreters. See James H. Merrell, *Into the American Woods: Negotiators on the Pennsylvania Frontier* (New York: Norton, 1999), and Paul A. W. Wallace, *Conrad Weiser, Friend of Colonist and Mohawk* (Philadelphia: University of Pennsylvania Press, 1945).

5. "Proceedings of the Colonial Congress held at Albany . . . 1754," pp. 853–92 in E. B. O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New York* (Albany, N.Y.: Weed Parsons, 1855); Franklin, *Autobiography*, pp. 102–3.
6. The Enlightenment view of relations between European nations and Indian nations was summarized in Chapter 18, Book 1, of Emer de Vattel's classic *The Law of Nations* (first French edition 1758, first English translation 1760; reprint Indianapolis: Liberty Fund, 2008). A legal scholar's study of Marshall's decisions and the Doctrine of Discovery is Lindsay G. Robertson, *Conquest by Law: How the Conquest of America Dispossessed Indigenous Peoples of Their Lands* (New York: Oxford University Press, 2005).
7. The history of the *Johnson v. M'Intosh* and Marshall's decision invoking the Doctrine of Discovery is in Robertson, *Conquest by Law*. Franklin's investments in the Grand Ohio Company and a land speculation in Nova Scotia are described in Carl Van Doren, *Benjamin Franklin*, 1938 (New York: Book of the Month Club 1980), pp. 396–402.
8. The Walking Purchase and its aftermath is discussed in Anthony F. C. Wallace, *King of the Delawares: Teedyuscung, 1700-1763*, 1949 (Syracuse: Syracuse University Press, 196). For the Quaker view, see Charles Thomson, *The Causes of the Alienation of Delaware and Shawanese Indians from the British Interest*, 1759. Thomson served as Teedyuscung's "secretary."
9. For Franklin at Gnadenhuetten, see Benjamin Franklin, *Autobiography* (Mineola, N.Y.: Dover Publications, 1996), pp. 115–9.
10. The text of the treaties of Ft. Stanwix, Ft. M'Intosh, and Greenville are reprinted in Wilcomb Washburn, ed., *The American Indian and the United States: A Documentary History* (New York: Random House, 1973), Vol. 4. The Trade and Inter-course Act of 1790 is in *United States Statutes at Large*, Vol.1, pp. 137–8.
11. The careers of the men who presided over the land-cession treaties after Greenville are all subjects of scholarly biographies. See Frank R. Woodford, *Lewis Cass: The Last Jeffersonian* (New Brunswick: Rutgers University Press, 1950; Jay Buckley, *William Clark: Indian Diplomat* (Norman, O.K.: University of Oklahoma Press, 2007); Robert M. Owens, *Mr. Jefferson's Hammer: William Henry Harrison and the Origins of American Indian Policy* (Norman, O.K.: University of Oklahoma Press, 2007); Thomas C. Danisi and John C. Jackson, *Meriwether Lewis* (Amherst, N.Y.: Prometheus Books, 2009); Jean R. Smith, *John Marshall: Definer of a Nation* (New York: Macmillan, 1996); Richard G. Bremer, *Indian Agent and Wilderness Scholar: The Life of Henry Rowe Schoolcraft* (Clarke Historical Library, 1988). For Jefferson's support of scholarly research on Indians and the work of Heckewelder and DuPonceau, see Anthony F. C. Wallace, *Jefferson and the Indians* (Cambridge, M.A.: Harvard University Press, 1999).
12. Records of the Indian Claims Commission are in the National Archives. Copies are available online at Oklahoma State University (www.digital.library.okstate.edu/icc). Records of research and testimony by ethno-historians employed by the Department of Justice in the Great Lakes Project defending the United States are in the library at Indiana University (Bloomington). The Joint Efforts Group files by the author and his assistant Michal Lowenfels Kane are in the Wallace Collection at the American Philosophical Society. For the Sac and Fox treaty of 1804 and the Black Hawk War, see Anthony F. C. Wallace, *Prelude to Disaster: The Course of Indian-White Relations Which Led to the Black War of 1832* (Springfield, I.L.: Illinois State Historical Library, 1970). It is worth noting that the formation of the

American Society for Ethnohistory (publisher of the journal *Ethnohistory*) was prompted by the involvement of anthropologists and historians in cases before the Indian Claims Commission.

13. See Royce, *Indian Land Sessions*, p. 854 et seq.
14. Parker's career in Washington politics is partially detailed in the biography by William H. Armstrong, *Warrior in Two Camps: Ely S. Parker, Union General and Seneca Chief* (Syracuse: Syracuse University Press, 1978). A sympathetic and more thorough account of Parker's efforts to save the western Indians from extinction is a chapter in Dee Brown, *Bury My Heart at Wounded Knee*, 1970 (New York: Henry Holt, 2007).