

to the clientele of southwestern Alaska as "savages" more often than by any other term, although together the terms "people" or "natives" were used as often as savages. By and large during the latter part of their period of control the Russians assumed a stern but essentially paternalistic attitude toward the native peoples. They always were anxious to expand the fur trade but not at the expense of drastically altering the economic foundations of the Eskimos and Indians with whom they dealt.

Peoples Destroyed and Displaced

(It would be difficult to prove, but it seems likely that after initial historic contact far more Indians were killed by diseases introduced by whites than by bullets.) It also appears that more Indians were killed by other Indians than by whites although many such murders unquestionably were abetted by whites. It is probable that every tribe was subjected to at least one major epidemic, and there were precious few Indians whose way of life was not altered dramatically, or even destroyed outright, early in their history.

In the preceding chapters the importance of disease as a disruptive force has been documented for specific peoples, and its influence cannot be underestimated. Diseases which had a long history among Europeans led to biological accommodations among them, yet the same illnesses could be deadly to a virgin population; measles and whooping cough are two examples. Diseases might rage in epidemic proportion among Indians and whites alike, as did malaria. Tuberculosis was a dreaded killer of Indians but was somewhat less frightful among whites.

Examples of tribes destroyed by diseases are not difficult to locate in the literature; two depressing examples will illustrate the speed of the demise. The Massachuset, whose population was estimated at 3000 in 1600, numbered only 500 by 1631 as a result of a terrible epidemic, possibly of smallpox, and soon thereafter smallpox reduced them to a remnant population. By 1663 when John Eliot published a Bible in their language they were practically extinct. The Mandan of North Dakota possibly numbered about 3600 early in their history; an estimate for 1836 was that there were about 1600 individuals, but as the result of a smallpox epidemic during 1837 the tribe was reduced to sixty-one survivors. For the Massachuset there could be no cultural continuity, but the Mandan slowly increased in number from the point of virtual extinction.

Even though disease might not utterly destroy a tribe an epidemic might wipe out so many persons that they were unable to fend off human enemies

*This Land Was Theirs: A Study of
the North American Indian*

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or effectively sustain their established cultural traditions. After the small-pox epidemics which struck the Pawnee in 1837-1838 they were harassed by their once less powerful enemies. The terrible epidemics in 1838 and 1900-1901 among the Kuskokwim Eskimos left so few adults that it is difficult to understand how their cultural ways could have been perpetuated in any but an attenuated manner. The malaria epidemic which struck the Columbia River Indians and those in the Central Valley of California in the early 1830's had a mortality rate estimated at 75 percent. As a result their population was reduced so severely that when whites arrived in large numbers somewhat later they could not be effective in their resistance.

The extinction of a population unquestionably is tragic, but another result of the contact setting was nearly as sad. Considering the intimate and often religious associations of Indians with their traditional homelands, their displacement to other areas was heartrending. The plight of the Fox in this respect has been documented, but there are other instances involving isolated tribes which are even more distressing. One example will suffice to make the point. In aboriginal times the Delaware occupied present-day New Jersey and adjacent areas, but in the early 1700's the Iroquois came to dominate them politically and sanctioned their displacement by white settlers. Before long many Delaware settled in eastern Ohio, but not without wandering largely homeless for some time. By 1820 some lived in Arkansas, and others had ventured on to Texas. Some fifteen years later many of them had settled on a reservation in Kansas, from which they were moved to Oklahoma in 1867. Most of them remain there today, but there are Delaware Indians scattered from eastern Canada to Montana, far from the New Jersey homeland of their historic origins.

The personal and cultural trauma wrought by purposefully displacing a tribe from its home to its remade home is tragic in itself. But to imagine that it became a Federal policy to move all Indians from one vast area to another violates the very principles on which the United States was founded. Yet such was the case, and the drama began to develop with clarity about 1800. One overwhelming argument had been advanced as justification for assuming control of Indian lands, and it never changed. Indians obstructed progress, whites could utilize land much more effectively than Indians, and thus it was the God-given right of the settlers to obtain and till such ground. Indian displacement became a blanket policy with the Removal Bill of 1830, and it was supported strongly by President Andrew Jackson. New Englanders could deplore this policy elsewhere because they long ago had resolved their Indian "problem." It was the southeastern states and the settlers venturing into the midwest who were considered the wanton, immoral destroyers of Indians.

Most surviving tribes with large landholdings in the area east of the Mississippi River were bribed and intimidated into moving westward. By 1831 the states of Alabama, Georgia, and Mississippi had forced the removal of the Choctaw, Chickasaw, and Creek. Fox and Sauk reluctance to forsake their lands led to the Black Hawk War, which was documented previously, and Cherokee resistance to removal likewise has been described. The Cherokee had adopted civilized ways and had become successful farmers, which was highly disconcerting to politicians in Georgia who yearned to bring their productive lands under state control. In 1829 the Georgia legislature passed a law incorporating much of the land of the Cherokee Nation as state holdings. Furthermore, under terms of the act all previous federal legislation and regulations were to be null and void by June of the following year. In addition Indians were prohibited from testifying in court cases involving whites, and prohibitions were established against interference with removal plans. About this time gold was discovered on Cherokee holdings, and the governor declared that all gold-bearing lands belonged to the state. The actions of the Georgia legislature led to the famous *Worcester vs. Georgia* case, which reached the Supreme Court in 1832 when John Marshall was Chief Justice. The court judgment was that the Federal government, not the state of Georgia, was responsible for the Cherokee. This decision led Jackson to make his famous remark, "John Marshall has made his decision, now let him enforce it." Illegal seizures of land and property by whites, conflicting policies of the Indian leaders, intrigue by unscrupulous persons who were both white and Indian, and harassment by state representatives finally led to the 1835 Treaty of Echota and Cherokee removal.

Before the Cherokee treaty leading to their "legal" removal, gross injustices were perpetrated by citizens and representatives of the state of Georgia. Indians were forced from their lands at bayonet point, they were removed in chains without due legal process, they were sold intoxicants in violation of federal regulations, and their movable property often was stolen with impunity. A state law prohibiting a Cherokee from employing a white was used as a pretext for seizing plantations, which then were disposed of to whites by lottery. The Cherokee were required by law to transfer land only to the state. When some families finally were forced to leave Georgia, much of the property that they carried with them was seized and money extorted from them. Food and shelter during the forced migration often was inadequate or nonexistent, and finally cholera struck, along with other diseases. Yet by 1838 when all of these people were to be removed only 2000 Cherokee had been deported; the other 15,000 still believed that somehow they would not be driven from their homeland. But

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such was not the case. About 7000 troops under General Winfield Scott moved against the Cherokee, who previously had been disarmed. He ordered that within a month's time every Cherokee must be moving westward. Soldiers went from house to house and forced people to leave at once. Often they were unable to take anything with them, and they were impounded in stockades until they could be shipped westward. Their journey to Oklahoma is known to the Cherokee as the Trail of Tears; about 4000 persons died as a direct result of their forced removal. The Cherokee had their own Bataan Death March a long time ago—courtesy of the United States Army.

Treaties

Most of the land in North America was used by Indians when Europeans arrived, but Indians today own and occupy only a very small portion of their original holdings. As is obvious from the preceding chapters, most Indian lands were obtained by treaties negotiated with tribes who relinquished land in one area for that in another, often with monetary compensation as added inducement. The treaty arrangements for a number of tribes have been documented, yet it is worthwhile to present a brief overview of the changing status of Indian lands in historical perspective.

In northeastern North America the early Dutch and English administrators in the 1700's held that Indian tribes were sovereign nations and the legitimate claimants to the lands they occupied. Any land acquired from Indians was obtained on a national, not an individual, basis. The pre-Revolutionary War treaties of the British dealt primarily with the question of boundaries and the acquisition of lands from Indians. As early as 1670, during the reign of Charles II, England was concerned that those tribes desiring her protection should receive it. There are treaties and agreements with New England tribes dating from 1664, and by 1755 a bureau was founded to deal with Indian matters. Formal recognition of Indian title to land was to guide policy in both Canada and the United States.

Between the years 1778 and 1871 the United States government negotiated formal treaties with Indian tribes in the same manner as it did with foreign powers. Tribes were viewed by Federal authorities as "dependent nations," and treaties were considered in the same light as other statutes of the United States Congress. In some instances early treaties prohibited U. S. citizens from venturing onto Indian lands without passports, but more often the subordinate position of the Indian nations to the United States is made clear by the provisions. It may come as a

surprise that in spite of the hostilities between the Federal government and various tribes, the United States never drew up a formal declaration of war against any hostile Indians.

In spite of the fact that no new treaties have been made with Indians for nearly a century there are still treaty obligations being fulfilled by the Federal Government, and Indian treaties have an important place in the development of Federal Indian law. It is clear that the Federal Government reserved the right to regulate affairs with Indians, and only rarely was this right relinquished to a particular state. Once a treaty was negotiated and ratified, it could not be regarded as invalid owing to fraud, duress, or improper Indian representation. Treaties might be renegotiated by the mutual consent of the Indians and the Federal Government, and a treaty could be superseded by other Congressional action. Hostilities with a tribe could invalidate a treaty, and a treaty could be modified or nullified under other circumstances. It has, however, been a general policy of the government to interpret ambiguities in treaties in favor of the Indians involved and to consider the circumstances under which a treaty was negotiated. At the same time the courts could not interpret a treaty in a manner not intended in the original wording.

Treaties with Indians were negotiated by the President of the United States and were binding when approved by the Indians and two thirds of the U. S. Senate. It is important to note that a treaty could not provide funds for Indians; monetary commitments required separate Congressional action. The subjects dealt with in Indian treaties varied widely, and in all nearly 400 treaties were negotiated. The greatest number, nearly 260, were arranged between 1815 and 1860, during the great westward expansion of white settlers following the War of 1812. The majority of the treaties, 230, involved Indian lands. These concerned the exchange and cession of lands or the establishment of boundaries for Indian lands. A block of 76 treaties called for Indian removal from their lands and resettlement on other lands. As early as 1818 there was a treaty setting aside or reserving lands for specific Indian tribes; however, the majority of the reservations were established much later. Nearly 100 treaties dealt primarily with boundaries between Indian and white lands and affirmed the friendly relations between a tribe and the United States. This was the general nature of most early treaties. Two tribes, the Potawatomi and Chippewa, each negotiated 42 separate treaties, which is a record number.

Most early treaties made no attempt to regulate or control the internal affairs of a tribe. As Federal power over Indians increased, this policy was changed, and treaties came to stipulate certain rules for the behavior of tribal members in their own communities. This shift took place in 1849

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in a treaty with the Navajo which included the provision that the Federal Government could (*Federal Indian Law*, 1958, 163) "pass and execute in their territory such laws as may be deemed conducive to the prosperity and happiness of said Indians." By the 1860's the Federal Government made treaties which could be amended unilaterally by Congress. This was an anticipation of the end of treaty-making. By the mid-nineteenth century it was becoming increasingly apparent that treaties with Indian tribes were unrealistic because of the increased Indian dependence on the Federal Government. It was not until 1871, however, that the last treaty was negotiated and ratified by the U.S. Congress. The end of treaty-making came as a result of a dispute between the U.S. Senate and the House of Representatives. The Senate approved treaties, but the House was obliged to appropriate money relative to the treaties. Their failure to agree finally brought an end to the treaty period.

An interesting sidelight in Federal dealings with Indians was the attempt to have Indian representation at the national level. In the first treaty of the United States with Indians, the Delaware in 1778, there was the provision that at a future date this tribe might consolidate with others and form a state, with the Delaware as the leaders. The state was to have Congressional representation, but nothing ever developed from the possibility. In a treaty of 1785 and another of 1830 it was proposed that Indians send a representative to Congress, but again this possibility was never realized.

In the United States, Indians have land rights based on aboriginal possession, treaty, a Congressional act, Executive order, purchase, or by the action of some colony, state, or foreign nation. Indian reservations were created by treaty arrangements before 1871, by acts of Congress after that time, and by Executive orders of the President. In almost every instance the Federal Government retained the title to reservation lands. Treaty reservations were created in some instances in recognition of aboriginal title and in others in exchange for different lands or for the privilege of joining another Indian group on its reservation. Occasionally during the treaty-making era and often thereafter, reservations were established by Congressional action. Such statutory reservations consisted usually of an area of public domain or land purchased by the Federal Government for use by a designated segment of the Indian population. The legality of reservations established by Executive orders was uncertain, but their validity was established in the General Allotment Act of 1887. Reservations were created by Executive order between about 1855 and 1919. The practice, however, met resistance from Congress and was brought to an end except to add some Alaskan reservations. It has happened also that from time to time

Indians have purchased lands with their own funds for their group as a whole; such land has been supervised by the Federal Government. Since virtually all of the territory which is now the United States was held earlier by a European-based power, the rights of Indians under British, Dutch, French, Mexican, Russian, and Spanish rule have been taken into consideration when there was a transfer of sovereignty. In each instance at least some implicit recognition was given to aboriginal rights of occupancy by the Indians.

As Allan G. Harper has noted, the Canadian government was not particularly generous in its treaties with Indians, but the promises which were made have been kept rather faithfully. In general, treaties with Canadian Indians were arranged before the arrival of settlers into a particular area of Indian occupancy, and thus there were no great conflicts between Indians and whites in Canada. The cornerstone of Indian policy was embodied in the "Proclamation of 1763" following the defeat of the French and the establishment of British sovereignty. This proclamation contained the principles which were to guide Indian-white relations: Indians possessed the rights to all lands not formally surrendered; Indians could not grant to whites any lands which had not been surrendered; and land could be surrendered only to the Crown. Between 1781 and 1836, twenty-three treaties were made, and all but one included remunerations to the Indians involved. It was only in the Crown Colony of British Columbia that the governor had control over Indians, and this special condition ceased to exist after Confederation in 1867. In a treaty of 1850 the stipulations of all later treaties were set forth. The major points were that the Crown alone had the right to receive Indian land; reserves were established for Indian use; payment was made for the surrender of land with perpetual annuities to the Indians involved; and Indian rights to hunt and fish on ceded lands were recognized. Between 1871 and 1921 the final eleven treaties were negotiated.

In Canada the earliest significant grant of lands to Indians was made in 1680 by Louis XIV to a band of Iroquois in Quebec. This land still is occupied by the Iroquois. The next major grant of land was to the Six Nations, who were Iroquois, in 1784. They received nearly 700,000 acres for their loyalty to the British during the American Revolution. By 1821 the Six Nations had alienated nearly half of the original grant by selling lands to whites before this practice was prohibited. In the early 1940's there were some 5,500,000 acres of land held in trust by the Dominion government for Indians. Under the Canadian Act of 1870 reserved lands may be held by a particular Indian under an allotment system. This means that the allottee has exclusive rights of use and occupancy. He may pass the land on to heirs or sell it to another Indian of his group, but he does

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not receive clear title to the holding. Indians with more land than is necessary for their welfare may surrender some and use the money derived from the sale for the benefit of the group. Under certain rare conditions an individual Indian may obtain a clear title to his land; for example, it is possible if he requests Canadian citizenship or enfranchisement and it is granted. Title to his land is obtained by receiving the consent of his group and the Dominion government, but he must pay the band for the land.

As a closing observation about treaties with Indians it must be noted that they seldom were "negotiated" in any meaningful sense of the term. Representatives of a particular tribe or tribes were assembled, and a treaty was offered for their approval. The signers seldom had any realistic opportunity to modify the terms. Then too treaties often were made through "chiefs" who were sympathetic to the whites, and in certain areas of the United States it was not uncommon for intoxicants to be distributed freely at treaty-making sessions. In addition the interpreters often could not or did not set forth the details of an agreement in true detail or spell out the implications of what the Indians were losing and what they gained. A most important final observation along these lines is that most Indians had no concept of the permanent alienation of land. Since they had never bought and sold land, their concept was that they were granting whites the rights to its use. Thus, many such agreements were not "treaties" in a strict sense of the word's usage.

Administration

The Continental Congress of the United States in 1775 created three agencies to deal with Indian affairs. These were in the three geographical areas, the northern, middle, and southern. The commissioners in charge of the respective areas were instructed to make treaties and to establish friendly relations with Indians to prevent them from aiding the British. The general structure of Indian administration remained the same as that which had existed under British control. The individuals in charge of the middle department included Benjamin Franklin and Patrick Henry, and their leadership indicates the importance attached to Indian affairs. In 1786 the administration of Indians was placed under the Secretary of War with two departments, the north and south, whose administrators were empowered to grant licenses to trade and live among Indians. With the adoption of the Constitution of the United States, the War Department maintained jurisdiction over Indians. The first Congress of 1789 appropriated funds for negotiating treaties and placed the governor of a particular