Introduction

The Anomaly of Indian Treaties

The formal treaties made by the United States government and various Indian tribes and bands have a complex history. They served many purposes for both the United States and the tribes, and they were negotiated by a great array of federal commissioners and Indian chiefs and warriors. Between 1778, when the first treaty was signed with the Delawares, and 1868, when the final one was completed with the Nez Perces, there were 367 ratified Indian treaties and 6 more whose status is questionable. In addition, a considerable number of treaties that were signed by the Indian chiefs and the federal commissioners were never ratified by the Senate and the president.[1] For both sides, conditions at the time of treaty signing called for pragmatic decisions, and it is dangerous to approach the treaties and their history with a priori patterns into which the actual events are squeezed to fit. Nor has the understanding of the old treaties in newer times followed a single pattern.

Indian treaties, when all is said and done, were a political anomaly. Chief Justice John Marshall hit it right when he wrote in *Cherokee Nation v. Georgia* (1831): "The condition of the Indians in relation to the United States is perhaps unlike that of any other two people in existence. . . . The relation of the Indians to the United States is marked by peculiar and cardinal distinctions which exist nowhere else." More than half a

1. Appendix B provides a list of the ratified treaties with basic information about each one.

century later the Supreme Court in *United States v. Kagama* (1886) echoed Marshall's sentiment: "The relation of the Indian tribes living within the borders of the United States . . . to the people of the United States has always been an anomalous one and of a complex character."[2] What was true about Indian-white relations in general was especially true about the Indian treaties.

The general rule is that a treaty is a formal agreement between two or more fully sovereign and recognized states operating in an international forum, negotiated by officially designated commissioners and ratified by the governments of the signatory powers. But American Indian treaties have departed from that norm in numerous ways, as their history shows. They exhibited irregular, incongruous, or even contradictory elements and did not follow the general rule of international treaties. It will not do to insist on univocal definitions while ignoring the multifaceted historical reality of the use of treaties in the relationships between the United States and the Indian communities. Only a detailed historical account will display the nature of the treaties and the many changes through which the understanding and use of the treaties passed in the course of American history.

Sovereignty

Indian treaties had certain characteristics or elements that, although appearing paradoxical or even incompatible, did not cancel each other out but existed together in an anomalous whole.

The United States, from the beginning of its political existence, recognized a measure of autonomy in the Indian bands and tribes. Treaties rested upon a concept of Indian sovereignty or quasi sovereignty and in turn greatly contributed to that concept. Treaties, as it was repeatedly pointed out in discourse about the relations between the United States and the Indians, made no sense unless based on recognition of some kind of special legal status of the Indians. In their actions, whites frequently enough disregarded Indian rights, but both theoretically and in practice the treaties gave the Indians a protected existence. Often this recognition of independence meant more to Indian groups than did their lands, and tribes eagerly sought treaties in order to gain

2. 5 Peters 16; 118 U.S. 381.

political recognition and not just to acquire the economic benefits that came from presents and from annuities paid for land.

The autonomous status was seen in the early treaties of "peace and friendship," for declaring war and peace were functions of sovereign nations. The first United States treaty—that with the Delawares in 1778 while the Revolutionary War was still raging—declared that "a perpetual peace and friendship shall henceforth take place, and subsist between the contracting parties . . . through all succeeding generations," and at the end of the war, treaties with all the onetime hostile Indians were designed to establish peace. The preambles to the treaties spoke of the United States "giving peace" to the Indians and receiving them into its favor and protection, but it was to be a mutual understanding of peace; the formula used in 1785–86 with the Cherokees and other southern tribes at Hopewell, in South Carolina, made this evident:

> The hatchet shall be forever buried, and the peace given by the United States, and friendship re-established between the said states on the one part, and all the Cherokees on the other, shall be universal; and the contracting parties shall use their utmost endeavors to maintain the peace as aforesaid, and friendship re-established.[3]

Similarly, after the War of 1812, the treaties at Portage des Sioux with the western tribes declared: "There shall be perpetual peace and friendship between all the citizens of the United States of America, and all the individuals composing [the particular tribe]." And the post–Civil War treaties made with the Five Civilized Tribes, who had aligned themselves with the Confederacy, reestablished "permanent peace and friendship" between the United States and each tribe; some of the tribes agreed, as the Creek treaty read, "to remain firm allies and friends of the United States, and never to take up arms against the United States, but always faithfully to aid in putting down its enemies."[4] In between such times of return to peace after a war, countless treaties issued or renewed declarations of peace between the United States and the Indian tribes.

Treaties also dealt with other aspects of the quasi-international status of the Indian tribes. Boundaries were established between the tribes and the United States and in some cases, notably in the Treaty of Prairie du Chien of 1825 and the Treaty of Fort Laramie of 1851, between the

3. Kappler, 2:3, 10–11.
4. Ibid., 110, 932.

various tribes as well. The lands of the Indian groups, although within the territorial limits of the United States recognized by European nations, were considered to be apart from the lands of the whites. This was a carryover from the concept of Indian country that was found in the Proclamation of 1763 with its line dividing Indian lands from areas of white settlement, a concept more sharply institutionalized by the federal trade and intercourse laws between 1790 and 1834. Treaties reinforced and amplified this principle of the separateness of tribal territory, especially in the initial years of treaty making. Early treaties with the Creeks and with the Cherokees, for example, required passports for United States citizens to enter Indian lands. There were, in addition, provisions in the treaties for the extradition of criminals, requiring the Indian tribes to deliver up Indians or other persons who committed crimes against United States citizens, so that they could be duly punished by the federal government. The cession of Indian lands, a prominent feature of Indian treaties, was an indication of Indian sovereignty over those lands, and the recognition by the United States of Indian ownership to the lands remaining strengthened the concept.[5]

Combined with the idea of separate Indian lands was the recognition of Indian autonomy within those lands. The language of the treaties is unmistakable in this regard. The first treaty was made with the Delaware "nation," and subsequent treaties followed that terminology, although little by little, especially with the Indians north of the Ohio River, the term "tribe" replaced "nation" or was used alternately with it. Even when "tribe" became common, the Creeks, Cherokees, and others of the southern tribes were still usually denominated "nations."[6]

John Marshall in the Cherokee cases of 1831 and 1832 argued the point at some length. In *Cherokee Nation v. Georgia* (1831) he declared that there was no doubt that the Cherokees were a state, "a distinct political society, separated from others, capable of managing its own affairs and governing itself." They had always been considered a state, he said, and the numerous treaties made with them by the United States had recognized them as "a people capable of maintaining the relations of peace and war, of being responsible in their political character for any violation of their engagements, or for any aggression committed on the citizens of the United States by any individual of their community."[7] Though Marshall balked at defining Indian tribes as foreign nations

5. See the discussion, pp. 226–34, on land cessions and payment therefor.
6. See discussion of the concept of "tribe," pp. 211–13.
7. 5 Peters 16.

able to bring suit before the Supreme Court, calling them instead domestic dependent nations, in *Worcester v. Georgia* (1832) he repeated and amplified his argument that the Indian nations were distinct, independent political communities. He concluded: "The words 'treaty' and 'nation' are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well understood meaning. We have applied them to Indians as we have applied them to the other nations of the earth. They are applied to all in the same sense."[8]

Erosion of Sovereignty

If the matter had stopped there with "the 'platonic notions of Indian sovereignty' that guided Chief Justice Marshall"—to which the United States Supreme Court recently referred—all might be simple enough.[9] The anomaly in treaty making, however, soon appeared. Indian tribal sovereignty had gradually eroded, until the tribes became the dependent nations Marshall also spoke of. The treaties both reflected and contributed to the inequality and dependency with which the Indian negotiators faced the federal treaty commissioners. They rested on the assumption that the Indian tribes were not independent nations on the international scene. The treaties of peace after the Revolutionary War not only spoke of the United States as giving peace to the Indians but also included some such phrases as the following: "The said Indian nations do acknowledge themselves and all their tribes to be under the protection of the United States and of no other sovereign whatsoever."[10]

The same formula was used by the United States in treaties with the western tribes who signed treaties at Portage des Sioux after the War of 1812; the Missouri River tribes encountered by General Henry Atkinson and Indian Agent Benjamin O'Fallon in 1825 (which admitted that they resided within the territorial limits of the United States, acknowl-

8. 6 Peters 559–60.

9. *County of Yakima v. Confederated Tribes and Bands of the Yakima Nation*, 112 S. Ct. 687. The phrase "platonic notions of Indian sovereignty" was used in *McClanahan v. Arizona State Tax Commission*, 411 U.S. 172 (1973).

10. Treaty of January 21, 1785, with Wyandots and others, Kappler, 2:7. A similar phrase appears in the treaties with the southern tribes at Hopewell in 1785–86, the Treaty of Fort Harmar of 1789, the 1790 treaty with the Creeks, and on and on through the subsequent decades.

edged its supremacy, and claimed its protection); the tribes of the Pacific Northwest met by Governor Isaac I. Stevens in the mid-1850s; and the northern plains tribes with whom the Edmunds Commission dealt at Fort Sully in 1865. In such treaties the Indians agreed to submission to the United States in their external political affairs. John Marshall called such submission the "single exception" to tribal independence, "imposed by irresistible power, which excluded them [the tribes] from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed." In declaring that the Indians were not *foreign* nations, Marshall spoke bluntly:

> They look to our government for protection; rely upon its kindness and its power; appeal to it for relief of their wants; and address the President as their great father. They and their country are considered by foreign nations, as well as by ourselves, as being so completely under the sovereignty and dominion of the United States, that any attempt to acquire their lands, or to form a political connection with them, would be considered by all as an invasion of our territory, and an act of hostility.[11]

In fact, even though in the beginning the treaties were of a diplomatic nature—being negotiated by separate political powers dealing with each other on grounds of rough equality—very soon the United States came to negotiate the treaties from a position of overwhelming strength. Thomas Jefferson wrote to William Henry Harrison as early as 1803 regarding the Indians, "We presume that our strength and their weakness is now so visible that they must see we have only to shut our hand to crush them." Secretary of War John C. Calhoun, less than two decades later, could say of the Indians: "They are not, in fact, an independent people, (I speak of those surrounded by our population,) nor ought they to be so considered. They should be taken under our guardianship; and our opinion, and not theirs, ought to prevail, in measures intended for their civilization and happiness." William Clark, Indian superintendent at St. Louis, spoke in 1826 of the Indians as once a "formidable and terrible enemy," whose "power has been broken, their warlike spirit subdued, and themselves sunk into objects of pity and commiseration."[12]

11. *Worcester v. Georgia,* 6 Peters 559; *Cherokee Nation v. Georgia,* 5 Peters 17–18.

12. Jefferson to Harrison, February 27, 1803, *The Writings of Thomas Jefferson*, ed. Andrew A. Lipscomb, 20 vols. (Washington: Thomas Jefferson Memorial Association, 1903–4), 10:370–71; Calhoun report of January 15, 1820, *ASPIA,* 2:200–201; Report of Clark, March 1, 1826, *House Report* no. 124, 19-1, serial 138.

"The practical inequality of the parties," the legal scholar Felix Cohen once warned, "must be borne in mind in reading Indian treaties."[13]

The political dependence of the tribes was matched by economic dependence. In fact, economic dependence was in large part the reason that the Indians were forced to accept United States suzerainty. Since the Indians were dependent upon the whites for trade goods, control of that trade was a primary means for putting political pressure upon the tribes, and elimination of abuses in the trade was a means for preserving peace on the frontiers. The details of trading relations were worked out in a series of trade and intercourse laws, stretching from 1790 to 1834, and between 1795 and 1822 the federal government itself managed trading houses (called factories) in the Indian country to satisfy the Indians' wants and tie them to the United States. But the treaties were another means, for in them the Indians themselves agreed to give Congress the exclusive right to regulate trade with them. Some treaties repeated the provisions of the trade and intercourse laws requiring a license from a United States official for citizens or others trading in the Indian country, and the Treaty of Greenville in 1795, for example, specified in considerable detail the measures to control the trade.[14]

The treaties signed by tribes along the Missouri River in 1825 contained this clause: "The said bands also admit the right of the United States to regulate all trade and intercourse with them." And as the United States domain expanded west to the Pacific, the Indians newly encountered agreed by treaty to the extension of the trade and intercourse laws over their territories.[15] The Indians' continuing, increasing, and in many cases nearly absolute dependence upon white citizens for necessary goods was an important factor in the growing conviction that Indians were wards of the government, not members of independent sovereignties with whom the United States should deal by means of formal treaties.

Moreover, the sovereignty of the tribes was seriously compromised by repeated provisions in the treaties that left many stipulations to be carried out at the discretion of Congress, the Senate, or the executive.

13. Felix S. Cohen, *Handbook of Federal Indian Law* (Washington: GPO, 1942), 41. There is discussion of Indian dependency in Francis Paul Prucha, *The Indians in American Society: From the Revolutionary War to the Present* (Berkeley: University of California Press, 1985), chap. 2.

14. Kappler, 2:10, 42–43.

15. Ibid., 230ff., 583, 585.

In a number of cases, when articles in the treaties specified payments or grants to individuals, the treaties themselves provided that if these articles were not ratified, the rest of the treaty would not be affected. The treaties at Fort Sully in 1865 with the northern plains tribes carried this principle to an extreme, for each of those nine treaties provided:

> Any amendment or modification of this treaty by the Senate of the United States shall be considered final and binding upon the said band, represented in council, as a part of this treaty, in the same manner as if it had been subsequently presented and agreed to by the chiefs and head-men of said band.[16]

The 1842 treaty with the Chippewas allowed the Indians to hunt on the territory ceded by the treaty "until required to remove by the President of the United States" and stipulated that the trade and intercourse laws would continue to be in force with respect to Indian intercourse with whites "until otherwise ordered by Congress." The treaties with the eastern Sioux in 1851 declared that "rules and regulations to protect the rights and persons and property among the Indians, parties to this treaty, and adapted to their condition and wants, may be prescribed and enforced in such manner as the President or the Congress of the United States, from time to time, shall direct."[17] When a treaty was signed with the Delawares in 1854, a practically open provision for federal action was included in these words:

> A primary object of this instrument being to advance the interests and welfare of the Delaware people, it is agreed, that if it prove insufficient to effect these ends, from causes which cannot now be foreseen, Congress may hereafter make such further provision, by law, not inconsistent herewith, as experience may prove to be necessary to promote the interests, peace, and happiness of the Delaware people.[18]

The president, again and again, was given discretionary authority in treaties to establish trading posts and military posts at locations of his choice, designate places in the Indian country at which trade could be conducted, appoint agents to advise and direct the Indians, arbitrate claims between whites and Indians, decide territorial claims between Indian tribes and arbitrate other such claims, determine the time at

16. For example, treaty with Lower Brulé Sioux, October 14, 1865, ibid., 886.
17. Ibid., 542–43, 589, 592.
18. Treaty of May 6, 1854, ibid., 617.

which a tribe should remove from ceded lands, fix the size of annuity payments and the nature of such payments (in goods or in cash), determine lands for the Indians in exchange for cessions, convey parts of Indian lands to individual Indians as private reserves, approve sale of reserves by the Indians, dispose of lands held within reservations by missionary groups, decrease annuities as tribal population decreased, approve attorneys chosen by Indian chiefs, invest tribal moneys, and extend benefits to Indian tribes as he might think just and proper.[19]

Such authority placed in the hands of the president (usually to be exercised by the secretary of war or the secretary of the interior) indicated not only the respect that the Indians had for the Great Father but also the ability of the federal government by means of treaties to set its will as the determining factor in many elements of Indian life.

Civilization

Many grants of authority given to the president or Congress in the treaties were business or administrative matters, which by a stretch of the imagination might be seen as proper in the relations between a sovereign and a dependent protectorate. Much more powerful in contributing to the anomalous character of the Indian treaties was the persistent drive of white society and its government to change—indeed, to revolutionize—Indian societies by the promotion of white civilization. The treaties themselves, to a remarkable degree, were instruments intended to transform the cultures of the tribes. Building upon a long history of colonial precedents, federal leaders beginning with George Washington sought to change the Indians from hunters and gatherers to agriculturalists and herdsmen. It is not surprising that the treaties were full of provisions designed explicitly to enhance this process.

The treaty with the Creeks in 1790 declared: "That the Creek nation may be led to a greater degree of civilization, and to become herdsmen

19. I have been helped in summarizing elements of treaty making by the section "The Scope of Treaties," in Cohen, *Handbook of Federal Indian Law*, 38–46. Similar material is carried over into later works based on Cohen's book; see Office of the Solicitor, Department of the Interior, *Federal Indian Law* (Washington: GPO, 1958), 148–64; *Felix S. Cohen's Handbook of Federal Indian Law*, 1982 ed. (Charlottesville, Va.: Michie Bobbs-Merrill, 1982), 62–70.

and cultivators, instead of remaining in a state of hunters, the United States will from time to time furnish gratuitously the said nation with useful domestic animals and implements of husbandry."[20] Such items would weaken communal ties, or so Secretary of War Henry Knox hoped when he spoke in 1789 of instilling in the Indians a "love of exclusive property" and recommended that gifts of sheep and other domestic animals be presented to the chiefs and their wives. Knox instructed General Rufus Putnam, who was sent in 1792 to treat with the Indians near Lake Erie, to make clear the desire of the United States to impart to the Indians "the blessings of civilization, as the only mean[s] of perpetuating them on the earth," and that the government was willing to teach them to read and write and to practice the agricultural arts of the whites.[21]

It became common in the treaties for the United States to promise clothing, implements of husbandry, domestic animals, spinning wheels, and looms; to provide blacksmiths to repair agricultural implements as well as guns; and to build mills—all designed to promote the movement toward white ways of subsistence (although often the dispensing of these goods and services was left to the discretion of the president). It is easy to concentrate on the land cession provisions of the treaties and see the treaties simply as a means of territorial aggrandizement, as a "license for empire," and thus to miss the overwhelming obsession of the United States with changing the cultures of the Indians from communally to individually based systems of property ownership and from hunting or mixed economies to yeomanry.[22]

When treaties were made in the 1850s with the tribes in the newly acquired territories in the West, the same concern for civilization was evident, even though many of the Indians were not ready for it and hardly understood what it meant. The Treaty of Fort Laramie of 1851,

20. Kappler, 2:28.

21. Knox to Washington, July 7, 1789, *ASPIA,* 1:53–54; Knox to Putnam, May 22, 1792, ibid., 235.

22. The term "license for empire" comes from Dorothy V. Jones, *License for Empire: Colonialism by Treaty in Early America* (Chicago: University of Chicago Press, 1982), 186. An example of overly harsh concentration on the land provisions of the treaties is Ronald N. Satz's statement: "As the demand for Indian lands grew, American officials increasingly resorted to bribery, deception, economic coercion, threats, and sometimes brute force to secure Indian signatures on land cession treaties. The treaty-making process served as a convenient means of sanctioning federal land grabs under the guise of diplomacy." *Chippewa Treaty Rights: The Reserved Rights of Wisconsin's Chippewa Indians in Historical Perspective*, Transactions of the Wisconsin Academy of Sciences, Arts and Letters, vol. 79, no. 1 (Madison: Wisconsin Academy of Sciences, Arts and Letters, 1991), 6.

for example, provided annuities in "provisions, merchandise, animals, and agricultural implements." In justifying the payment of $50,000 a year for fifty years (a duration drastically cut by the Senate to fifteen years), one of the commissioners of the treaty remarked, "Humanity calls loudly for some interposition on the part of the American government to save, if possible, some portion of these ill-fated tribes; and this, it is thought, can only be done by furnishing them the means, and gradually turning their attention to agricultural pursuits."[23]

The much-criticized treaties signed with the eastern Sioux in 1851, in which the bands ceded large sections of land in Minnesota and adjacent regions of Dakota and Iowa in order to make room for expectant settlers and to acquire funds to wipe out large debts to traders, were also seen as a means to acculturate the Indians to agricultural life. "Unknown to most Dakota [Sioux]," a recent historian of those Indians writes, "the treaties of 1851 were tools of reform rather than examples of reciprocity." Even the abortive treaties with the Apaches, Navajos, and Utes in New Mexico Territory embodied civilizing principles, for the Indians agreed to cultivate the soil and raise flocks and herds, and they accepted gradually reduced annuities, which the president, at his discretion, could use in part for the Indians' moral improvement and civilization.[24]

The treaties in the same decade signed by Commissioner of Indian Affairs George W. Manypenny with the eastern tribes that had been moved west of the Mississippi in earlier decades—Indians who, for the most part, had long been in contact with whites—adopted the ultimate provision for changing the Indians into yeoman farmers: allotment of reservation lands in separate agricultural parcels to individual families. The treaties with the Pacific Northwest tribes in the same years spoke specifically of "civilization" and contained stipulations toward that end.

The treaties signed in 1867 and 1868 by the United States Indian Peace Commission at the very end of the treaty-making era were civilizing documents. One needs only to read the treaties—with their extensive provision for arable land for farming; construction of warehouses, mechanics shops, and other buildings; a "land book" to record individual allotments; domestic clothing; compulsory education; seeds

23. David D. Mitchell to Luke Lea, November 11, 1851, CIA AR, 1851, serial 613, pp. 289–90.

24. Gary Clayton Anderson, *Kinsmen of Another Kind: Dakota-White Relations in the Upper Mississippi Valley, 1650–1862* (Lincoln: University of Nebraska Press, 1984), 203. Two of the treaties with Indians in the southwest are printed in Kappler, 5:686–92.

and agricultural implements; and farmers, blacksmiths, and physicians—to see the strong thrust toward civilization that dominated them. By then the treaties had long since ceased to be simple political agreements between equal sovereigns, as some present-day Indian writers still see them.

Aside from the change to an agricultural mode of subsistence, formal schooling was the principal vehicle for modifying Indian cultures. The United States encouraged the educational efforts of missionary groups among the Indians and in 1819 formalized its support of these groups by providing an annual "civilization fund" to support their schools. It is understandable, then, that the treaties, too, made provision for schools and teachers. It was another element in the contract: the United States promised to furnish the means, and the Indians, explicitly or implicitly, agreed to send their children to school.

The Treaty of Doak's Stand with the Choctaws in 1820 provided that fifty-four sections of good land out of the ceded territory should be sold "for the purpose of raising a fund, to be applied to the support of the Choctaw schools, on both sides of the Mississippi," and a subsequent treaty in 1825 added an annuity of $6,000, to be applied for twenty years "to the support of schools in said nation, and extending to it the benefits of instruction in the mechanic and ordinary arts of life." Between 1817 and 1852 Congress appropriated more than $500,000 for Choctaw education under treaty provisions.[25]

Other tribes, too, benefited from education provisions in the treaties, for the treaty commissioners repeatedly entered such stipulations into the treaties.[26] By 1834 fourteen treaties provided an annual total of $35,500 for schools, with payments to run for limited periods of time or at the pleasure of Congress. By 1845 the annual sum (in twenty-four treaties) reached $68,195.[27]

Farther west, the story was the same. The treaties made by Manypenny in the 1850s included stipulations for schools and education, and in Governor Stevens's Treaty of Medicine Creek of 1854 with Puget Sound Indians, the government agreed to furnish an agricultural and

25. Kappler, 2:193, 212. Calculations on money for Choctaw education are given in George D. Harmon, *Sixty Years of Indian Affairs: Political, Economic, and Diplomatic, 1789–1850* (Chapel Hill: University of North Carolina Press, 1941), 357–58.

26. See Kappler, 2:270 (Chippewas, 1826), 274 (Potawatomis, 1826), 282 (Chippewas, 1827), 287 (Miamis, 1828), 304 (Delawares, 1829), 307 (Sacs and Foxes, 1830).

27. Harmon, *Sixty Years of Indian Affairs*, tables VI and VII, 380–81. Harmon estimates that in the first seventy-five years of the United States about $3 million was stipulated in treaties for Indian education. Ibid., 360.

industrial school for twenty years.[28] The Indian Peace Commission treaties of 1867–68, of course, made sure that education was attended to. All its treaties included this article:

> In order to insure the civilization of the Indians entering into this treaty, the necessity of education is admitted, especially of such of them as are or may be settled on said agricultural reservations, and they therefore pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school; and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with; and the United States agrees that for every thirty children between said ages who can be induced or compelled to attend school, a house shall be provided and a teacher competent to teach the elementary branches of an English education shall be furnished, who will reside among said Indians, and faithfully discharge his or her duties as a teacher. The provisions of this article to continue for not less than twenty years.[29]

It must be noted that these and other educational provisions were not always carried out to the letter. The United States was remiss in fulfilling its promises for schools and teachers and the Indians in sending their children to school. Still, the presence of such provisions in the political treaties enhanced their anomalous character.

Another thrust toward bettering the condition of the Indians came in treaty provisions to prohibit or restrict the use of spirituous liquors by the Indians. Control of the liquor trade, with its deleterious effects on Indian society, was a fundamental element of American Indian policy. The trade and intercourse laws became increasingly severe in the matter, and those statutes were augmented by specific treaty provisions. Many chiefs recognized the evil of the liquor traffic and easily acquiesced in restrictive articles entered in the treaties. Thus, in some of the Many-penny treaties of the 1850s the Indians promised "to use their best efforts to prevent the introduction and use of ardent spirits in their country; to encourage industry, thrift, and morality; and by every possible means to promote their advancement in civilization." The Chippewa treaty of 1854 said bluntly, "No spirituous liquors shall be made, sold, or used on any of the lands herein set apart for the residence of the Indians, and the sale of the same shall be prohibited in the Territory hereby ceded, until otherwise ordered by the President." In

28. Kappler, 2:613, 663.
29. See, for example, the Fort Laramie Treaty of 1868, ibid., 1000.

some cases, as a motivation for enforcement, the treaties provided for withholding annuities (for as long as the president would determine) from Indians who drank liquor or brought it into the reservations.[30]

The desire to direct the Indians into the path of peaceable white civilization was well summed up in an article inserted in Manypenny's treaty with the Winnebagos signed in Washington in 1855:

> The said tribe of Indians, jointly and severally, obligate and bind themselves, not to commit any depredation or wrong upon other Indians, or upon citizens of the United States; to conduct themselves at all times in a peaceable and orderly manner; to submit all difficulties between them and other Indians to the President, and to abide by his decision; to respect and observe the laws of the United States, so far as the same are to them applicable; to settle down in the peaceful pursuits of life; to commence the cultivation of the soil; to educate their children, and to abstain from the use of intoxicating drinks and other vices to which many of them have been addicted. And the President may withhold from such of the Winnebagos as abandon their homes, and refuse to labor, and from the idle, intemperate, and vicious, the benefits they may be entitled to under these articles of agreement and convention, or under articles of former treaties, until they give evidences of amendment and become settled, and conform to, and comply with, the stipulations herein provided.[31]

Such provisions, of course, cut deeply into the lives of the Indians and subjected them almost completely to the will of the dominant partner in the treaties. The treaties, in fact, became social documents as well as political ones, a catch-all for legislating a good life for the reservation Indians.

Domestic Policy

Running through the anomaly of Indian treaties and going directly counter to the notion that a treaty is an *international* agreement between independent sovereign states was the hard fact that the Indians were ultimately a domestic issue for the United States. This was evident from the start, as Indian affairs were made the responsibility

30. Ibid., 193, 556, 633, 650, 660, 663.
31. Ibid., 692–93.

of the War Department (and later the Interior Department) rather than the State Department. When interference in Indian affairs by the separate states of the Union was condemned as a violation of the Articles of Confederation, it was because it went against the "sole and exclusive right and power" of Congress to regulate trade and manage all affairs with Indians (Article IX) rather than because it violated the prohibition upon the states against entering into "any conference, agreement, or alliance or treaty with any King, prince, or state" (Article VI). It is instructive to note, too, that Lewis and Clark, who met many Indian tribes on their cross-continental journey in 1804–6 and freely distributed peace medals to the chiefs, did not enter into treaty negotiations with them. President Jefferson, who was an aggressive treaty maker with Indians within the territorial boundaries of the United States, thought of dealing with the distant tribes only through trade, not through the political arrangements of formal treaties. This may have been because, when he planned the "voyage of discovery," the Louisiana Purchase had not yet been consummated and the Indians were not yet within United States territory.[32]

Even John Marshall, for all his talk about autonomous political entities and the meaning of the words *treaty* and *nation,* said that the relation of the Indians and the United States "resembles that of a ward to his guardian." The bold act of the southern tribes in throwing off their allegiance to the Union in the Civil War and joining the South has the appearance of an international act (although the Confederacy was never recognized as independent), but the Confederate States themselves, in their treaties with the Indian tribes, adopted Marshall's usage and spoke of recognizing the Indians "as their wards." By the time the treaties were being used to regulate Indian trade, provide for Indian education, and transform the Indians from hunters to full-time agriculturalists, the domestic nature of Indian affairs was fully confirmed. The post–Civil War drive to detribalize the Indians and assimilate them as individuals into the dominant white society was a culmination of a movement that had long been under way. Resolution of disputes between the tribes and the United States has always been the business of federal courts, not international tribunals.

It is true that some Indians in the twentieth century have demanded

32. There is nothing about formal treaty making in James P. Ronda, *Lewis and Clark among the Indians* (Lincoln: University of Nebraska Press, 1984), although Ronda discusses Jefferson's concern to bring the western Indians into America's political orbit by making trading arrangements with them.