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Summary

The opinions presented in this Report may be summarized as follows, section by section:

**Chapter One: Tribal Land-Holding Concepts in Pre-Revolutionary New York: The Iroquois, the Dutch, the French and the British, 1600-1775.** *The Years 1660-1664 (pages 6-8).* The Iroquois Confederacy linked five tribal nations (from east to west, the Mohawks, the Oneidas, the Onondagas, the Cayugas and the Senecas), each of which thought of itself as owning and controlling its own homeland. *The Years 1664-1763 (pages 8-13).* Britain's imperial rivalry with France led to British encouragement of the notion of Iroquois proprietorship from Virginia to north of the Great Lakes. *The Years 1763-1775 (pages 13-17).* The elimination of France led Britain to attempt to reduce the Iroquois from the status of absolute proprietors to the status of tenants on royal land. This new policy was resisted and resented by the Iroquois.

**Chapter Two: The Revolution's Impact on Tribal Land-Holding in New York State, 1776-1789.** *The Post-Revolutionary War Iroquois Confederacy (pages 18-22).* The Iroquois Confederacy was badly splintered by the Revolutionary War. The three westernmost Iroquois tribes were severely impacted by a 1779 invasion by Continental troops. After the War, many Iroquois groups never returned to their pre-War homelands. The Mohawks mostly relocated to British Canada. The pro-Revolutionary Oneidas were forced to flee during the War, but then returned to their homelands. Many Cayugas and Onondagas as well as Tuscaroras settled amongst the Senecas, whose homelands remained under British military control until 1796. *Post-Revolutionary War New York State (pages 22-32).* The Revolution rejected major aspects of

British imperial tribal policy, including the 1774 Quebec Act, which had restricted the land claims of New York, Massachusetts, Connecticut and Virginia. This led to a scramble amongst the Revolutionary states reasserting their pre-1763 claims to western lands. New York State's claims were based on conquests by their "ancient dependents" the Iroquois. *Competing New York State-Congress Treaty at Fort Stanwix, September-October, 1784 (pages 32-34)*. Fearful that the Continental Congress would take land from Iroquois tribes that had fought against the Revolution and then deny this land to New York State, New York Governor George Clinton attempted unsuccessfully to reach advance agreement with the Iroquois. Congress then forcibly imposed a Treaty that many Iroquois steadily resisted until its terms were modified in 1794. *The 1786 Hartford Compact (pages 34-37)*. By handsomely compensating Massachusetts at Hartford, New York State established its political jurisdiction within what became its modern borders. *New York's State Treaties, 1785-1789 (pages 37-39)*. Like the Revolutionary states, members of the Iroquois Confederacy had revived their pre-1763 claim to be politically independent and absolute proprietors of land. New York State confronted this challenge by dealing separately with each Iroquois tribe, securing surrenders of claims to land ownership and political independence from the three central tribes (the Oneidas, Onondagas and Cayugas) prior to the inception of the new federal government on March 4, 1789. Some members of these tribes later claimed that they had been deceived, and rejected New York State's interpretation of these pre-Constitutional treaties. *Years of Crisis, 1788-1790 (pages 39-41)*. Near-chaos prevailed in what is now western New York State, as private individuals holding rights under Massachusetts attempted to deal with the Iroquois, in competition with British-backed private groups offering to recognize Iroquois claims to political independence and land ownership in exchange for a 999-year lease. Nathaniel Gorham, a Massachusetts delegate at the 1787 Constitutional Convention as well as a speculator

in Iroquois land, linked New York events to the drafting and ratification of the Constitution. *The New Federal Government Confronts Tribal Issues in New York State (pages 41-45)*. Assuming office in the midst of this on-going controversy, President Washington sought a negotiated solution acceptable to New York State, Massachusetts, Pennsylvania and the Iroquois. *The Erie Triangle Controversy, 1788-1790 (pages 45-49)*. No solution was possible however prior to determination of the location of the eastern boundary of the Erie Triangle. The survey was complicated by British reluctance to cooperate.

**Chapter Three: President Washington’s Seneca Initiative: The 1790 Tioga Conference.** *The President Visits Philadelphia, September, 1790 (pages 50-53)*. President Washington’s discovery that Pennsylvania was planning to negotiate directly with New York-resident Senecas led to his decision to appoint a federal treaty commissioner to preside over this impending negotiation. *The President Hires Timothy Pickering to Confer with the Senecas ( pages 54-60)*. Aware that he must find someone quickly to negotiate with the Senecas, Washington selected his War-time subordinate Colonel Timothy Pickering for this short-term assignment, despite Pickering’s lack of prior experience with tribes. *Pickering’s Preparations, September-October, 1790 ( pages 61-64)*. Eager to secure regular employment in Washington’s administration, Pickering did everything he could to insure that the Seneca negotiation would be a notable success. *The Tioga Conference, November, 1790: The First Meeting of Pickering and Red Jacket (pages 64-77)*. Representatives from several Iroquois tribes showed up, and at their request Pickering addressed the chiefs assembled as the “Six Nations.” This enhanced the importance of the gathering in the eyes of Iroquois chiefs attending, including Red Jacket. *Aftermath, December, 1790 (pages 77-81)*. Pickering’s efforts at Tioga and the optimism he expressed about establishing positive

relations with tribes won commendation from both Secretary of War Knox and President Washington.

**Chapter Four: Cornplanter’s Philadelphia Mission, 1790-91.** *Cornplanter’s Conference with Pennsylvania Authorities, October, 1790 (pages 82-85).* Cornplanter came to Philadelphia to present miscellaneous Seneca grievances to Pennsylvania authorities. *Cornplanter’s Exchanges with President Washington, December, 1790-January, 1791 (pages 85-96).* Like the Tioga conference, Cornplanter’s mission began as a conference with Pennsylvania authorities and ended up as a federal conference, in this case presided over by President Washington himself. In two exchanges with Cornplanter, Washington emphasized that the Constitution would benefit tribes, but also explained the federal government’s limited ability to protect tribes that insisted on retaining their political independence.

**Chapter Five: A Job for Pickering, 1791.** *Robert Morris’s Seneca Investment (pages 97-105).* During the years 1776-1789, several states adopted the practice of selling preemption rights to tribally occupied land. The federal government forbade this practice in federal territory, but preemption rights that had passed from states into private hands remained in private hands. Early in 1791, Robert Morris, U.S. Senator from Pennsylvania, acquired preemption rights to Seneca-occupied lands in New York State. This acquisition was criticized by Secretary of State Jefferson and President Washington. *A “Six Nations” Treaty Conference Authorized in the President’s Absence (pages 105-114).* While President Washington was on tour, a treaty conference with the “Six Nations” was authorized by the President’s three top cabinet members. At this conference, Robert Morris planned to pressure the “Six Nations” into relinquishing land that he then could

sell at a profit. *Pickering's Re-Hiring (pages 114-120)*. Secretary of War Knox employed Colonel Pickering to preside at this conference, the first under the Constitution characterized in advance as with the "Six Nations." The planned treaty conference was denounced by New York Governor Clinton, who opposed any encouragement of the "Six Nations" structure. *Preparing to Negotiate (pages 121-126)*. Senator Morris's advance efforts to dispose the "Six Nations" to yield land to him backfired, and the Tioga conference opened in a confrontational atmosphere.

**Chapter Six: The "Six Nations" at Newtown and the "Five Nations" at Philadelphia, 1791-1792. *Redefining the Iroquois Confederacy (pages 127-129)*** New York State's position was that the "Six Nations" Confederacy should not be convened for any purpose. U.S. officials who saw value in reviving the Confederacy had divergent perspectives and goals. Senator Morris wanted to deal with the "Six Nations" to secure land rights he could sell. Federal Treaty Commissioner Pickering believed reviving the Confederacy would prove an efficient way to exert federal influence simultaneously on all the various Iroquois nations. *Pickering, Red Jacket and Good Peter Debate the Future of the Confederacy (pages 129-136)*. Pickering's attempt to resuscitate the Iroquois Confederacy elicited a strongly positive response from Iroquois leaders. Their goals for the Confederacy however diverged sharply from Pickering's. Pickering hoped to encourage the Confederacy to disband voluntarily, allowing Iroquois individuals to become yeoman farmers on compact reservations, which would have freed up Seneca hunting lands for the enrichment of Senator Morris. Many Iroquois chiefs in contrast wished to re-establish the Confederacy as politically independent nations that were absolute proprietors of their respective homelands. The result was a contest over whether the federal government or ambitious Iroquois chiefs such as Red Jacket would gain the upper hand. *Ebenezer Allen's Seneca Daughters and the Cayuga*

*Reservation Lease (pages 136-145)* At Tioga in 1791, Pickering failed to convince Confederacy leaders that it made sense to accept reservationization and turn to yeoman agriculture. Pickering however did take two small steps in this direction, in approving allocation of farms to two Seneca women, and a lease of the bulk of the Cayugas' New York State reservation. Both these actions were denounced as illegal by New York State, and repudiated by Secretary Knox and President Washington. Pickering was ordered to call on New York Governor Clinton and apologize. *The "Five Nations" at Philadelphia, 1792 (pages 146-151)*. Knox attempted to manage the next round of Iroquois diplomacy by himself, but Pickering, now U.S. Postmaster General, insisted that Iroquois diplomacy needed his involvement. *A Stipulation and a Federal Agent for the "Five Nations" (pages 151-155)*. In connection with the visit of around fifty Iroquois chiefs to the nation's capital, a Stipulation was approved by the Senate and proclaimed by the President authorizing a federal aid program designed to encourage Iroquois yeoman agriculture. Retired Massachusetts Militia General Israel Chapin, a Canandaigua resident, was appointed Federal Agent to the newly dubbed "Five Nations" now federally defined as including "the Stockbridge Indians" but excluding the Mohawks.

**Chapter Seven: Pursuant to the Constitution: The Indian Trade and Intercourse Acts of 1790 and 1793.** *The 1790 Act (pages 156-163)*. Passage of this Act by Congress came in response to proposals made by Secretary of War Knox and President Washington, who wished to demonstrate in action that the federal government had taken control of relations with independent tribes. A first step, the Act was soon being criticized as inadequate. *The 1793 Act (pages 163-179)*. Flaws in the 1790 Act were addressed during consideration of its 1793 successor. Secretary of State Jefferson, Treasury Secretary Hamilton and Attorney General

Randolph all helped revise the Act, which was readily approved by Congress. Coinciding with discussion of the 1793 Act, President Washington successfully mediated a Cabinet debate about tribal land rights between Jefferson and Hamilton. *Washington's First Cabinet Disintegrates (pages 179-183)*. By the end of 1793, President Washington could no longer constrain the growing antagonism between Hamilton, who wished to enlarge central government power and discretion, and Jefferson, a believer in limited government and states' rights, who preferred a federal government that was strictly rule-bound.

**Chapter Eight: Negotiating the 1794 Treaty of Canandaigua.** *The Political Context, 1793-1794 (pages 184-188)*. Britain's retention of military control of lands south of the Great Lakes in disregard of its obligations under the 1783 Treaty of Paris, and support for an "Indian Barrier State" between the United States and Canada posed a severe threat to U.S. interests.

*Pennsylvania's Advance toward Lake Erie (pages 188-194)*. Having acquired the Erie Triangle from the federal government in 1792 free and clear of all tribal occupancy rights, Pennsylvania decided to evict by force the Senecas living there, risking the possibility of British military action in support of the Senecas. *General Chapin's Intervention (pages 194-200)*. General Chapin attempted to mediate, but finding all sides intransigent he recommended convening a federal treaty conference. *Pickering's Canandaigua Strategy (pages 201-209)*. Once again appointed Federal Treaty Commissioner to the "Six Nations," this time to secure their relinquishment of all claims to the Erie Triangle, Colonel Pickering faced extraordinary challenges. Pennsylvania declined to attend the treaty, or to authorize any concessions to Senecas living in the Triangle. Pickering's options were confined to making cash payments and/or making adjustments to "Six Nations" land rights within New York State. The latter possibility had not been mentioned in

advance to New York State. Pickering nonetheless reasoned that the seriousness of the crisis justified negotiating a settlement acceptable to the “Six Nations” at Canandaigua, taking his chances regarding whether this would prove acceptable to his federal superiors and New York State. *Cornplanter Loses, Red Jacket Wins (pages 209-218)* The Treaty that resulted included concessions demanded by Red Jacket as his price for sacrificing the interests of Cornplanter-led Senecas living in the Erie Triangle. These concessions also impinged on the interests of New York State and Senator Morris.

**Chapter Nine: Interpreting the Canandaigua Treaty.** *Pickering’s Post-Treaty Explanations (pages 219-226)*. Asked by Secretary of War Knox to explain the Canandaigua Treaty’s problematic provisions, Pickering produced an intricately argued defense. Central to it was Pickering’s contention that any problems created by the Treaty could be readily renegotiated following British withdrawal from Fort Niagara, which took place in 1796. *Senate Action on the Treaty (pages 226-227)*. The Senate consented to the Treaty by a two-thirds vote, following consideration by a committee including Robert Morris. *Pickering’s Long-Range Iroquois Agenda (pages 227-230)*. During the four months that he devoted exclusively to Treaty-related matters, Pickering devised plans for all elements of the “Six Nations”---those expected to remain in the United States, those in the process of emigrating, and those who had already resettled in British Canada. These plans were however not spelled out in the Canandaigua Treaty. The Treaty also failed to distinguish between the full-value State reservation property rights of the Oneidas, Onondagas and Cayugas and the low-value hunting ground use rights of the Sencas. *Pickering’s Oneida Agenda (pages 230-234)*. On his way back from Canandaigua, Pickering stopped to confer with the Oneidas. A separate Treaty resulted, promising federal compensation for war

services and federal aid for agricultural development. A covenant was also drafted anticipating the subdivision of the Oneida reservation into 200-acre family farms. Pickering wanted the Oneidas to succeed as agriculturalists, among other reasons so that the Senecas could be persuaded to follow their example, accept reservationization and relinquish the bulk of their lands to Senator Morris. *Pickering's Onondaga and Cayuga Agenda (pages 234-237)*. In contrast to his approach to the Oneidas and Senecas, Pickering supposed that the Onondagas and Cayugas would and should emigrate to Canada. He was therefore willing to facilitate the sale of their New York State reservations. *Pickering's Seneca Agenda (pages 237-238)*. Unlike the Oneidas, Onondagas and Cayugas, the Senecas had yet to accept compact reservations, and rejected the U.S. view that they possessed aboriginally only a hunting ground use right of negligible sale value. The Senecas also had direct access to the British garrisoned at Fort Niagara. For the Senecas, the Canandaigua Treaty was therefore seen by Pickering as only a first step. *Pickering's Accomplishments as a Federal Treaty Commissioner, 1790-1794 (pages 238-240)*. Pickering's work as a federal treaty commissioner is commonly regarded as having been more successful than his troubled later services as Secretary of War and Secretary of State. But Pickering's successes and failures are both attributable to an enduring mix of traits---notably partisan zeal and self-righteousness---that became increasingly problematic as he became more powerful.

**Chapter Ten: The 1795 New York-Iroquois Crisis.** *Pickering Joins Washington's Cabinet as Secretary of War (pages 241-245)*. Colonel Pickering was not Washington's first choice to succeed Major General Knox as Secretary of War, and the President evidently was unaware of Pickering's elaborate plans for the future of New York-resident Iroquois. *The French Revolution Polarizes America (pages 245-248)*. Pickering's entry into Washington's Cabinet coincided with

heightened national anxiety about the spread of French-style “Republicanism” to the United States. Pickering sided with monarchical Britain against Revolutionary France. *George Clinton, Jeffersonian (pages 249-250)*. Apart from Thomas Jefferson, New York Governor George Clinton was the nation’s most prominent friend of France. Personally suspicious of each other since 1791, Pickering and Clinton were also on opposite sides of the French question. *Pickering and Clinton Spar Over Iroquois Land Rights (pages 251-256)*. Having just agreed with the Oneidas the previous December on plans to subdivide their State reservation into two hundred acre Oneida family farms, Pickering was upset to hear that part of the Oneida reservation might be sold. Sale of Onondaga and Cayuga reservation lands was not opposed by Pickering, but he concluded that federal supervision was imperative for all three of these tribal land sales. *Pickering Requests Attorney General Bradford’s Opinion (pages 256-261)*. Anxious to forestall independent action by New York State, Pickering sought the opinion of U.S. Attorney General William Bradford, who concluded that the State reservations of the Oneidas, Onondagas and Cayugas were subject to the land sale section of the 1793 Indian Trade and Intercourse Act, because these reservations, though nominally State-granted, were inherently retained aboriginal lands. *Jay Succeeds Clinton as New York Governor (pages 261-264)*. Pickering sent Bradford’s opinion to the new Governor of New York, John Jay, who had just resigned as the first U.S. Supreme Court Chief Justice. Jay refused to halt New York’s negotiations and indicated that he considered open the question of the Act’s applicability to the State reservations. *President Washington’s Cautious Response (pages 264-265)*. Washington advised Pickering to consider this issue open pending further consultation. *New York State Negotiations with the Cayugas and Onondagas (pages 265-268)*. State negotiations with the Cayugas and Onondagas conducted by Philip Schuyler made clear that the author of the U.S. definition of “Indian Title” as a nearly

worthless hunting ground use right believed that the Cayugas and Onondagas possessed far more valuable land rights in their State reservations. *Pickering's Dilemma* (pages 269-273). The death of William Bradford, following upon the doubts expressed by Jay and Washington, seems to have left Pickering uncharacteristically indecisive. *New York State Negotiations with the Oneidas* (pages 273-277). General Schuyler's negotiations with the Oneidas were broken off, following a protest by recently appointed Federal Agent Israel Chapin, Jr., acting on instructions from Pickering. Negotiations were later resumed in Albany, and agreement was reached.

**Chapter Eleven: Drawing a Line: The 1796 Indian Trade and Intercourse Act.** *Establishing Federal Trading Houses for "Indians"* (pages 278-281). The decision by Congress to subsidize trade with "Indians" led Pickering to investigate whether the "Six Nations" should be included. He decided they could not be, because of their situations, being either wholly surrounded by U.S. settlements or on an international border. The Act establishing frontier trading houses was passed a month before a new Indian Trade and Intercourse Act, which was described in its title as also applying to the frontier. *Congress Deliberates: James Madison, James Hillhouse, William Lyman* (pages 281-287). The 1796 Act stirred considerable partisan controversy, reflecting the widening gap between Hamiltonian Federalists and Jeffersonian Republicans. Debates in Congress included statements by James Madison of Virginia, James Hillhouse of Connecticut and William Lyman of Massachusetts, regarding the Act's scope and objectives. A boundary line delimiting the area within which the Act was to apply helped assuage opposition.

**Chapter Twelve: Taking Sides: Federal-New York State-Iroquois Negotiations, 1796-1800.** *Federalist Dominance in New York State* (pages 288-289). From 1795 to 1801, Federalist John

Jay was New York's Governor, and cooperated with the Federalist administrations of Washington and Adams in amicably resolving a number of longstanding tribal land questions. *The British Mohawk Treaty (pages 289-291)*. British-allied Mohawks who had emigrated to Canada demanded payment for lands they had left. Agreement was finally reached in 1797. *The "Seven Nations of Canada" Treaty (pages 291-298)*. The "Seven Nations of Canada" posed problems stemming from their background of French affiliation. Following lengthy negotiations, a tentative settlement was reached in 1796 by which the "Seven Nations" were to receive a State reservation at Saint Regis on the Canadian border. *The Oneida Treaty (pages 298-301)*. This 1798 sale of Oneida State reservation land was negotiated without controversy and in accordance with Oneida wishes, and was both approved by the Senate and proclaimed by the President. *The Seneca Treaty (pages 301-309)*. The shamefully corrupt 1797 Treaty with the Senecas may well have been the worst federal treaty yet negotiated with any tribe. Unlike the 1794 Treaty of Canandaigua, this was a Seneca treaty rather than a "Six Nations" treaty. Pickering's goal of Seneca reservationization was achieved, but not in a defensible way. Robert Morris's selfish interests were preferred over the national well-being of the Senecas. No full-value land rights were accorded the Senecas when they relinquished the bulk of their ancestral hunting grounds. The reservations retained by the Senecas were still only "Indian Title" tracts, fee title to which remained in private hands. Though not represented at the treaty, New York State did indirectly benefit from it. The Treaty was premised on federal acceptance for the first time of the legal position of Massachusetts and New York State as outlined in the 1786 Hartford Compact, which meant federal acknowledgment that New York State rather than the federal government held fee title in the One Mile Reserve along the east bank of the Niagara River. *The Four Treaties Compared (pages 309-316)*. The absence of partisan distractions in relations between New York

State and the federal government helped clarify the real objectives of federal tribal policy.

Ineffective federal efforts to protect tribes from unsatisfactory New York State regulation gave way to open federal promotion of tribal transition to settled agriculture under State jurisdiction.

**Chapter Thirteen: President Jefferson, Governor Clinton and the Iroquois, 1800-1802.**

*Jefferson's "Revolution of 1800" (pages 317-322).* The transition from Federalist to Jeffersonian control of the federal government had important implications for tribal policy in New York State.

*George Clinton: Friend of Washington, Ally of Jefferson (pages 322-327).* Coinciding with Jefferson's election as President was George Clinton's return as New York Governor. Just as Federalists had controlled both State and federal governments from 1795 to 1801, so beginning in 1801 Jeffersonians controlled both State and federal governments. Close State-federal cooperation in addressing tribal issues within New York State remained the rule, but from a different political standpoint. A new perspective was evident in the decision to give Governor Clinton control of federal treaty negotiations within New York State, in sharp contrast to the adversarial federal stance favored by Pickering. *The "Seven Nations" Treaty Conference (pages 327-329).* Lingering issues left unresolved by the 1797 "Seven Nations" Treaty were settled, after which the Saint Regis Reservation came under ordinary State jurisdiction. *The Oneida Treaty (pages 329-331).* Another sale of Oneida reservation land took place, which followed the model of 1798, but only up to the point of Presidential proclamation, which did not occur. In both 1798 and 1802, use of the federal treaty procedure seems to have been the Oneidas' preference, stemming from Oneida memories of the controversies of 1794-95. *The Seneca Treaties (pages 332-350).* The disastrous miscarriage of justice that had been federally sanctioned by the 1797 Seneca Treaty continued to generate confusion and anger. Alterations

were made in 1802 by three separate Seneca treaties. Two concerned the Massachusetts pre-emption area, one New York State's One Mile Reserve. This latter was the first-ever direct treaty negotiation involving New York State and the Senecas, and resulted in Seneca relinquishment of land rights secured to the Senecas by the federal government in 1794-95 without New York State consent in New York State's wholly-owned One Mile Reserve. *Differentiating the Four New York State Treaties of 1802 (pages 350-353)*. The two Seneca treaties pertaining to the Massachusetts pre-emption area were consented to by the Senate and proclaimed by President Jefferson. The Oneida Treaty and the Seneca Treaty pertaining to New York State's One Mile Reserve were not proclaimed. This can be attributed to Jefferson's differentiation between the two treaties that concerned aboriginal "Indian Title" whose extinguishment required a full federal treaty and the Oneida and One Mile Reserve agreements, where no aboriginal "Indian Title" was involved. *Pickering's 1817 Comments on Seneca Land Rights (353-354)*. Strenuously opposed to the course of events flowing from Jefferson's "Revolution of 1800," Timothy Pickering in 1817 no longer placed any confidence in the disposition of the federal government to protect tribal interests, and urged the Senecas to look out for themselves.

**Chapter Fourteen: Envisioning Tribal Removal: Thomas Jefferson, John Calhoun, Jedidiah Morse.** *Thomas Jefferson, Philosopher and Pragmatist (pages 355-360)*. The most systematic thinker among the Revolution's leaders, Jefferson tried throughout his career to fit tribal policy into a theoretical framework. An advocate of states' rights and a minimal federal government, Jefferson was committed to bringing members of tribes under ordinary state jurisdiction and terminating tribal governments. A strong believer in due process, Jefferson also insisted that all formal federal agreements with tribes must be respected. Jefferson urged tribes

unwilling to disband and accept ordinary state jurisdiction at least to consider the option of removal westward. But, east or west, Jefferson never considered federally securing to tribes anything other than “Indian Title” hunting ground use rights. *Secretary of War John Calhoun and President James Monroe, 1817-1825 (pages 360-370)*. The federal government’s slow movement toward accepting trusteeship responsibility for tribes gained momentum during Monroe’s administration. Making fee title grants to tribes in federally owned territory was experimented with but, where tribes occupied lands whose fee title was in private or state hands, federal options were far more circumscribed. *Jedidiah Morse’s 1822 Report to the Secretary of War (pages 370-378)*. Morse compiled the first comprehensive nationwide survey of tribal groups, some of which Morse believed would benefit if they moved west. Morse’s Report was drawn on by Calhoun and Monroe in formulating a national Removal strategy.

**Chapter Fifteen: Negotiating Tribal Removal from New York State.** *Eleazer Williams and the Ogden Company (pages 379-385)*. In addition to being influenced by Morse’s Report, Calhoun and Monroe were also impressed by the apparent success of the voluntary Removal effort in New York State led by Eleazer Williams, with Ogden Company funding. *Federalizing the Williams-Ogden Removal Plan (pages 385-387)*. Calhoun and Monroe proposed exploring the possibility that a voluntary Removal effort such as that underway in New York State might also work in the southern states, if backed with sufficient federal funds. *President John Quincy Adams and the Senecas (pages 387-388)*. Like his father President John Adams, who had accepted the corruptly negotiated 1797 Seneca Treaty, President John Quincy Adams failed the Senecas and allowed them to be corruptly manipulated for private gain. *The 1838 Treaty of Buffalo Creek (pages 389-393)*. The 1794 Treaty of Canandaigua had been the last with the “Six

Nations.” The 1838 Treaty was with “the New York Indians” and was an umbrella agreement for all New York tribal groups considering emigration to federal western territory. Separate provisions covered each of these groups, reflecting differences in the nature of their land rights. The Oneidas, who held rights granted by New York State, were expected to sell them back in direct negotiations with New York State. The Senecas in contrast held “Indian Title” on their New York State reservations, fee title to which remained in private hands, and these Seneca rights could only be extinguished by federal treaty.

**Chapter Sixteen: Negotiating the Value of New York Reservation Lands.** *The Tribal Spectrum (pages 394-398).* Tribes and tribally descended groups spanned a wide spectrum of legal statuses. Within New York State could be found much of the spectrum present in the nation as a whole. The single most important touchstone of the legal status of a tribal group was the nature of their land-holding rights, and above all whether these rights were federally protected. This issue became confused in New York State, due to the State’s range of tribal groups and the federal protection extended to some but not others. *New York State’s Full-Value Tribal Reservations (pages 398-402).* Lands granted by New York State to a tribe or tribal group, even when their sale was restricted, ordinarily carried full value, but the State itself sometimes forgot or ignored this fact. *Chief Justice John Marshall’s 1812 Opinion Regarding State-Granted Tribal Lands (pages 402-403).* The full-value nature of land rights granted by a state to a tribe was confirmed by U.S. Supreme Court Chief Justice John Marshall in his 1812 Opinion in *New Jersey v. Wilson*. *Realizing Full Value for New York State Tribal Reservation Lands (pages 403-405).* From 1829 forward, New York State accepted the proposition that lands granted by the State to a tribe should be considered fully valued.

**Chapter Seventeen: Chancellor Kent’s Interpretation of Federal and New York State Laws**

**Regarding Tribes.** *James Kent, the “American Blackstone”* (pages 406-407). James Kent’s brilliant legal mind, combined with his twenty-five years’ experience as a fervent Federalist serving in the New York State judiciary, enabled him to produce comprehensive commentaries synthesizing federal and state laws, commentaries that helped crystallize legal thinking and practice throughout the nation. *Goodell v. Jackson: Kent’s Response to Johnson v. McIntosh* (pages 407-418). Kent’s most important New York State Opinion on tribal rights, which directly concerned the Oneidas, was written immediately after Marshall’s landmark 1823 Supreme Court Opinion on tribal land rights, and strongly affirmed a joint federal-State mandate to protect tribal land rights. *Kent’s Commentaries on American Law* (pages 418-421). After retiring from the New York judiciary in 1825, Kent produced his four-volume survey, in which he again affirmed a joint federal-state mandate to protect tribal land rights, this time with all the states in mind. *Kent’s Cherokee Brief* (pages 421-427). Georgia’s treatment of the Cherokees, combined with President Jackson’s support for Georgia, induced Kent to reconsider some aspects of his position regarding state-federal responsibilities toward tribes. *Justice Smith Thompson’s Cherokee Dissent* (pages 427-430). Kent’s views were incorporated into the *Cherokee Dissent* written by his former law clerk, Justice Thompson, in which he was joined by Justice Story. *Justice Story and Chancellor Kent* (pages 430-436). Close friends and admirers, Story and Kent both produced *Commentaries* that helped shape the course of American law. Both Story and Kent stressed that states and the federal government had complementary responsibilities for tribal regulation.

**Chapter Eighteen: After Removal: Searching for an Alternative.** *Political Opposition to Andrew Jackson and Tribal Removal (pages 437-440).* Removal began as a voluntary movement supported by a number of tribal chiefs. President Jackson’s promotion of coerced Removal and his refusal to honor federal treaty commitments shocked not only members of tribes but many U.S. citizens. This contributed to a new alignment of the electorate and the emergence of an anti-Jackson party, the Whigs, which elected William Seward Governor of New York in 1838 and William Harrison President in 1840. The Whigs halted coerced Removal and initiated discussion of a future for eastern tribes desiring to remain in their homelands. *John C. Spencer and Red Jacket (pages 440-445).* The federal official most immediately responsible for halting Removal was New Yorker John C. Spencer, Secretary of War from 1841 to 1843. Spencer’s mentor regarding tribes was Red Jacket. Beginning as his antagonist, Spencer had been won over by Red Jacket’s wit, subtlety and sheer logic. Together, Spencer and Red Jacket laid the foundation for modern federal tribal policy.

**Chapter Nineteen: Changing Tribal Policy, 1860-1934.** *James Thayer’s Legal Categories (pages 446-449).* The decades 1860-1934 saw much discussion of the legal implications of the survival of tribes as organized entities. James Thayer’s 1891 outline of the multiple legal statuses of U.S. “Indians” highlighted some of the problems needing to be resolved. *Citizenship for New York Oneidas and North Carolina Cherokees (pages 450-454).* Under what circumstances tribal membership might be compatible with U.S. citizenship absorbed much attention until 1924, when citizenship was conferred on all members of tribes. *Pueblos of the Southwest (pages 454-460).* The anomalous situation of pueblos, which were culturally tribal but not legally tribes, and whose members were U.S. citizens, generated much discussion, which led ultimately to the

designation of pueblos as tribes. *The 1934 Indian Reorganization Act (pages 461-462)*. The 1934 Act introduced radical changes in federal tribal policy. The status of federally regulated tribes was greatly improved, meaning that for the first time federal tribes would come to have more legal advantages than state-regulated tribes.

**Chapter Twenty: Early Federal Tribal Policy: Then and Now.** *President Washington's "Indian Country" Boundary Line (pages 463-466)*. A supreme pragmatist, President Washington was able to keep long-range objectives and larger national interests in view while surrounded by vague laws, incoherent treaties and squabbling factions. A series of short-term Indian Trade and Intercourse Acts allowed for periodic review and clarification when circumstances permitted. The 1796 introduction of an "Indian Country" boundary line into the third Act reflected this approach. Washington similarly thought of treaties as part of a series, each new treaty being considered binding---until changed. *"Indian Country" and "Indian Title" (pages 466-469)*. Aware that states must play a role in tribal regulation, Washington focused his efforts on what only the federal government could do acceptably, which included gradually and consensually extinguishing "Indian Title" in "Indian Country." This led to a shrinking of "Indian Country" and the transfer of formerly independent tribes to ordinary state jurisdiction. *The Post-Revolutionary Emergence of the Concept of "Indian Title" (pages 469-475)*. Like President Washington, Chief Justice Marshall advanced the national agenda by measured, small steps. For tribes, Marshall believed that a few federally secured rights were better than none. Marshall's crafting of a modest but well-defined legal concept of "Indian Title" epitomized his method and accomplishments. *Redefining "Indian Title" as Full Value Title (pages 475-481)*. In the twentieth century, federally guaranteed tribal rights were expanded far beyond anything

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imagined in the republic's first decades. In 1946, after a century and a half of legal evolution, "Indian Title" finally was declared to be as valuable as fee title. *Past, Present, Future* (pages 481-482). Federal tribal policy is not bound by rigid constraints imposed by the Constitution or early federal laws. Future policy should benefit all U.S. citizens, tribal and well as non-tribal.

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Francis G. Hutchins, Ph.D.

