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Envisioning Tribal Removal:

Thomas Jefferson, John Calhoun, Jedidiah Morse

Thomas Jefferson, Philosopher and Pragmatist.

In 1801, when Thomas Jefferson became the third U.S. President and John Marshall the third U.S. Supreme Court Chief Justice, few parameters of U.S. tribal policy had yet been established. Key referents included the presumptively permanent Constitution (as amended) and the series of three-year Indian Trade and Intercourse Acts passed beginning in 1790. A number of tribal treaties negotiated according to the procedure defined in the Constitution also possessed the status of federal law.

All these texts made clear that the federal government held primacy in all tribal matters, but especially those affecting war and peace. Perhaps the greatest single weakness in the tribal provisions of the pre-Constitutional Articles of Confederation had been their authorization of the use of force without prior consultation with other states by an individual state that felt threatened by a tribe (Article Six, Paragraph Five). Under the 1789 Constitution, the federal government alone could declare and wage war on a tribe, even if that tribe lived within the boundaries of a state. There was no disagreement however, either before or after the drafting and adoption of the Constitution, that states would continue to regulate peaceable tribes.

Jefferson had in mind only dangerous tribes when he argued in 1786 that

the two principles on which our Conduct towards the Indians should be founded, are justice and fear. After the injuries we have done them they cannot love us, which leaves

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us no alternative but that of fear to keep them from attacking us, but justice is what we should never lose sight of & in time it may recover their esteem.¹

In dealings with independent tribes, intimidation was legitimate. Jefferson hoped that the proportion of “justice” in the national government’s policy mix might be gradually increased, but even such “justice” would have stopped short of welfare protection. The tribal groups living on Virginia-granted reservations were clearly not comprehended among the “Indians” Jefferson felt must be confronted with “justice and fear.” Protecting these “Indians” had been among Jefferson’s own responsibilities as Governor of Virginia from 1779 to 1781.

Both before and after March 4, 1789, U.S. tribal policy utilized “fear and justice” in attempts to dissuade independent tribes from insisting on their right to govern themselves, and claiming territories solely by aboriginal “Indian Title.” Political independence was risky, and a self-asserted “Indian Title” claim was problematic. Tribes were therefore urged to accept state land grants under welfare-oriented state jurisdiction.

Tribes that sold their “Indian Title” but preferred to remain independent had to decide for themselves where to go. Prior to the 1803 Louisiana Purchase, a tribe moving west across the Mississippi River left U.S. jurisdiction altogether, but Jefferson’s acquisition of territory stretching from modern-day Louisiana to the Pacific northwest compelled the federal government to take a more active role in orchestrating tribal emigration. President Jefferson’s reasons for deciding to acquire Louisiana in fact included hope that the growing conflict in the south between tribes and U.S. citizens might be alleviated if hunting grounds west of the

¹ Anthony F. C. Wallace, *Jefferson and the Indians, The Tragic Fate of the First Americans*, Cambridge; Harvard University Press, 1999, 165.

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Mississippi could be offered to southern tribes. The importance of tribes in Jefferson's Louisiana calculations is evident in his draft of a proposed Constitutional Amendment, which stated

The province of Louisiana is incorporated with the United States and made part thereof. The rights of occupancy in the soil, and of self-government are confirmed to the Indian inhabitants, as they now exist. Preemption only of the portions rightfully occupied by them, and a succession to the occupancy of such as they may abandon, with the full rights of possession as well as of property and sovereignty in whatever is not or shall cease to be so rightfully occupied by them shall belong to the United States. The Legislature of the Union shall have authority to exchange the right of occupancy in portions where the United States have full right for lands possessed by Indians within the United States on the east side of the river for those of the white inhabitants on the west side thereof and above the latitude of 31 degrees: to maintain in any part of the province such military posts as may be requisite for peace or safety: to exercise police over all persons therein, not being Indian inhabitants: to work salt springs, or mines of coal, metals and other minerals within the possession of the United States or in any others with the consent of the possessors; to regulate trade and intercourse between the Indian inhabitants and all other persons; to explore and ascertain the geography of the province, its productions and other interesting circumstances; to open roads and navigation therein where necessary for beneficial communication; and to establish agencies and factories therein for the cultivation of commerce, peace and good understanding with the Indians residing there.²

Jefferson's draft Amendment would have mandated federal coordination of what came to be called tribal Removal, that is, the planned relocation of eastern tribes to lands west of the Mississippi. The federal government was to encourage "white inhabitants" currently living in the Louisiana territory north of the 31st parallel to leave, and to extinguish the "Indian Title" of tribes already west of the Mississippi to any areas that might be offered as federally guaranteed "Indian Title" hunting grounds to emigrating eastern tribes.

The press of events obliged Jefferson to shelve his draft Amendment, but not the ideas it contained, which resurfaced in the Act passed in 1804 to provide for governance of the Louisiana Territory. This Act stated that

² Wallace 255.

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The President of the United States is hereby authorized to stipulate with any Indian tribes, owning lands on the east side of the Mississippi, and residing thereon, for an exchange of lands the property of the United States, on the west side of the Mississippi, in case the said tribes shall remove and settle thereon; but, in such stipulation, the said tribes shall acknowledge themselves to be under the protection of the United States, and shall agree that they will not hold any treaty with any foreign power, individual state, or with the individuals of any state or power; and that they will not sell or dispose of the said lands, or any part thereof, to any sovereign power, except the United States, nor to the subjects or citizens of any other sovereign power, nor to the citizens of the United States. And in order to maintain peace and tranquility with the Indian tribes who reside within the limits of Louisiana, as ceded by France to the United States, the act of congress, passed on the thirtieth day of March, one thousand eight hundred and two, entitled “An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers,” is hereby extended to the territories erected and established by this act.³

The Act made clear that the federal government would give the emigrating tribe a formal *guarantee* of its new lands, subject only to a federal right of preemption. Less clear was that this was not a *grant* of land of the sort a tribe could expect from a state but rather an exchange of lands east of the Mississippi for federally recognized “Indian Title” west of the Mississippi. In their new western locations, tribes would possess only a hunting ground use right on lands most if not all of which tribes would be expected to surrender for nominal sums when hunting failed. By terms of the 1804 Act, steady reduction of tribally occupied land obtained at little or no cost to the purchaser was set to continue west of the Mississippi.

These terms applied even when a tribe would be leaving behind full-value state reservation lands. In 1808 for example, Mahicans and other New York tribal groups led by U.S. Captain Hendrick Aupaumut proposed to emigrate from New York State to Indiana. After securing permission through his own efforts from the “Miamis and Powtewatamies” to settle on their land, Aupaumut on December 21, 1808, visited President Jefferson in Washington, D.C., to

³ Chapter 38 of 1804, Paragraph 15.

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seek his support. Jefferson eloquently commended Aupaumut for his initiative, but gave him only “a paper declaring your right to hold, against all persons, the lands given you by the Miamis and Powtewatamies, and that you can never sell them without their consent.”⁴ Sadly, the New York emigrants were compelled to leave Indiana when federal officials after the War of 1812 extinguished the occupancy rights of the “Miamis and Powtewatamies” to the lands promised by these tribes to Aupaumut.

Jefferson’s commitment to promoting orderly advance of U.S. settlement and peaceful recession of “Indian Country” was expressed most vividly in a private letter written after he left the Presidency, in which Jefferson referred to this process as the “march of civilization advancing from the sea coast, passing over us like a cloud of light.” This enabled “our own semi-barbarous citizens, the pioneers of the advance of civilization” to supplant “savages...on our frontiers in the pastoral state, raising domestic animals to supply the defects of hunting.” The “savages...on our frontiers” were in turn supplanting “savages” farther west “living under no law but that of nature...and covering themselves with the...skins of wild beasts.” As a result, “Barbarism...[was] receding before the steady step of amelioration.”⁵ Jefferson believed the federal government could not, even if it wanted, halt the advance of this “cloud of light.” Nor should the federal government ever claim to be responsible for its advance. Subtle facilitative interventions were however permissible. On January 18, 1803, for example, President Jefferson had written confidentially to the Senate that

4 Andrew A. Lipscomb, ed., *The Writings of Thomas Jefferson*, Washington, D.C., 1903, 16:450-454.

5 Thomas Jefferson to William Ludlow, September 6, 1824, in Thomas Jefferson, *Writings*, New York: Library of America, 1984, 1496-97.

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The Indian tribes residing within the limits of the United States have, for a considerable time, been growing more and more uneasy at the constant diminution of the territory they occupy, although effected by their own voluntary sales; and the policy has long been gaining strength with them, of refusing absolutely all further sales, on any conditions; insomuch that, at this time, it hazards their friendship, and excites dangerous jealousies and perturbations in their minds to make any overture for the purchase of the smallest portions of their land. A very few tribes are not yet obstinately in these dispositions. In order peaceably to counteract this policy of theirs, and to provide an extension of territory, which the rapid increase of our numbers will call for, two measures are deemed expedient. First: to encourage them to abandon hunting....Secondly: to multiply trading houses among them, and place within their reach those things which will contribute more to their domestic comfort than the possession of extensive, but uncultivated wilds. Experience and reflection will develop in them the wisdom of exchanging what they can spare and we want, for what we can spare and they want.⁶

So far the great advocate of unobtrusive government was willing to go. Offering manipulative inducements to independent tribes was morally acceptable to Jefferson. What might happen if tribes “obstinately” resisted even enhanced incentives Jefferson chose not to address, even in retirement.

Secretary of War John Calhoun and President James Monroe, 1817-1825.

During the Presidencies of Jefferson’s successors Madison and Monroe, federal tribal policy became far more assertive and far more centralized, indeed for the first time truly national rather than a loosely coordinated set of modest regional initiatives. After the War of 1812, Jefferson’s easy assumption that spontaneously occurring frontier processes needed only federal fine-tuning would never again guide federal tribal policy. Tribes were clearly resisting, not receding, standing up for their rights rather than silently disappearing from view.

⁶ *Senate Executive Journal*, January 18, 1803.

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Armed uprisings such as that led by Tecumseh during the War of 1812 could be put down, but how should the federal government deal with the refusal of tribes to move from lands guaranteed them by state grant or federal treaty? Emigration to new western homes was not inherently unimaginable to tribal leaders. In response to pressures or incentives, tribes had emigrated from one region of North America to another before European contact, and such emigration remained an option for tribal leaders of the early nineteenth century. But specifics had to be weighed. Before agreeing to a move, tribal leaders wanted to know the quality and extent of the lands offered, the nature of the tenure by which these lands would be held, and how much freedom could be enjoyed there.

Disasters such as the expulsion of Captain Aupaumut's New York emigrants from Indiana notwithstanding President Jefferson's guarantees, and increasing tribal familiarity with U.S. land law, led to experimentation with other procedures. Prompted on the one hand by pressures from states anxious to gain access to tribally-occupied lands within state bounds and on the other by resistance from tribes to federal offers of nothing more than low-value "Indian Title" use rights, the Monroe administration began making a few full-value land grants to members of tribes. In 1817, Acting Secretary of War George Graham proposed offering members of Ohio-region tribes "life estates" which in the next generation would be held in fee.⁷

⁷ Paul W. Gates, "Indian Allotments Preceding the Dawes Act," in John G. Clark, ed., *The Frontier Challenge, Responses to the Trans-Mississippi West*, Lawrence: University Press of Kansas, 1971, 147; Kappler 2:87-88. According to Gates, "The first of a long line of individual reserves or grants appears in a treaty of 1805 made with the Choctaws. This was a reserve of 5,120 acres in southwestern Alabama." (Gates142) This reserve for "Alzira...[and] Sophia, daughters of Samuel Mitchell, by Molly, a Chaktaw woman"---reminiscent of Federal Treaty Commissioner Timothy Pickering's failed 1791 attempt to provide for the mixed-race Seneca daughters of Ebenezer Allen---was anomalous. Aside from a few private arrangements for

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The resulting Treaty, negotiated by Federal Treaty Commissioner Lewis Cass, established a complex, multi-stage process by which “the Wyandot, Seneca and Shawnese tribes of Indians” were to relinquish their low-value hunting ground use rights throughout large regions, and receive in return compact tracts “by patent, in fee simple.” The Wyandots were allocated “a tract of land twelve miles square, and the Sandusky Senecas “a tract of land to contain thirty thousand acres.” One “Shawnese” group was granted “a tract of land ten miles square, the centre of which shall be the council-house at Wapaghkonetta”, another “a tract of land containing twenty-five square miles, which is to join the tract granted at Wapaghkonetta, and to include the Shawnese settlement on Hog creek, and to be laid off as near as possible in a square form.” The Senecas and “Shawnese” tribes residing at Lewistown received “a tract of land to contain forty-eight square miles.”⁸

Intact tracts were to be conveyed “by patent, in fee simple” to the chiefs of these tribal groups “and their successors in office.” But the chiefs were to have little discretion. Schedules attached to the Treaty listed the individual tribal members who would receive fee title allotments within the tracts patented to the chiefs.

And the said chiefs or their successors may, at any time they may think proper, convey to either of the persons mentioned in the said schedule, or his heirs, the quantity secured thereby to him, or may refuse so to do. But the use of the said land shall be in the said person, and after the share of any person is conveyed by the chiefs to him, he may convey the same to any person whatever. And any one entitled by the said schedule to a portion of the said land, may, at any time, convey the same to any person, by obtaining the approbation of the President of the United States, or of the person appointed by him to give such approbation. And the agent of the United States shall make an equitable partition of the said share when conveyed.

individuals, the real beginning of federal employment of full-value land grants as a policy tool came in 1817.

8 Kappler 2:145-55.

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By this 1817 Treaty, tribes were promised fully-valued federal land patents---and considerable federal supervision. The federal government thereby came close to accepting a direct trusteeship obligation to individual members of tribes. Though limited to the duration of a process presumptively leading to U.S. citizenship under state jurisdiction, this new federal trusteeship commitment was substantive, and potentially extendable.

The same year, Acting Secretary of War Graham proposed offering Cherokee

individuals...who have acquired property, and wish to remain, and who experience the daily increasing embarrassments and difficulties arising from the want of proper laws for the protection and security of that property...the rights and immunities of a citizen of the United States, and...the protection of the laws of the particular State or Territory in which they may respectively reside.

By the resulting Treaty, which was ratified but not implemented, individual Cherokees would have received “a life estate for every head of a family who wished to become a United States citizen, the tract to descend in fee simple to his heirs.”⁹ Procedural questions about these terms led two years later to a replacement Treaty negotiated in Washington, D.C., by Secretary of War John Calhoun. By it, the federal government agreed

to pay...for all improvements on land lying within the country ceded by the Cherokees, which add real value to the land, and do agree to allow a reservation of six hundred and forty acres to each head of any Indian family residing within the ceded territory...who choose to become citizens of the United States...It is also understood and agreed by the contracting parties, that a reservation, in fee simple, of six hundred and forty acres square...which is...to include their improvements, and which are to be as near the centre there of as possible, shall be made to each of the persons whose names are inscribed on the certified list annexed to this treaty, all of whom are believed to be persons of industry, and capable of managing their property with discretion, and have, with few exceptions, made considerable improvements on the tracts reserved. The reservations are made on the condition, that those for whom they are intended shall notify, in writing, to the agent for

9 Robert W. McCluggage, “The Senate and Indian Land Titles, 1800-1825, *Western History Quarterly*, October 1970, 419. Kappler, 2:140-44. Andrew Jackson was a Federal Treaty Commissioner for this Treaty.

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the Cherokee nation, within six months after the ratification of this treaty, that it is their intention to continue to reside permanently on the land reserved.¹⁰

This Treaty was approved by the Senate and proclaimed by President Monroe on March 10, 1819. Then, “Some 311 Indians accepted allotments, but neither Georgia nor North Carolina would concede the right of the federal government to convey them” and the Treaty therefore had to be repudiated.¹¹ Grants of fee title in federal territory, such as those negotiated with tribes north of the Ohio by Lewis Cass in 1817, were within the power of the federal government, but Calhoun’s treaty had committed the federal government to trying to persuade Georgia and North Carolina to make fee title grants to Cherokee individuals. 311 Cherokees were willing, but Georgia and North Carolina were not.

The 1817 Cherokee Treaty had committed the federal government to providing “life estates” for Cherokee family heads, whose descendants would receive fee title. As with the Cass Treaty’s grants to the Wyandots, Sandusky Senecas and “Shawnese,” these Cherokee grants presupposed continuing federal supervision with a degree of trusteeship for at least several decades. The 1819 Cherokee Treaty similarly made an implicit trusteeship commitment to a list of Cherokees “believed to be persons of industry, and capable of managing their property with discretion.” Though restricted to named individuals, and premised on the idea that these individuals or their heirs would in time probably become U.S. citizens subject to state law, this Treaty too anticipated a limited trusteeship relationship with the federal government.

The land grants in these federal Treaties were rationalized as concomitants of the on-going extinguishment of tribal claims to “Indian Title” hunting grounds and the gradual

¹⁰ Kappler 2:177-81.

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transfer of members of tribes to the status of yeoman farmers under state jurisdiction. But these grants of consolidated tracts to coherent communities would in theory have enabled them to improve protected reservation lands while adapting gradually to a new way of life.

John Calhoun, who served as President Monroe's Secretary of War from 1817 to 1825, energetically pursued this modified approach to tribal land rights. In the middle of a routine report on tribal trade licenses submitted to Speaker of the House Henry Clay in 1818, Calhoun "digressed" to remark that frontier tribes had

ceased to be an object of terror, and have become that of commiseration. The time seems to have arrived when our policy towards them should undergo an important change. They neither are, in fact, nor ought to be, considered as independent nations. Our views of their interest, and not their own, ought to govern them. By a proper combination of force and persuasion, of punishments and rewards, they ought to be brought within the pales of law and civilization....Such small bodies, with savage customs and character, cannot, and ought not, to be permitted to exist in an independent condition in the midst of civilized society....[T]hey ought to be made to contract their settlements within reasonable bounds, with a distinct understanding that the United States intend to make no further acquisition of land from them, and that the settlements reserved are intended for their permanent home. The land ought to be divided among families; and the idea of individual property in the soil carefully inculcated....Those who might not choose to submit, ought to be permitted and aided in forming new settlements at a distance from ours. When sufficiently advanced in civilization, they would be permitted to participate in such civil and political rights as the respective States within whose limits they are situated might safely extend to them....A...strong desire to arrest the current of events, which, if permitted to flow in their present channel, must end in the annihilation of those who were once the proprietors of this prosperous country, must be my apology for this digression.¹²

Applying lessons learned by the War Department in the past year's treaty negotiations, Calhoun recommended a new way to define the land rights of tribes that were directly regulated by the federal government. The federal government had initially posited that independent tribes could logically possess only a use right to hunting grounds. Jefferson, who died in 1826 at age

11 Gates 143.

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eighty-three, never abandoned his belief that members of independent tribes were basically hunters. But Calhoun, thirty-nine years younger than Jefferson, could see that a tribal policy with any chance of being acceptable to tribes must include full-value land grants. Calhoun proposed retaining the old definition of “Indian Title” as a hunting ground use right for tribes beyond the frontier who really were still principally hunters, but to grant federally guaranteed, fully-valued land rights to members of tribes who wished to become farmers, while remaining members of federally supervised tribes.

Such grants would not comprehend the entire territories acknowledged by treaties as aboriginal hunting grounds. Tribes granted full-value land rights, in Calhoun’s words, “ought to be made to contract their settlements within reasonable bounds.” But on such smaller tracts, tribes could remain tribes and enjoy direct federal trusteeship for fully valued lands.

Two obstacles stood in Calhoun’s path. His proposal involved breaking promises made to tribes in numerous treaties and repudiating the legal rights and expectations of private individual and state fee holders of tribally occupied lands. Acknowledging the seriousness of these problems, Calhoun argued nonetheless that “Our views...ought to govern” and even that “a proper combination of force and persuasion...punishments and rewards” should be used. Federal treaty guarantees to tribes would have to be renegotiated, and states and individuals holding fee title to tribally occupied lands would have to be bought off, but Calhoun assumed that both sides might be won over by a forthright federal government willing to face up to past failure and to offer a bold solution to a festering dilemma. Unfortunately, Calhoun got nowhere.

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Six frustrating years later, in Cabinet discussions of February and March of 1824, Calhoun argued that the logic behind his 1818 plan was stronger than ever but conceded that it no longer had any chance of succeeding. The Cherokees, Calhoun told his Cabinet colleagues,

are now, within the limits of Georgia, about fifteen thousand, and increasing in equal proportion with the whites; all cultivators, with a representative government, judicial courts, Lancaster schools, and permanent property....They write their own State papers, and reason as logically as most white diplomatists.¹³

Yet they were doomed, because the Cherokees' "permanent property" included only *improvements* such as houses and barns. The Cherokees possessed no "permanent property" in the land itself. As holder of the fee, Georgia owned all Cherokee land within Georgia. What was worse, the federal government in 1802 had promised Georgia that the Cherokees would be removed at federal expense, leaving Georgia possessed of all Cherokee land, complete with all Cherokee improvements, *at no expense to Georgia*. By the 1802 Georgia Compact, the federal government had agreed to extinguish all "Indian Title" occupancy rights within Georgia entirely at federal expense and "as early as the same can be peaceably obtained on reasonable terms."¹⁴ James Madison had negotiated this agreement with Georgia, and President Jefferson had approved it. Two decades later, Georgia not surprisingly wanted immediate delivery on these federal promises, and Calhoun was powerless to compel Georgia to renegotiate.

Aware that the Jeffersonian policy of minimal intervention was no longer working, Calhoun had set out in 1818 to modify this policy by trying to grant some fee title lands to eastern tribes possessing only "Indian Title." By 1824, Calhoun was forced to admit he had

13 John Quincy Adams, *Memoirs*, Philadelphia: J.B. Lippincott, 1875, 6:272.

14 Charles Edwin Carter, ed., *The Territorial Papers of the United States*, Washington: Government Printing Office, 1937, 5:144.

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failed. As they neared the ends of their terms as Secretary of War and President, Calhoun and Monroe surrendered to the refusal by proprietors of fee title to yield any of their proprietary rights to tribal occupants, and proposed instead a comprehensive nation-wide plan for tribal Removal.

On the verge of retirement from public service, the sixty-seven-year-old Monroe, whose involvement with tribal policy stretched back more than forty years, understood the seriousness of what was now proposed. He also made clear that the overriding incentive to quick action was Georgia's insistence that the federal government finally do what President Jefferson had promised in 1802 to do as soon as possible. "For the removal of the tribes within the limits of the State of Georgia," Monroe informed Congress on January 27, 1825,

the motive has been peculiarly strong, arising from the compact with that State, whereby the United States are bound to extinguish the Indian title to the lands within it, whenever it may be done peaceably and on reasonable conditions. In the fulfillment of this compact, I have thought that the United States should act with a generous spirit; that they should omit nothing which should comport with a liberal construction of the instrument and likewise be in accordance with the just rights of those tribes.

Monroe wanted the federal government to live up to its commitments to *both* Georgia and the tribes within Georgia. Increasingly, tribes were imperiled by actions of Georgia citizens, and there was very little the federal government could do to stop them. As Monroe put it,

It has been demonstrated...that, without a timely anticipation of, and provision against, the dangers to which they [Georgia's tribes] are exposed, under causes which it will be difficult, if not impossible, to control, their degradation and extermination will be inevitable.

Put more bluntly, Georgians would not leave these tribes alone. The federal government had therefore devised a plan to "shield them from impending ruin."

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How could the federal government provide for Georgia's tribes "on conditions which shall be satisfactory to themselves and honorable to the United States"? Monroe had a straightforward answer: "This can be done only by conveying to each tribe a good title to an adequate portion of land." *Good title* was wholly distinct from "Indian Title." Sadly, good title for Georgia tribes meant by definition Removal because within Georgia, the State or its grantees possessed all the good title and the federal government had none to offer. The federal government could only offer Georgia tribes good title in western federal territory. Ironically, to provide Georgia tribes with good title, the federal government actually planned to extinguish the "Indian Title" to lands occupied by western tribes. But Monroe assured Congress that "the Indian title has already been extinguished to extensive tracts in that quarter, and...other portions may be acquired, to the extent desired, on very moderate conditions"---i.e., on the usual terms for "Indian Title" of one or two cents per acre.

Monroe expressed hope that Georgia's tribes, "even those most opposed [to Removal], may be induced to accede to it at no very distant day." Still determined to *persuade* tribes to leave Georgia, Monroe anticipated presenting inducements

of sufficient force to surmount all their prejudices in favor of the soil of their nativity, however strong they may be. Their elders have sufficient intelligence to discern the certain progress of events in the present train, and sufficient virtue, by yielding to momentary sacrifices, to protect their families and posterity from inevitable destruction.

Georgia's tribes were to be offered a proposal for their acceptance *or rejection*. Monroe stressed that everything must be done "with their consent" because nothing less than the honor and pledged word of the federal government was at stake.¹⁵

15 ASPIA 2:541-42

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The only logical way to induce Georgia's tribes to emigrate voluntarily was for the federal government to engage with them in a bargaining process leading to a mutually agreed result. Monroe's confidence that this was possible in Georgia stemmed from the fact that such a process *appeared* to have been engaged in successfully during the past several years with New York's tribes. For several years, Calhoun had been facilitating negotiations intended to secure the Removal of New York tribes, having been encouraged to believe this was feasible and desirable by the Reverend Jedidiah Morse, whom Calhoun had commissioned in 1820 to prepare a *Report* on tribal Removal

Jedidiah Morse's 1822 Report to the Secretary of War.

After graduating from Yale in 1783, Morse served for thirty years as a Congregational minister in Charlestown, Massachusetts (now a part of Boston) but became better known for his scientific publications. Called the "father of American geography," Morse gained respect as the author of factual compendia, especially *The American Geography*, published in 1789. Today Jedidiah Morse is probably best known as the father of an even more famous scientist, Samuel F. B. Morse, inventor of the first working telegraph and the Morse code.

At an early date the elder Morse developed a familiarity with the conditions of tribal groups in New England, New York and beyond. In 1796, Morse visited the Oneida, Stockbridge and Brotherton Indians, and co-authored a report on their status.¹⁶ After the War of 1812, Morse became interested in the Removal question. Under commission from "the Honorable and

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Reverend Society in Scotland for Propagating Christian Knowledge, and the Northern Missionary Society in the State of New York,” Morse in 1819 undertook to explore the desirability of relocating eastern tribes to western federal territory, a project that gained greatly in scope and importance on February 7, 1820, when Morse secured federal sponsorship and a five hundred dollar subsidy from Calhoun.¹⁷

Completed in 1822, Morse’s 496-page *Report* was the first systematic nationwide survey of the status of tribal groups under both federal and state regulation. Morse argued that New England’s well-cared-for tribal groups, which enjoyed adequate, fully-valued lands under effective state regulation, would gain nothing by emigrating west. For quite different reasons, Morse felt that the large southeastern tribes under direct federal supervision also did not necessarily need to move, but did desperately need an improvement in their landholding status. Morse considered the situation of New York tribes to be not as bad as that of tribes regulated exclusively by the federal government but also not as good as that of tribes regulated by more progressive states. For New York’s tribes, Morse did recommend Removal, but not until their potential land-holding status in the west was satisfactorily clarified. Morse did not want New York tribes to emigrate, only to find themselves no better off than western tribes under back-handed federal control.

16 Jeremy Belknap and Jedidiah Morse, “Report on the Oneida, Stockbridge and Brotherton Indians, 1796,” *Indian Notes and Monographs* 54, New York: Museum of the American Indian, Heye Foundation, 1955.

17 Jedidiah Morse, *A Report to the Secretary of War of the United States on Indian Affairs, Comprising a Narrative of a Tour performed in the Summer of 1820, under a Commission from the President of the United States, for the Purpose of Ascertaining, for the Use of the Government, the Actual State of the Indian Tribes in our Country*, New Haven, 1822, 11n.

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Morse believed that most tribal groups in Massachusetts, Connecticut and Rhode Island were doing as well as could be expected. The governments of these states had granted valuable agricultural lands to their tribal groups, and guaranteed them enough legal protection to shield them from harm until they chose to accept the full responsibilities of citizenship within their respective states. As Morse put it, “These Indians are all provided for, both as to instruction and comfort, by the governments and religious associations of the several states in which they reside.” Morse predicted that while “a portion of them might be persuaded” to emigrate to a federal “Asylum”, the “body of them...would doubtless prefer to remain where they are.” Morse reasoned that past efforts to assist these New England groups had achieved some positive results, and it therefore made sense to “continue those means which have been successful, and correct, or abandon those, which have proved abortive.”¹⁸

Morse reported for example that in Massachusetts 320 tribally descended non-citizens at Mashpee possessed

about 13,000 acres, worth on an average about four dollars an acre; held in joint stock (except what individuals choose to cultivate and enclose, which is theirs not in fee, but only in tillage) guaranteed to them by the State, managed by a Board of Overseers, appointed by the Governor and Council, and rendered unalienable, except by legislative authority. Their connexion with the State, and with those immediately superintending their affairs, is a very happy one, did they but know the things pertaining to their happiness.¹⁹

Some 340 others resided on Martha’s Vineyard, Morse recorded, and smaller communities of forty and fifty, respectively, could be found at Herring Pond and Troy. All these Massachusetts

18 Morse Report 23-24.

19 Morse Report Appendix 70. Quotation from a letter Morse had received from Phineas Fish.

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communities, Morse noted, held jointly owned state-granted land whose sale was regulated by state-appointed trustees charged with protecting the value of tribal assets.

Their lands are held in common, and are unalienable, but with the consent of their overseers. These overseers are appointed by the government of the State, and their duties are, as guardians of the Indians, to see that they are not maltreated by the white people, and to advise them in the management of their affairs.²⁰

In Rhode Island, 429 Narragansetts at Charlestown held “about three thousand acres, the joint property of the tribe...estimated to be worth about \$50,000 or \$60,000.”²¹

In Connecticut, the Mohegans were

the proprietors and occupants, in their manner, of a reservation of about four or five thousand acres of fine land....The State has assumed the care of their property, and of themselves, in like manner as the other New England States have done for their Indians.²²

In addition, Connecticut’s Pequots, noted Morse, “own about three hundreds acres of ordinary pasture land, with here and there a patch for tillage, worth about twenty dollars an acre.”²³

Morse’s description of all these New England tribal groups was intended to

shew the extent and value of several of their Reservations...their relation to the government of the states in which they reside; their situation as to civil privileges; their feelings on the subject of a division of their lands and having individual property; [and] of removal from their present places of abode.²⁴

In New England, Morse discerned little or no interest in Removal, a disposition that he considered eminently reasonable, especially when one considered the irresponsible way in which the federal government was then dealing with tribes in federal territory. New England’s tribal

20 Morse Report Appendix 69.

21 Morse Report Appendix 73.

22 Morse Report Appendix 74-75.

23 Morse Report Appendix 75.

24 Morse Report Appendix 73.

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groups were well-regulated, well-situated and taking good advantage of their opportunities, and Morse believed the federal government would do well to learn from their example.

Morse pointed out that although many federally supervised tribes had large populations, excellent lands, talented leadership and effective missionary help, their land title situation was a national disgrace. Morse denounced the federal government's long-standing practice of paying trivial amounts when extinguishing a tribe's "Indian Title" on the theory that this was less than "perfect" title.²⁵ Although he understood the federal government's distinction between what the federal government extinguished (a mere hunting ground use right) and what was then possessed by the fee holder (unfettered fee title), Morse made a moral case for considering the sale value of the tribes' "Indian Title" much closer than had previously been acknowledged to the value of "perfect" fee title.

Morse had some trouble explaining precisely how aboriginal land rights were currently defined in U.S. law because his *Report* appeared one year before Supreme Court Chief Justice John Marshall's magisterial 1823 Opinion in *Johnson vs. McIntosh*, which has shaped all subsequent discussion. In 1822, Morse had to base his analysis on one highly qualified sentence in the Supreme Court's 1810 decision in *Fletcher vs. Peck*. In his Opinion in this case, Marshall had worked hard to produce a minimal statement that his divided Court could agree on, and the result was a classic example of judicial balance:

The majority of the Court is of opinion, that the nature of the Indian Title, which is certainly to be respected by all courts, until it be legitimately extinguished, is not such as to be absolutely repugnant to seisin in fee on the part of the State.

²⁵ Morse Report 67-69, 82.

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Although Marshall had said nothing about the sale value of the tribes' "Indian Title," Morse argued that the Court's expression of respect for "Indian Title" implied an appropriate sale value *close* to the value of full fee title. Morse therefore contended that in future negotiations with tribes the federal government should not continue "to take their property from them for a small part of its real value."²⁶ Morse calculated that

more than *two hundred million acres* of some of the best lands in our country, have been purchased, after our manner, and at our own prices, of the Indian tribes. Of these lands, previously to October, 1819, there had been sold by the government about eighteen and a half millions of acres, for more than *forty-four millions of dollars*. The remainder of these lands, if sold at the same rate, and the sums paid to the Indians for them deducted, would yield to the government a net profit of more than FIVE HUNDRED MILLIONS OF DOLLARS!!²⁷

Morse contended that the time had come to discard the government's long-standing policy of evaluating "Indian Title" as a function of the amount of commercial game remaining and to shift to a way of evaluating tribal lands that acknowledged the potential ability of tribes (and therefore their right) to develop, utilize and exploit their lands for purposes other than hunting. If this was done, federally supervised tribes such as the southeastern Cherokees would become almost as well-advantaged as tribes in New England, and also might not need to emigrate from their ancestral homelands.

Morse's discussion of Removal as the preferred choice focused on tribal groups whose land rights were less well-protected than those of New England but which were politically weaker than the independent tribes supervised directly by the federal government.

26 Morse Report 82.

27 Morse Report 94-95. All emphases in original.

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In this intermediate category, New York’s State-regulated tribes were the prime example. In Morse’s view, the overall situation of New York tribes was incoherent. Competing efforts at tribal regulation by federal and State authorities had left everyone confused, and tribes at risk. As Morse put it,

While these tribes, for certain purposes, and to a limited extent, are independent of each other, of the State, and of the United States, and in all Treaties held with them are so regarded; yet they are in confederacy with each other, and are so far under the control, of the Legislature of New-York, in respect to their lands, as that they are not permitted to sell them to private individuals, or companies, but to the State only, who claim the right of preemption and of disposing of this right, to whom they please. The Indians are thus deprived of the privilege, common to free men, of going into the market with their lands, and of course, of obtaining their fair and full value.²⁸

Morse also pointed out that several of the tribal groups in New York State were quite small and unlikely to survive as distinct communities capable of supporting schools and other social services.²⁹ Even New York’s larger reservations were poorly protected, and the State had failed to guarantee that these lands would only be sold for full market value. Morse therefore believed that all of the approximately five thousand persons living on New York reservations might well benefit if they decided to move west. Morse had however discovered a sharp “division among them on the subject of removal. The greater part, probably, at present choose to remain on their several Reservations.”³⁰

Morse predicted that this disposition was however likely to change in the years ahead, and praised the enterprising efforts of “Mr. Eleazer Williams...who is of Indian descent” to found a “colony” on land “lately selected, and purchased of the Winebago and Menomine

28 Morse Report Appendix 89

29 Morse Report Appendix 361.

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Indians, on Fox River” which Morse pronounced “judiciously chosen.” Once this colony was well established by those willing to try the experiment “under the auspices of the [federal] Government...there is little doubt in my mind, but more of these, and other reduced and feeble tribes, and ultimately the whole or nearly all of this class, will voluntarily, or with a little persuasion and assistance follow them.”³¹ Morse even envisioned the possibility that such consolidation might lead to the emergence of a new state government in the vicinity of Green Bay, Wisconsin, including

the White settlers at Green Bay, who have Indian wives, and their children of mixed blood. The expectation is, that a great part of the Stockbridge Indians, with numbers of the St. Regis tribe, of the Six Nations, of the Munsees, Nanticokes, Delawares and of other tribes, in the course of the next season, will migrate and plant themselves on this purchase. Should this take place, a colony will be formed at once, and a current to it created; and should its foundations be laid broad, and with wisdom there is little doubt of its gradual increase. Should the plan be popular with the Indians, and the prospect is, that it will be, a large colony, enough perhaps, to form a Territory or even a State, may be ultimately collected here, educated together, and received into the Union, and to the enjoyment of the privileges of citizens.³²

Morse’s 1822 *Report* recommended Removal for New York tribes but not for southeastern tribes, which Morse thought should be offered better security in their homelands. Three years later, Secretary of War Calhoun and President Monroe, feeling it was no longer imaginable to establish the southeastern tribes securely in their homelands, seized on Morse’s well-intended advocacy of tribal Removal from New York State as justification for applying a New York-style strategy in the southeast. Unfortunately, Removal of tribes from New York was not proceeding

30 Morse Report 24.

31 Morse Report 25.

32 Morse Report Appendix 313.

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as happily as Morse or Calhoun or Monroe supposed, and the southeastern promise of a New York-style strategy was to prove illusory.