The Dispute Between the Creek Nation and the State of Georgia: United States Diplomacy in the Formation of the Federal Union, 1784-1790

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The Dispute Between the Creek Nation and the State of Georgia: United States Diplomacy in the Formation of the Federal Union, 1784 – 1790

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To my Mother, without whom I would not be.
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The United States of America did not spring fully formed onto the geopolitical scene. The infant republic was a political foundling with the grimmest of prospects when British and American negotiators signed its birth certificate in Paris on 3 September 1783. The United States was loathed abroad and distrusted on the far side of the mountain chain that divided the new republic’s treaty territory psychologically as well as physically. Both militarily and financially, the union was weak to the point of impotence, rendered inert by sectional friction and an unwieldy, unworkable governmental structure. The new experiment in democratic republicanism arrived on the scene more with a gasp than a cry.

Maryland’s accession to the Articles of Confederation in September 1781 brought into being an uncoordinated government that could be likened to a team of thirteen horses pulling in as many different directions. The weak central authority was an unworkable means of making the individual sovereign states operate cooperatively, if not harmoniously, toward a common end.

Christopher Collier cited Confederation Congressmen’s “primary commitment to their states’s political culture and commercial prospects”¹ as a major factor in the conflict between the Union and the several states. That conflict “reduced the Congress under the

¹ Christopher Collier, All Politics is Local: Family, Friends, and Provincial Interests in the Creation of the Constitution (Hanover, NH: University Press of New England, 2003), 2.
Articles of Confederation to hardly more than an empty gesture, a leftover symbol of the wartime need for unity."\(^2\) Another way to look at the impotence of the Confederation Congress is to consider it as merely “the steering committee of a coalition.”\(^3\)

The solution to the unviability of the Confederation scheme came in the form of a Constitution that granted strong powers, including the exclusive power to conduct diplomacy, to the Federal government. The central government’s ability to assert its authority, or at least influence, over both its own citizens and foreign nations was not a given at the time the Constitution was ratified.

The central problem facing the new Constitutional regime was how to implement, on both the macro and micro level, the structure of a unified polity. On the macro level, there was opposition from the several states, which yielded their sovereignty only grudgingly. Although the governments of the states gave lip service to the political reality of the new, unified polity, their attitude was more along the lines of “the Federal government has the authority, now let them exercise it.” That is, the dual-layer hierarchy received due acknowledgement in the several statehouses. State governments were neither eager nor willing to leap to the assistance of the Federal government when the central administration’s authority was challenged or flouted.

Peter S. Onuf neatly encapsulated this impediment to the expansion of the Federal government’s authority when he wrote, “the inadequacies of congressional government stood opposed to the broad range of powers – over war and peace and the conduct of

\(^2\) Collier, 2.

\(^3\) Michael W. Beatty, “The Indian Trading Establishment and Federal Finance, 1781 to 1824.” The Psi Psi Historian, Spring 2007, <www.umsl.edu/~history/PsiPsi/PsiPsi_07.htm>, 7.
foreign policy and other common concerns – that were set forth in the Articles.‖

Onuf also introduced the intriguing concept of a “federal balance” which he asserted was “implicit in [the Founders’] experience in the British Empire and compatible with Revolutionary commitments to individual rights, local self-government, and national independence.”

This “federal balance” appears to be not merely a bilateral modus vivendi between the central government and the people who instituted that government, conferring upon it its powers. It is also a dynamic approach to the ongoing problem of relations between government and people. It is both a state of being and the process of maintaining that delicate state, whose existence is precarious and subject to rejection at any time, for any reason, by any individual member of the Federal polity.

On the micro level, individual white settlers and their local communities viewed the imposition of a new stratum of hierarchy, situated days’ or weeks’ travel away, with at best a jaundiced eye. In Georgia, the new hierarchical superstructure was a necessary evil, though no less evil for being necessary. The skepticism of Americans was, to a great degree, mirrored in the skepticism that the Indians directed toward the Constitutional government. Taken as a whole, this skepticism toward the General Government at the capital in New York, and later Philadelphia, would prove to be a formidable barrier to the formation of the Early Republic.

Further complicating the issue was the ramified structure of hostility that characterized and plagued the relationships between the Indians and the communities around them. The Indian nations were mutually suspicious of their red and white

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neighbors and of the white settlers who were beginning seriously to impinge upon Indian tribal lands. Whites, in addition to their mistrust of the Indians surrounding them, were suspicious of the new central government in Washington. Within the overall framework of the main problems of suspicion and mistrust, several ancillary problems required solution in support of the main process of unification.

Reginald Horsman wrote that “in these years [1789-1815] the federal government had to prove that the Constitution drafted in 1787 would work, and that republicanism was capable of existing over a vast area.” 6 Celia Barnes applied that principle to the problem of dealing with the Indians when she wrote, “early U.S. history studied from the perspective of Indian affairs reveals the extent of the struggle to legitimize federal authority, establish national institutions, and create a cohesive union.” 7 The stumbling block in the way of those goals was the fact that, as Peter Kastor noted, “nationhood was never an obvious choice, nor was it some natural impulse as it so often appears in the scholarly literature on nationalism. Nationhood had to be argued rather than simply embraced, and in some cases it had to be imposed by force.” 8

The subtext underlying Kastor’s statement is that the United States was perilously close to war between its white citizens and the Indian nations across the border. Had war erupted in this period, it would not have been so much a case of the United States of America, as a cohesive entity, being killed, as being aborted, since the process of incorporating the formerly-sovereign states into an artificial, consensual union was not


complete until the late 1820s. Arthur Campbell of North Carolina stated the situation succinctly in a letter to President George Washington on 10 May 1789. He wrote that “war will not be a popular measure in the youthful stage of our government, and important must be the considerations, for entering into it, at any time. A wise and judicious policy may yet be our cheapest, and most successful policy.”

The “vast area” to which Horsman referred was a skittish, suspicious borderland inhabited by a self-sufficient population that, while no longer English, was not yet American. Henry Adams observed that, in 1800, “the entire population … west of the mountains, reached not yet half a million; but already they were partly disposed to think themselves, and the old thirteen States were not altogether unwilling to consider them, the germ of an independent empire.”

That “independent empire,” Adams went on to write, “was to find its outlet, not through the Alleghanies to the seaboard, but by the Mississippi River to the Gulf.” The problem with that escape valve, as Horsman noted, was the presence of hostile European colonial powers to the northwest and southwest. Thus, the Appalachian Mountains and the Mississippi River each constituted a borderland, in which the new republic faced daunting challenges, both internal and external, to its authority.

The crux of the matter for the western settlers, according to Barnes, was that relentless attacks on western settlements rendered frontier life so insecure and

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11 Adams, 6.

12 Horsman, 1.
fearful as to provoke calls from the beleaguered inhabitants for separation from the Union in favor of a government capable of protecting them. The American government’s inability to protect its citizens, conciliate the Indians, or secure and maintain boundaries between the two exposed the incompetence of Congress and its lack of legitimate authority in the west. That so many embraced the notion of separation and contemplated almost casually the adoption of an alternative nationality reveals the fragility of the Union.\textsuperscript{13}

The fragile Union did not collapse because Federal officials were able to weld the diverse states into a cohesive polity by the successful assertion of the powers vested in the United States by the Constitution.

This is not to say that the western borderlands, or the people who inhabited them, waited in idyllic peace while Federal officials worked the structural kinks out of the Constitutional structure. The record is full of violence and near-violence. The process of developing a bilateral \textit{modus vivendi} between the Federal government and white settlers generally, on one hand, and the Indians on the other, involved parleying and gunfire in near-equal measures. The goal of the Washington Administration was to prevent musket flashes from spreading into a flame that would consume the fragile union. Diplomacy was the means by which American negotiators attempted to obtain sufficient breathing room to allow the central government to weld the diverse states into a cohesive unit.

That those diplomatic efforts ultimately failed to achieve a lasting, equitable peace should not condemn the effort, or the actors, as failures. The Americans, at least, appear to have had as their motivation the desire to do justice, treating the Indians fairly, at least as the Americans understood fairness.

Joseph Ellis wrote that “on the American side, the leadership of the new national government created by the recently ratified Constitution declared its determination to avoid a policy of Indian removal at almost any cost.” He contrasted this coherent

\textsuperscript{13} Barnes, 119.
Constitutional scheme with the hodgepodge of policies that had prevailed under the Articles of Confederation. Under the previous plan, “Indian policy had been an incoherent blend of federal and state jurisdictions, with a gloss of reassuring rhetoric that covered a crude reality of outright confiscation.”

The charge of “outright confiscation” is problematic in light of the primary sources, and will be addressed below. Ellis’s point, which is completely correct, was that, under the Constitution, “for the first time, the power to implement a coherent national policy toward the Indian tribes east of the Mississippi was vested in the federal government.”

Ruth Wedgwood, of Yale Law School, posed some provocative questions about the transformation of revolutionists into governors when she wrote, “once political actors spurn existing allegiances, anxiety must attend. How is the revolution to close, consolidate itself and begin the normal tasks of governance? What regime of law can succeed pure politics?”

Richard H. Kohn neatly presented the issue that faced the framers of the Constitution when he wrote, “one of the fundamental questions raised in the debates over the Constitution in 1787 and 1788 was on what foundation the ultimate authority of government rested.”

The answers to those questions form the backdrop against which United States officers, both military and diplomatic, operated in the construction of the United States of America in the early republic. The questions themselves form, in significant part, the

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15 Ellis, *American Creation*, 128.


beatty, michael, umsl, 2009, p.13

barrier that those officers had to surmount in order to carry out their part of the construction process.

the leaders of the infant experiment in democracy had to define what the new republic meant to its citizens. furthermore, they had to define what the new republic meant to the indian populations both within and beyond the boundaries of the new nation. finally, they had to define what the new republic meant to themselves, who were charged with administering the new polity and ensuring its physical and economic vitality and security.

all of the above-mentioned goals had significant ramifications for the nascent doctrine of federalism, which governs and provides legal structure to relations between the federal government and the governments of the several states. throughout the early republic period, the problem of defining and stabilizing the balance of power between the union and the sovereign states that composed that political entity vexed the legal wisdom of the founding fathers. there was no precedent for a hierarchy in which a union of nominally sovereign states was superior to those states. there was no example from which to extract guiding principles for the fledgling united states.

an episode in the early history of the republic illustrates the process by which the exercise of diplomacy served to establish the government of the union as an entity capable of bringing even a temporary resolution to a dispute that had defied the efforts of one of the sovereign states. that episode involved the intervention of the federal government in the intractable dispute between the state of georgia and the creek nation, from 1787 until the signing of the treaty of new york in august 1790.

barnes described the decade from the mid-1780s to the mid-1790s as “a dark
period on the southern frontier, when violence and disdain for authority created an atmosphere of desperation.”18 This thesis will define the nature of the dispute between the Creek Nation and the State of Georgia in comparison to, and in contrast with, treaties that had been made with Indian tribes in the Northwest Territory during the Confederation period. It will also show how the United States government, under the Constitution, became embroiled in a pre-Constitutional dispute between a sovereign state and a nation beyond the borders of the U.S. This is not an attempt to write social history, although the Creek/Georgia dispute is placed in historic context. The fundamental principle applied throughout the researching and writing of this thesis has been to trace the process by which the United States became embroiled in the dispute between the Creeks and the State of Georgia. That process constituted a vital effort in the realization of the Federal Union.

The difficulty in describing and situating in historical context the events that transpired in Georgia and the Creek Nation can be found in the Chronology and documentary handbook of the State of Georgia, which “contains a chronology of historical events from 1540 to 1970, [and] a directory of prominent citizens.”19 That chronology makes no mention of the disputed land cessions allegedly made by the Creeks to the people of Georgia; indeed, there is no reference to any of the treaties by which those cessions were supposedly made. The directory of prominent citizens only lists birth places and dates, and recites the fact of the prominent citizens’s respective offices. The directory makes no mention of Alexander McGillivray, who although not formally a

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18 Barnes, 118.

citizen of the State of Georgia, nonetheless was arguably the most influential figure in the dispute.

The issue at the heart of the dispute between the Creeks and the people of Georgia was ownership of land. As Barnes pointed out, “the Indians occupied land from the Great Lakes to the Gulf of Mexico. Competition for that land raged at all levels, from individual settlers to national governments. The issue of how to acquire it from the Indians, either by force or negotiation, and the contest for their alliance fueled antagonism between opposing social and political groups and brought the Republic to the brink of fragmentation.”

Barnes was correct to state that the new republic faced the very real risk of fragmentation into the components that had coalesced under the Constitution. That the Union did not immediately disintegrate back into its constituent parts is, to a significant degree, due to the diplomatic effort that is the subject of this thesis.

The Creeks’s dispute with the people of Georgia turned on the question of the validity of cessions of Indian land that the Creeks had made to Georgia in the mid-1780s. The Creeks later claimed that the cessions were invalid, while the Georgians asserted that the cessions had been made for value received. Violence punctuated the dispute, as each side employed force to assert the rights to which it stubbornly clung.

At this time, the weak United States could not afford to run the risk of precipitating a general war between Indians and whites on the western periphery. The adherence of Georgia and other states along the southwestern border to the Union would

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20 Barnes, 11. Barnes reiterated the issue of the fragmentation, or near-fragmentation, of the republic a few pages later. She wrote, “The antagonism between east and west and federal and state governments was stimulated by the need to manage the Indian problem – which itself inflamed other contentious issues, threatening to fragment the Union.” (Barnes, 15.)
allow them to enjoy the fruits of membership in a polity that, under the Constitution, possessed strong taxing power. On the other hand, those states’s pre-union disputes with their Indian neighbors constituted a serious risk that the Union could be dragged into a war that it could not afford. The General Government of the United States quickly emerged as the only entity that possessed sufficient resources (primarily money, although there was little enough of that), as well as the will and the inclination to put an end to the border dispute between Georgia and the Creek Nation.

The white settlers on the periphery of the union were a conservative, insular population. They had an insatiable appetite for land and would indulge in any sort of mental gymnastics to justify their occupation of land. In this they were driven by the imperative need to obtain a livelihood. If the Georgians had acknowledged as valid the Creeks’s arguments that the land cessions that were at the center of the dispute, the whites would have faced the loss of their fortunes. The Georgians would not acknowledge the Creeks’s right to the land along the St. Mary’s River, because they could not acknowledge it without destroying their own economic viability.

The process by which the Federal Union was drawn into the border conflict between the State of Georgia and the Creek Nation as an active participant provides important insights into how the United States of America, under the constitutional scheme of government, conducted a form of domestic diplomacy, in the process constructing one facet of the doctrine of federalism. That facet was external, in that it involved the Federal republic’s relations with a population beyond the limit of its authority.

That diplomatic process, which saw its high-water mark at the signing of the
Treaty of New York in August 1790, ultimately failed to establish lasting, equitable peace on the Creek borderland. Joseph Ellis wrote that “[President George] Washington clearly regarded the Treaty of New York as the diplomatic model for all subsequent negotiations with the Native Americans,”\textsuperscript{21} which suggests that the United States government, at least at that early stage of its existence, did not consider negotiations with the Indians an exercise in futility.

In the end, the General Government, exercising its constitutional power to conduct diplomacy, established its status as the hegemon of peace and stability along the nation’s borders. The United States, by substituting itself for the State of Georgia, took responsibility for settling disputes over land tenure between whites and Indians. Ultimately, the United States was no more able definitively to resolve the dispute by parley than the Georgians had been. Armed conflict between whites and Indians in the southwest would not finally end until the Indian Diaspora of the 1820s and 1830s. Disputes would continue between the two sides in the quieter venue of the courtroom; Henry Southerland and Jerry Brown observed that claims against the United States were still being filed as late as 1924, more than a century after the United States became embroiled in the intractable border dispute between the Creek Nation and the State of Georgia.\textsuperscript{22}


\textsuperscript{22} Henry DeLeon Southerland and Jerry Elijah Brown, \textit{The Federal Road through Georgia, the Creek Nation, and Alabama, 1806-1836} (Tuscaloosa, AL: The University of Alabama Press, 1989), 134.
Chapter 1

The Strategic Situation of the United States in 1789

On 7 August 1789, President George Washington addressed Congress, in writing, on the subject of national security, with regard to “the disputes which exist between some of the United States, and several powerful tribes of Indians within the limits of the Union.” The president, observing that the protection of United States citizens and their property should be the first concern of government, added the caveat that “due regard should be extended to those Indian tribes whose happiness … so materially depends on the national justice and humanity of the United States.”23

The president’s appeal to “the national justice and humanity of the United States,” arguably was an attempt to establish a moral framework in which Congress and the executive branch would develop a modus vivendi for relations with the Indians. It appears on its face to have been a disinterested attitude, willing to deal with the Indians on a rational basis, respectful of their status and rights as the prior occupants of the land. There are two possible explanations for Washington’s panegyric to fair treatment for the Indian tribes, which fell into the turbulent milieu of Americans’s aggressive westward expansionism. One explanation is that Washington expressed a naïve, ultimately forlorn hope for a sociopolitical system that had no hope of success. On the other hand, the president was simply disingenuous, arguing for a duplicitous act of hypocrisy designed to induce the Indians to compromise their rights, the existence of which the white leadership

of the United States acknowledged.

The United States made a number of treaties with the several Indian nations on the frontiers of the United States east of the Mississippi River between 1788 and 1822. The treaties that the Confederation Congress had concluded with various tribes on the northwestern frontier were a subject of considerable thought and action on the part of the U.S. government under the Constitution. They are considered in light of the post-1788, follow-up negotiations conducted with the same tribes. A significant part of this study concerns the intractable question of the validity of cessions of land purportedly made by the Creek nation to the State of Georgia in the period 1783-1785. This issue, which proved to be an ongoing source of friction between the two nations, eventually drew the Federal union into the conflict as an active participant.

Throughout this analysis, it must be remembered that during the period in question, the United States was dealing with social groups that were politically independent of, albeit to a great degree economically dependent upon, European and American populations and their governments. U.S. government documents during this period repeatedly stated several roles and goals of the “General Government” of the United States. The most important was to confirm the Indian tribes in the possession of their territory, to confirm cessions of land made by them to the U.S. and the several state
governments, and to fix the frontier line between the U.S. and tribal territories. A significant secondary goal was to bring the native communities under the “friendship and protection” of the United States. The strategic vision that this process intended to realize was to wean the Indians away from their allegiances, real or imagined, to the European colonial powers. The most important of these alliances was to Britain, which was still politically, militarily and, most important, economically active within United States territory.

In the spring of 1789, the United States faced the most grave of all strategic threats, that of having to fight on two fronts. Barnes observed that “in the north, Britain had given a vast swath of territory to the United States without reference to its occupants, who did not consider themselves a conquered people. Similarly, in the South [sic], the United States faced a native population that would not submit to boundaries and authorities imposed on them.”

Ellis defined the threat in terms of numbers when he wrote, “an all-out war against the southern tribes would cost at least $15 million, based on the estimate that McGillivray could call upon five thousand warriors, more if the Cherokees, Choctaws, and Chickasaws joined the campaign. Presuming that the Ohio tribes mounted an organized resistance that required a military response, the United States would be forced to fight a two-front war, the cost of which in men and money would defy the imagination.”

This threat to national security arose as much from the Indians as from the European powers that continued to maintain a colonial presence in North America. It is clear that the British were not the only challengers to the peace and security of the United States beyond the Allegheny Mountains and the Ohio River.

\[24\] Barnes, 11.

\[25\] Ellis, American Creation, 148.
On the northwestern frontier, Indian nations, particularly the Wabash, regularly made incursions across the Ohio River. The mayhem and bloodshed these raids caused among the white settlers led to increasingly-urgent demands from frontier Americans that their government act to protect them. On the southwestern frontier, Indian attacks, both unprovoked and those launched in retaliation for the intrusions of white settlers across the national boundary into Indians country, plagued relations with whites along the Tennessee River watershed and the frontiers of the states of North Carolina, South Carolina and Georgia. This pattern of tit-for-tat behavior, which would characterize Indian/white relations virtually to the end of the nineteenth century, informs the issue of diplomatic negotiation between the Indian nations and the young republic.

Furthermore, the intractable conflict between the Creek Nation and the State of Georgia provided a forum and a pattern for defining relations between the central government and individual, semi-sovereign states. The diplomatic impasse in the southwestern borderland presented a serious challenge to the Federal

MAP 1. Spain and the United States, 1783-1795, by Annand. Copied from Thomas A. Bailey, A Diplomatic History of the American People, 9th ed. (Englewood Cliffs, NJ: Prentice-Hall, Inc., 1974), 59. Note the eastern border of the extreme Spanish claim, which appears to follow the line of the Oconee and Oakmulgee rivers in east-central Georgia. This line was defined by the Treaty of New York (1790) as the boundary between the Creek Nation and the State of Georgia.
government’s assertion of control over its territory. The temporary resolution of that impasse represented one model of the General Government’s consolidation of its authority, as well as its stature, in conducting the new republic’s foreign affairs.

The young republic did not have to fear being surrounded by its enemies, since both “fronts” were on the western frontier. Nonetheless, it is clear that geographic factors, such as distance and physical barriers to mobility and communications rendered the northwestern and southwestern frontiers into two separate areas of military operations. Those physical barriers included the Allegheny, Cumberland and Great Smoky Mountains, as well as the Ohio and Tennessee Rivers. As a result of these spatial and geographical challenges, the military forces of each “front” were practically incapable of effective, mutual support. As the United States gathered strength and undertook the process of gaining and exercising control over its territory beyond the great mountain ranges, diplomacy necessarily took primacy as a means to achieve ends – namely, peace and stability – which the young republic could not achieve by force of arms.

Eliga H. Gould has provided an interesting perspective on the southwestern frontier (that is, in modern North and South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Arkansas and Tennessee). He wrote that in the years following Spain’s accession of Louisiana in 1762, “the Bourbon monarchy was able to establish a formidable presence in North America … creating a network of alliances that, during the early 1790s, included the Choctaws, Cherokees, Chickasaws, Creeks, and Seminoles.”

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26 Eliga H. Gould, “Entangled Histories, Entangled Worlds: The English-Speaking Atlantic as a Spanish Periphery,” in The American Historical Review, Vol. 112, No. 3 (June 2007), 777. Barnes observed that “the domestic tensions that threatened to tear the union apart were aggravated by international relations that
All of those tribes would figure prominently in U.S. treaty-making and the process of defining the borders of the United States. The Indian nations, who vastly outnumbered the Spanish-speaking population, gave “Spain an effective buffer against land-hungry Anglo-Americans.”

Thus, the United States found itself, along essentially its entire western frontier, facing a multilayered, nearly-continuous chain of alliances between Indians and European colonial interests. If the Indian nations were not yet uniformly, overtly hostile along the entire frontier, there was at least a marked degree of ill will between them and the Americans.

Political and military instability in the region derived from the fact that “[d]espite [her] vast territorial reach, Spain’s empire over the Indians of the Southeast was in many respects a hollow empire. Not only did the Indians themselves remain fiercely independent, but Spain’s influence in the region depended heavily on the cooperation of French and British traders.”

Not the least of the reasons why French and British traders were inclined to support their Indian trading partners against the Spanish was that, as Gould pointed out, the French and British “had Indian wives and families and were integrated into Indian society.” Regardless of affectional and other familial ties to the Indian communities, the cooperation by white traders could not be assumed after the British evacuation of their Great Lakes trading posts, which was slow in coming. Capital will always seek an outlet in investment, and British traders, once they finally left their trading posts in American territory around the Great Lakes (which would not happen

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until after the Treaty of Ghent in December 1814), could hardly be expected to pass up the opportunity to transfer their trading operations to the Gulf of Mexico.

The United States’s diplomatic triumph in bringing the British to observe their obligations under the treaties of Paris and Ghent held enormous potential for turning into a Spanish diplomatic and commercial disaster. The political situation was potentially explosive. U.S. diplomats faced the extremely delicate task of upholding the rights of the Union and of its constituent states, while preventing the escalation of localized violence and bloodshed into general war. The mutual antipathy between the Indians and the expansionistic Americans only multiplied their difficulties. The diplomatic high-wire act of preventing war confronted Spaniards as well as Americans. Gould asserted that “In 1786, a Creek military campaign to expel Georgia squatters from lands west of the Ogeechee River was so successful that Spanish officials feared being drawn into an open war with the United States.”

Secretary of War Henry Knox tacitly admitted the United States’s inability to project force onto the young republic’s frontiers in a report to President Washington on 15 June 1789. Knox, having meditated on “the question how the disturbances on the [northwestern] frontiers are to be quieted,” reported to the president that the United States could either make war on the Indians, or engage in a series of treaties with them. After questioning the moral propriety of the use of force, Knox

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30 Gould, op. cit., 777-78.
appears to have qualified the discussion by “supposing the force for that object easily attainable.”

Thus, Knox acknowledged that the United States lacked the ability to achieve its politically-based, national will into Indian territory beyond the frontier. Acquisition, or development of that capacity, was a necessary precondition to the General Government’s ability to impose its will along, and on both sides of, the frontier. The problem was that the young republic lacked the means to marshal that capacity, in the form of a sufficiently-large standing army, or to support such an army in the field.

At least part of the cause of the United States’s impotence on the frontier lay in the ramshackle financial infrastructure that was the least welcome legacy of the Articles of Confederation to the Constitution. Barnes’s summation is both succinct and stark. She wrote, “with scarcely enough funds to function, much less exert its authority, the national government was exposed as a weak institution, either incapable of addressing the needs of its citizens or unwilling to do so.”

For the infant American republic, independence brought with it the insupportable burden of providing the ways and means for its own financial operations. In 1789, as the Constitutional scheme of government was getting underway, the United States of America was indebted to its citizens for over $27 million. This represented loans and contributions, both large and small, of money and other wealth thrown into the crucible of the war for independence that had been won barely five years previously. Separation from English capital and English financial markets raised the specter of a complete cutoff

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32 Beatty, 7-8.

33 Barnes, 14.
of capital in a capitalist economy. There was no guarantee that English capitalists would allow the Confederation Congress access to the City of London, much less ensure the resumption of the free flow of specie.

Similarly, French and Spanish capital was at best a question mark for the financial organs of the new Republic. France was teetering on the brink of bankruptcy, and the amount of cash it could commit to the Americans was severely limited. French assistance to the revolutionary cause in America had been mostly in kind. Goods, in the form of weapons and ammunition, and services, along with the soldiers and sailors whom Louis XVI sent to aid the Revolutionary cause, formed the bulk of France’s material commitment to the American Revolution. Only the relatively limited amount of cash needed to meet army and navy payrolls had flowed out of the country, while the bulk of the livres and sous that Louis XVI and his ministers spent remained within the borders of metropolitan France.

Spain, for its part, looking askance at the possibility of an expansionist regime unhindered by European colonial masters who understood the urgent need to protect their colonial interests, could hardly be expected to treat sympathetically with the United States’s claims of imminent fiscal collapse. The Spanish colonial empire, built upon what was, arguably, the world’s greatest deposit of what was, at the time the universal medium of exchange, could have solved the Americans’s cash problem at a single stroke – a fact that was not lost on the Escorial.

The United States and Spain, erstwhile allies in America’s war for independence, came to the brink of armed conflict over their competition for access to the Gulf of Mexico, and the coastlands on its northern shore. Spain’s need to protect its American
mineral resource holdings was all-encompassing. It could not afford to look benignly on the encroachment of any foreign power, however weak, toward the Spanish possessions of Louisiana and Mexico. Spain’s need for security stood in direct opposition to the urgent need of the U.S. citizens in the trans-Appalachian West to gain access to the sea for export of their manufactured goods and their boundless desire for territorial expansion, brought the two erstwhile allies to the brink of armed conflict. The mere prospect of war further dimmed the possibility that Spain could, or would, serve as a financial lifeline to the floundering United States.

Not the least of the ancillary problems facing the new General Government in Washington was the problem of credibility. Notwithstanding any opposition that frontiersmen may have felt toward the “tyranny” they saw inherent in any institution that attempted to impose rules or other social strictures upon them, the fact is that a significant number of citizens on both sides of the Appalachians had cause to complain of the central government over the most basic cause of interpersonal disputes: money. The republic’s debt to its citizens was evidenced by little more than a bale of paper, but the Confederation Congress had determined to honor that debt, so its successor was on the hook to find the money. Moreover, the United States was in arrears on payment of interest on the Revolutionary War debt for over $2.6 million, and that interest had not been paid since December 1786.

The roots of the new General Government’s dilemma stretched back into the colonial period. Thomas A. Bailey observed that “American settlers gradually came to realize that the New World had a set of interests peculiarly apart from that of the Old
World, and they sought to secure recognition of this basic truth.”34 One could argue that by the time the Constitution was ratified in 1788, the Anglo-Americans of the trans-Appalachian West “had a set of interests peculiarly apart from that of the Piedmont, and the Tidewater, and the whole commercial establishment of the Atlantic Coast.” Bailey went on to describe the issue facing pre-Revolutionary Westerners: “Why should they disrupt profitable trade, butcher their neighbors and be butchered by them, simply because of a European clash in which they had no direct stake?”35 Substitute “Eastern” for “European” in Bailey’s formulation, and it becomes clear that achievement of de jure independence had not changed, indeed had done nothing to change settlers’ attitudes on the far side of the mountains. Independence had done very little to change the political climate. Britain’s concession of American independence in 1783 had, from a trans-Appalachian standpoint, only given legal acknowledgement to the self-perception that the settlers had enjoyed all along. The task for the U.S. government would be to assert American sovereignty over the region in place of the negated British sovereignty.

The fiscal problem facing Congress under the Constitutional scheme of government was twofold: first, money had to be found to fund the ordinary, ongoing operations of government; second, money had to be found to retire the staggering debt that Congress under the Constitution had inherited from its predecessor under the Articles of Confederation. That failed legacy of the United States’s first attempt to create a workable governmental structure presented a unique challenge to Congress’s efforts to set the new republic’s financial affairs in order.


35 Bailey, 24.
The problem of the public debt arose from the decision by the Continental Congress, on 22 June 1775, to fund the war with paper backed by nothing more than Congress’s pledge that the “twelve confederated colonies” would repay the money. In an interesting twist of historical fate, Georgia was the only colony not represented at that session. Lyman Hall, a representative of St. John’s Parish (now Liberty County) Georgia, which dissented from the refusal of the Georgia colonial administration to send a delegate to Philadelphia, had appeared before Congress on 13 May, and was admitted on the strength of his credential from St. John’s Parish.

The issuance of Continental notes represented the riskiest maneuver Congress undertook in its prosecution of the war effort. Underlying that risk was the poor business model by which Congress used paper to fund the war. Continental notes served not only as evidence of Congress’s debt, but also circulated as currency in payment for the purchase of goods and supplies on behalf of the Continental Army. To be precise, these notes evidenced the debt by which the several States had been bound by Congress, in addition to their own, individually-contracted debts; all thirteen of the independent States having issued their own notes as evidence of their debt for money borrowed, or provisions purchased, in support of their own war efforts.

All of these notes, whether evidence of loans or payments for tangible goods under contract, were denominated in terms of cash. As an example, we can suppose that three colonists came to one of the offices that Congress had delegated for the receipt of

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cash or goods. One has a supply of ten Spanish milled dollars, which he has decided he can spare for the war effort. He hands in the coins, and receives a note obligating Congress to pay him the ten Spanish milled dollars at a time certain, according to one of several resolutions that the Continental Congress passed between May 1775 and November 1776. He goes on his way. The second patriot steps up, offering to sell one hundred pounds of flour, in two fifty-pound barrels, for $5 per barrel. He expresses his willingness to accept Congress’s paper in payment, and takes another note bearing the same obligation on the part of Congress, namely, to pay cash on a date certain, as the first man had. He delivers his flour to the commissary officer, and goes on his way. The third patriot steps up, also offering one hundred pounds of flour, in two fifty-pound barrels, for $5 per barrel. He is more skeptical of the financial stability of Congress, or a more shrewd businessman, and he demands cash for his flour. The paying agent pays him the ten Spanish milled dollars which the first man had just lent, and the third man delivers his flour to the commissary officer and goes on his way.

The hypothetical Continental finance and commissary office now has possession of two hundred pounds of perishable goods, no cash, and obligations totaling $20 that must be discharged in cash, according to the provisions of the various currency resolutions, between November 1779 and November 1782. If this scenario is multiplied by the hundreds of local commissary and disbursing offices set up throughout the United States during the course of the war, one can easily see the genesis of the mountain of claims that pressed in upon Congress from all sides once peace was concluded. That poor business model of borrowing money and purchasing supplies may be excused on the basis of the exigent need to act swiftly to impose a system for supplying the Continental
Army. It does not alter the fact that the new nation’s domestic debt was only a part of the enormous sums that were due to foreign creditors.

Besides incurring a debt that would have strained the resources of a polity which enjoyed the ability to subject an established order of private estates to a comprehensive scheme of taxation, the infant United States of America was practically unable to develop an effective system of taxation to meet that debt. It is, perhaps, in the fiscal arena that one finds the greatest stumbling block to the creation of the *united* States of America. The thirteen colonies, having cast the British king aside, were not favorably disposed to impose a new central government in place of their former colonial masters.

That said, it is inescapably clear that on one more than one occasion, in more than one state, the new republicans seized independence as both the pretext and means to declare the “king’s bankruptcy.” They simply refused to pay what was due to their creditors, notwithstanding votes of their representatives in support of Congress’s debt resolutions, or any inclination that the leaders would have shown to prosecute their own defaulting debtors. But this is to place effects before causes. To understand the difficulties that Congress under the Constitutional scheme of government faced in trying to set the new republic’s finances in order, we must examine how the sovereign, and only marginally “united,” states had dealt with the problem of national finance in the first fifteen years of independence.

The first republican phase of United States history started under inauspicious circumstances with the State of Maryland’s ratification of the Articles of Confederation on 1 March 1781. The Articles of Confederation attempted to forge the Continental Congress, which was no more than the steering committee of a coalition, into a hybrid
legislative/executive body administering a union. Adoption of a plan of union failed to address satisfactorily the issue of how to create a coherent polity from a constellation of independent states embracing varying and often antithetical political agendas.

During the turbulent debate over the ratification of the proposed Constitution, in 1787, Alexander Hamilton limned the disgraceful state of the Confederation’s finances in stark terms:

Are there engagements, to the performance of which we are held …? These are the subjects of constant and unblushing violation. Do we owe debts to foreigners, and to our own citizens, contracted in a time of imminent peril, for the preservation of our political existence? These remain without any proper or satisfactory provision for their discharge.\(^{38}\)

“We may indeed, with propriety,” Hamilton wrote in *The Federalist, No. 16*, “be said to have reached almost the last stage of national humiliation….”\(^{39}\) The failure of the Articles of Confederation system was fundamentally attributable to the nonexistent authority of Congress to impose taxes, or otherwise compel money to flow into the national treasury.

This is not to say that Congress was passive in accepting its inability to establish a reliable national income. Indeed, from 1782 to 1785, the Confederation Congress waged a spirited but futile campaign to determine the amount of levy that each state would owe to the national treasury, as prescribed by Article VIII of the Articles of Confederation.\(^{40}\) Congress’s effort was stymied by the sovereign states, which dragged their feet – and in

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some cases simply refused to cooperate – in providing an enumeration of their citizens as a basis to determine the levy.

Even if the several states had stepped forward with Cincinnatus-like disregard for their own prerogatives in order to discharge their obligations toward the Confederation Congress, it is doubtful that they would have had the resources at hand to make good the calls on their respective treasuries. The hard fact is that there simply was not enough cash in the United States, collectively much less individually, to have discharged the debts accrued in acquiring sovereignty.

Secretary Knox projected that fielding an army of 1,900 men and their officers on the frontier for six months, with “every thing in the hospital and quartermaster’s line, would require the sum of 200,000 dollars; a sum far exceeding the ability of the United States to advance.” In contrast, Knox cited information from Arthur St. Clair, governor of the Western Territories, that “a treaty with the Wabash Indians may be effected for the sum of 16,150 dollars.” Furthermore, even if the money for a military expedition could be found, Knox warned, “it is very possible that this sum may not effect the object intended. It can be considered only as an experiment dictated by a regard to public justice.”

Clearly, the secretary of war took a dim view of the economic and practical feasibility of attempting to use military force northwest of the Ohio River. In his official communications with the President, Knox made the case that all-out war with the Indians was neither financially feasible, nor morally exemplary. Because Knox was one of the

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heroes of the Revolutionary War, and because there was no political imperative to wage war in the West, the United States was able to pursue the cheaper, quieter path of diplomacy in an attempt to bring peace on the southwestern border.
Chapter 2

Diplomacy and Treaty-making with the Indians Before the Constitution

The first order of business for the General Government under the Constitutional scheme of government was to clarify residual issues with the various Indian nations on the northwestern frontier, left over from the Confederation’s diplomatic overtures. On 25 May 1789, Secretary Knox reported to the Senate on three treaties that the Continental Congress had made with northwestern tribes:

- The “treaty at Fort Stanwix, on the 22d day of October, 1784,” with “the Sachems and Warriors of the Six Nations”;
- The treaty of Fort McIntosh of 21 January 1785, with “the Sachems and Warriors of the Wyandot, Delaware, Chippawa, and Ottawa nations of Indians”;
- “The treaty at the mouth of the Great Miami, the 31st day of January, 1786,” with the “Chiefs and Warriors of the Shawonoe nation.”

The first two treaties were, according to Knox’s report, the products of a commission composed of Oliver Wolcott, Richard Butler and Arthur Lee; the Secretary did not specify who had been the United States’s negotiators for the treaty at the mouth of the Great Miami. Prucha asserted, in American Indian Treaties, that the commissioners for the Treaty of Fort McIntosh were George Rogers Clark, Butler and Lee. Prucha also identified the commissioners for the Treaty of the Mouth of the Great Miami as being Clark, Butler and Samuel H. Parsons. All three of those treaties had been found

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45 Prucha, American Indian Treaties, n.p. See Note 44, above.
lacking, or at least in need of renewal after the anticipated transition from the
Confederation to the constitutional Republic. As their instrument for the renegotiation of
the treaties with the northwestern tribes, Congress selected their former president, Arthur
St. Clair.

On 5 October 1787, Congress elected St. Clair, who had been a member of
Pennsylvania’s delegation, as territorial
governor. The same day, Congress
elected Winthrop Sargent, formerly
surveyor of the Northwest Territory, as
territorial secretary. St. Clair does not
appear to have been in any great hurry to
take up his new post on the frontier. It
was not until 9 July 1788 that the
“Governour and Commander in Chief
arrived at Fort Marmar, [sic] & on the
15th was published the Ordinance of the
honorable Congress for the Government of the Territory” as well as the commissions of
the territorial officials. Apparently, Governor St. Clair’s duties on the frontier did not
prevent him from continuing his service in Congress. As late as 1 September 1788, a
committee of which he was a member reported to Congress on their examination of “an

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Acco\textsuperscript{5} of Capt Allen McLane and a letter touching the same from the Com\textsuperscript{5} of Army accounts.\textsuperscript{48}

Having at length taken up his post on the Ohio, St. Clair spent approximately six months in negotiations with the Indian nations. Matters came to a head on the busy day of 9 January 1789, when St. Clair concluded two treaties, one with the “sachems and warriors of the Six Nations” and the other with the “sachems and warriors of the Wyandot, Delaware, Ottawa, Chippewa, Pattawatima, and Sac nations.” These early treaties offer some interesting insights into the attitude of the General Government of the United States toward the Indians, and also give early examples of how American imperialism in Indian relations would play out.

Article 1 of the treaty with the Six Nations “except the Mohawks, none of whom have attended at this time,” dealt with the western boundary line between the Six Nations and the United States. This boundary was essentially the western boundaries of the states of New York and Pennsylvania, except the shoreline of Lake Ontario between Johnson’s Landing, New York and the Pennsylvania state line. For a “consideration of a quantity of goods, to the value of three thousand dollars, now delivered to them …, the receipt whereof they do hereby acknowledge, [the Indians] do hereby renew and confirm the said boundary line …, to the end that it may be and remain as a division line between the lands of the said Six Nations and the territory of the United States, forever.”\textsuperscript{49} This is rigidly legalistic language, reciting virtually verbatim the standard acknowledgement of


\textsuperscript{49} “Articles of a Treaty made at fort Harmar … between Arthur St. Clair … and the sachems and warriors of the Six Nations, …,” (the “Six Nations Treaty”) 9 January 1789, in Lowrie and Clarke, IV:5.
receipt of consideration that is (and was in the 1780s) an essential element of contract law between whites. Governor St. Clair, and the emissaries who had negotiated before him with the Indian nations, had been formed in the conduct of law and public affairs in the English common-law tradition. One of the foundations of English common and statutory law regarding alienation and transfer of real property was the principle of *pacta sunt servanda*, the idea that agreements must be observed. A contract entered into for specific performance in return for adequate consideration given and duly acknowledged was both definitive and binding.

St. Clair been a country squire in Pennsylvania before his election to Congress, and, although not, apparently, formally trained in law, had a lawyerly aversion to uncertainty in drafting documents. A prudent lawyer’s defense against the risk of having an agreement fall apart in litigation is to draft the document with stock phrases, so-called “solicitor’s boilerplate,” that have stood up to judicial scrutiny in the past. St. Clair’s treaties with the Wyandot, Delaware, Ottawa, Chippewa, Pottawatomie, and Sac nations, and five of the Six Nations were full of solicitor’s boilerplate: the treaty with the Wyandots and other tribes contained virtually the same formula as the Six Nations treaty, except the value of goods delivered to the Wyandots was $6,000.

The necessity for boilerplate language appears in Secretary Knox’s letter to President Washington of 23 May 1789, after Knox had had a chance to review the fruits of St. Clair’s negotiations with the Indians. Knox advised the president that “it may be proper to observe, that the Indians are greatly tenacious of their lands, and generally do not relinquish their right, excepting on the principle of a specific consideration, expressly
given for the purchase of the same.” Further, the practice of purchasing land from the Indians for money and goods was a legacy of the English colonial system, which “has firmly established the habit in this respect, so that it cannot be violated but with difficulty.”

But the past had passed, and the United States was the way of the future. Consideration of the legalistic language of St. Clair’s treaties turns on more than just the established pattern of negotiation inherited from the colonial scheme, and the necessity, or desirability, of continuing traditional patterns of intercultural behavior under the U.S. constitutional scheme. There is more to St. Clair’s adoption of the legal niceties of English contract law in drafting his treaties with the Indian tribes than prudence, or mere force of habit. Clearly, he interpreted his role as plenipotentiary as ambassadorial rather than imperial; he was dealing with people who, though his social inferiors, were nonetheless sufficiently dignified politically as to rate sober, equitable treatment.

The treaties of Fort Harmar of 9 January 1789 were not diktats imposed upon the Indians by an imperious American republic; they were mutually bargained-for exchanges. Whether the Indians fully understood the ramifications of the concessions they made, and realized that the loss of access to the territory west of the boundary line was to be permanent and absolute, is beyond the scope of this paper. The course of events suggests that they did not understand those facts, which led to ongoing friction between the Indian and white communities within the United States. St. Clair, for his part, appears to have bargained in “good faith,” to the extent that he understood the meaning of the term with the Indian sachems.

50 Knox to Washington, 23 May 1789, in Lowrie & Clarke, IV:8.
51 Knox to Washington, 23 May 1789, op. cit., 8.
Ellis offered one interpretation of the Americans’ mindset when he wrote, “as the Americans saw the situation, after the Treaty of Paris there was no such thing as Indian Country, since all the land from the Atlantic to the Mississippi belonged to the United States by right of conquest.” In Ellis’s construction, there would be neither place nor opportunity for the Indians to parley. “It was a take-it-or-leave-it proposition in which the Indians surrendered a portion of their tribal lands or faced war with the United States and certain annihilation.”

The incongruity of “arm’s length” negotiations with the Indians, in light of the way the United States subsequently treated the native peoples, is foreshadowed by other provisions of the pacts. A separate article of the treaty with the Six Nations provided that serious crimes (specifically, robbery, murder, or horse theft), committed either by Indians against “the citizens or subjects of the United States,” or vice versa, would be punished by either U.S. state or territorial law. Further, the article required the Indians to deliver any person, of whom the natives felt aggrieved in the way of crime, to either state or territorial officials of the United States. The United States’s writ thus passed beyond the boundary line, and U.S. law (either state or territorial) would be the foundation of justice, even in the Indians’s lands.

The treaty with the Wyandot, Delaware and other tribes, also of 9 January 1789, addressed the issue of “certain prisoners, who have been taken by others, not in peace with the said United States, or in violation of the treaties subsisting between the United States and [the Indian nations],” whose release was the subject of Article 1 of the treaty. The issue of the repatriation of U.S. citizens held prisoner by Indians had been the subject of the treaty of Fort McIntosh, on 21 January 1785, with the Wyandot, Delaware, Ottawa

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52 Ellis, American Creation, 132.
and Chippewa. It is not clear whether any of the prisoners already held on 21 January 1785 were still captives of the Indians on 9 January 1789. The Wyandot agreed “to deliver into [Arthur St. Clair’s] hands, two persons of the Wyandot nation, to be retained in the hands of the United States, as hostages, until the said prisoners are restored; after which, they shall be sent back to their nation.”53 It is significant that the taking of Indian hostages for the return of “all the prisoners, white and black”54 held by them was not a new concept introduced at Fort Harmar. The treaties of Fort Stanwix, Fort McIntosh and the Mouth of the Great Miami all required the provision of hostages in varying numbers from different tribes.

This provision is markedly divergent from the carefully legalistic, arm’s-length negotiation discussed above, as between two peoples who deserved fair treatment. It is one thing to give consideration in the form of goods to a certain value, the receipt of which is acknowledged among the terms of the contract. When consideration takes the form of human beings and countrymen, the observer is left to wonder whether the receiver (that is, the hostage-taker) is actually negotiating in good faith. The repatriation of the Indian hostages was left to the hostages’s kinsmen; they agreed to “deliver up all the prisoners now in their hands … as soon as conveniently may be; … after which [the Wyandot hostages] shall be sent back to their nation.”55

In fixing the boundaries between the United States and the Wyandots et al., the U.S. tried to have its cake and eat it, too. After reciting the course of the boundary line


54 Knox to Washington, 23 May 1789, in Lowrie & Clarke, IV:11-12.

55 Knox to Washington, 23 May 1789op. cit., 11-12.
between Indian and white settler lands, Article 2 stated that the Indians “do … renew and confirm the said boundary line; to the end that the same may remain as a division line between the lands of the United States of America and the lands of the said nations, forever.” Having established a permanent boundary line, allotting to the Indian nations their piece of real estate, the treaty immediately turned around and reserved to the United States the exclusive, pre-emptive right to repurchase the lands from the Indians.

Prucha observed regarding U.S. treaties with the Indians on its frontier that “they exhibited irregular, incongruous, or even contradictory elements.” That the United States would, in the very act of confirming the Wyandots and other Indian nations in their possession of the lands allotted to them, reserve to itself the pre-emptive right to re-acquire (and thus dispossess the Indians from) those lands, only seems “incongruous, or even contradictory.” Upon closer examination, it is easy to see that this is not the case.

At the time Governor St. Clair negotiated with the Indian nations between the Ohio River and the Great Lakes, the United States was in the legally, diplomatically and militarily precarious position of having title to land it did not yet occupy. Further, the United States lacked the ability to project its will into the area, and could not reasonably expect to attain hegemony in the region without first having developed the military resources to obtain and secure its position. Absent either a professional army to compel the British to quit the Northwest Territory posts as they had promised, the U.S. temporized. By granting to the various Indian nations the right “to live and hunt upon” the lands allocated to them “forever,” (Articles 3 and 2, respectively), the U.S. also granted its Indian neighbors the right to hunt on United States territory, “as long as they demean themselves peaceably, and offer no injury or annoyance” to their white neighbors.

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56 Prucha, American Indian Treaties, 2.
This was clearly an effort to preserve the status quo while effecting transfer of legal title to land in a clear, incontrovertible, equitable transaction. This mollified the Indians, who were given evidence of the fairness and compassion of the Americans, while the U.S. could claim the moral high ground as “benefactor” and “defender.”

Although the granting to the Indians of the right of access to United States territory in pursuit of game is a significant concession, the real payoff appears in Article 6, which dealt with the issue of horse theft. Regarding the complaints of the Indians that U.S. citizens had stolen horses from them, the treaty provided that “the civil magistrates in the United States” or in the Northwest Territory itself “shall give all necessary aid and protection to Indians claiming such stolen horses.”

The white man’s law was to be applied equally against both Indians and whites. Indians accused of crimes against whites were to be held to the same standard as whites, who not merely harmed the persons of the Indians, but also despoiled them of their property. The significance of this discussion should not be overlooked: The machinery of white man’s justice was required, under the terms of the treaty, to move on behalf of the Indians.

The principle that agreements must be observed where adequate consideration is given assumes that both parties to the negotiation have a more-or-less common understanding of the rights and responsibilities for which they bargain. In terms of the Indian nations on the northwestern frontier, Americans were expanding into the area that the Treaty of Paris had defined as U.S. territory, so St. Clair’s treaties served as vehicles to bring order within an area that was already part of the United States. In contrast, on the southwestern frontier, the State of Georgia attempted, in the mid-1780s, to gain

\(^{57}\) Wyandot et al. treaty, in Lowrie and Clarke, IV:6.

\(^{58}\) Wyandot et al. treaty, in Lowrie and Clarke, IV:7.
cessions of land from the Creek nation, whose territory lay beyond the U.S. border. Although the treaties that the State of Georgia made with the Creek nation were in the form of objective, legalistic transactions, cultural differences on the part of both the Indians and the whites indicated a disparity in understanding of what the treaties were about. That lack of a common understanding would lead to violence and ill-will, as well as a general irritation of relations between the two cultures. Resolution of the conflict would require the interposition of the Federal government to reach what appeared to be a mutually-agreeable solution.

Having achieved a measure of apparent peace and stability, the General Government turned its attention to the issue of relations with the Indian nations on the southwestern frontier. Again, as in the U.S. dealings with the Six Nations and the Wyandots et al., issues of land ownership dominated the treaty negotiations. Land ownership, and the validity of Indians’ land transfers to the Americans, are issues that are central to understanding the course of events. Furthermore, the fact that significant tracts of disputed land lay within the states of Georgia and North Carolina (as opposed to the Northwest Territory) further complicated the negotiations, and raised significant issues for the nascent doctrine of federalism.

On 7 August 1789, President Washington drew Congress’s attention away from its other business to consider “the disputes which exist between some of the United
States, and several powerful tribes of Indians within the limits of the Union; and the hostilities which have, in several instances, been committed on the frontiers.”

Washington had realized the importance of bringing the Creek situation to a head earlier that spring. He wrote to Georgia Governor George Walton, on 29 May 1789, that “the unhappy state of affairs between the State of Georgia and the Creeks will soon be a subject of deliberation, and I am persuaded will receive all that dispatch that the nature of the case may require, and the circumstances of the Government admit.”

The president proposed the appointment of a three-man commission, “if it should be the judgment of Congress that it would be most expedient to terminate all differences in the Southern district, and to lay the foundation for future confidence, by an amicable treaty with the Indian tribes in that quarter.” Washington’s impetus appears to have been a report from Secretary Knox dated 6 July 1789, in which Knox reviewed the situation of the United States vis-à-vis the Indians.

It is in Knox’s report that the formidable and exasperating person of Alexander McGillivray first appears in the records of the United States after the adoption of the Constitution. McGillivray was a known character; his first appearance in Congressional records is as the author of a letter to James White, at the time superintendent of Indian affairs for the southern district, referenced in a committee report on 11 October 1786. McGillivray, the bastard son of a Scottish trader and a mixed-race mother, would dominate negotiations between the two peoples for most of the next four years.

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59 Washington to Congress, 7 August 1789, in Lowrie & Clarke, IV:12.


61 Washington to Congress, 7 August 1789, in Lowrie & Clarke, IV:12.
Knox asserted that “the Creeks appear, at present, to be much under the influence and direction of Alexander McGillivray[ ] whose … father … was an inhabitant of Georgia, and adhering to Great Britain in the late war, his property was confiscated by that State. His mother was a principal woman of the Upper Creeks.”

Andrew Frank wrote that “nineteenth century historian Albert James Pickett credited Alexander McGillivray with controlling the southern frontier with an iron fist. ‘No one ventured into the nation without making way to him for protection.’” McGillivray “had an English education; his abilities and ambition appear to be great; his resentments are probably unbounded against the State of Georgia, for confiscating his father’s estate.”

McGillivray’s unbounded resentments against the State of Georgia had been a subject of concern for Congress as early as August 1787. On 3 August, acting on “information received from the Superintendent of Indian Affairs for the southern department, that some misunderstanding prevails among the Creek Indians which it is necessary should be investigated in order that Justice may be done and such measures taken as will establish peace and friendship with the said Indians,” resolved, on motion by William Few of Georgia, “to invite the Kings and Headmen of the Creek Nation to a conference,” time and place to be determined. Congress, while considering whether to invite the Creeks to parley, had declined to delay the debate to consider a committee

62 Knox to Washington, 6 July 1789, in Lowrie & Clarke, IV:15.

63 Andrew Frank, Creeks and Southerners: Biculturalism on the Early American Frontier (Lincoln, NE: University of Nebraska Press, 2005), 22. The internal citation is to History Notebook, Vol. I, Pickett Manuscripts, Alabama Department of Archives and History.


65 Journal of the Continental Congress, Friday, 3 August 1787, in Ford, ed., Journals of the Continental Congress, XXIII:454. Few was the only member of the Georgia delegation to attend that day’s session.
report “on the subject of Indian Affairs in the Southern department.” That committee consisted of Dyre Kearny of Delaware, Edward Carrington of Virginia, William Bingham of Pennsylvania, Melancton Smith of New York and Nathan Dane of Massachusetts. The record is not clear as to the date of the committee’s appointment, or who served in the chair. Nathan Dane made the motion to consider the committee’s report in preference to Few’s motion to invite the Creeks to parley.

The report that Congress disdained included a significant observation regarding the attitudes of white settlers toward the southern Indian nations, attitudes that would continue to inform relations between the two cultures and plague Indian/white relations through the early Federal period. The committee wrote that

An avaricious disposition in some of our people to acquire large tracts of land and often by unfair means, appears to be the principal source of difficulties with the Indians. There can be no doubt that settlements are made by our people on the lands secured to the Cherokees by the late treaty between them and the United States; and also on lands near the Oconee claimed by the Creeks, various pretences seem to be set up by the white people for making those settlements, which the Indians tenacious of their rights, appear to be determined to oppose.

The “various pretences … set up by the white people for making … settlements” appear to have included a series of treaties purportedly made between the State of Georgia and the Creeks, beginning in the immediate post-Revolutionary War period.

The first treaty was the product of negotiations held at Augusta, Georgia in November 1783. Secretary Knox, reporting after the fact to President Washington, stated that “at this treaty, certain lands on the Oconee were ceded by the Creeks to the State of


Clause Three of that treaty, as reported in the minutes of the Georgia House of Assembly on 23 October 1787, contains a detailed description of the boundary line.

The second treaty, at Galphinton, Georgia on 12 November 1785, contained a confirmation on the part of the Creeks of the boundary line of the Augusta treaty two years previously. The Galphinton treaty also provided for an extension of the boundary line “from the forks of the Oconee and Oakmulgee, to the source of the St. Mary’s.”

The Creeks and the State of Georgia concluded a third treaty at Shoulderbone, in what is now Hancock County, on 3 November 1786. Knox reported that, “at this treaty, it would appear that the Creeks acknowledged the violation of the two former treaties recognised, and ratified the former boundaries, and gave six hostages for the faithful execution of the conditions.”

This thumbnail sketch of the treaties concluded between the Creeks and the sovereign State of Georgia tends to give the appearance that relations between the State of Georgia and the various Creek nations were all aboveboard, and should have led to the establishment of peace and harmony between the two peoples. The problem, as Knox pointed out, was that “the Creeks object entirely to the validity of the said treaties, stating that the cessions to the State of Georgia were made by the chiefs of two towns only; whereas, the lands ceded were the property of the whole nation.” The Creeks’s argument for the invalidity of the treaties appears in a series of correspondence that Alexander McGillivray sent to American diplomats from his headquarters at Little Tallassie between

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68 Knox to Washington, 6 July 1789, in Lowrie & Clarke, IV:15.

69 Minutes of the Georgia House of Assembly, 23 October 1787, quoted as enclosure D. No. 2 in Knox to Washington, 6 July 1789, in Lowrie & Clarke, IV:23.

70 Knox to Washington, 6 July 1789, in Lowrie & Clarke, IV:15.

71 Knox to Washington, 6 July 1789, in Lowrie & Clarke, IV:15.
September 1785 and February 1789. McGillivray wrote to Andrew Pickens, at the time U.S. commissioner for treating with the Indians in the south; James White, superintendent of Indian affairs; Andrew Moor, Virginia’s commissioner for treating with the Creeks; and Thomas Pinckney, governor of South Carolina.

On 5 September 1785, McGillivray wrote to Pickens that

when we found that the American independency was confirmed by the peace, we expected that the new government would soon have taken some steps to make up the differences that subsisted between them and the Indians … and to have taken them into protection, and confirm[ed] to them their hunting grounds. Such a conduct would have reconciled the minds of the Indians, and secured to the States their attachment and friendship, and considered them as their natural guardians and allies.  

Clearly, McGillivray’s hostility toward the State of Georgia did not extend to the rest of the Federal union. Having protested that the Creeks would have been loyal to the United States if the U.S. had acted expeditiously to “secure to the States their attachment and friendship,” McGillivray got down to the causes of discord and discontent between his people and the citizens of the State of Georgia.

“[The Georgians] attempted to avail themselves of our supposed distressed situation. Their talks to us breathed nothing but vengeance,” McGillivray complained, despite “their particular interest … to have endeavored to conciliate the friendship of this nation.” The lands whose ownership was the subject of dispute “have been ours from the beginning of time,” and the Creeks intended to keep them. McGillivray averred to Superintendent Pickens that “I have taken the necessary steps to prevent any future

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72 Alexander McGillivray to Andrew Pickens, 5 September 1785, quoted as enclosure B. No. 1 in Knox to Washington, 6 July 1789, in Lowrie & Clarke, IV:17.

73 McGillivray to Pickens, 5 September 1785, op. cit., 17-18.

74 McGillivray to Pickens, 5 September 1785, op. cit., 18.
predatory excursions of my people, against any of your settlements. I could wish that the people of Cumberland shewed an equal good disposition to do what is right. They were certainly the first aggressors since the peace, and acknowledged it in a written certificate, left at the Indian camp they had plundered."

Despite the Creeks’s sense of having been harassed and pestered by the Georgians, it appears, at least at that early date, that McGillivray and his people were still willing to attempt to defuse the volatile situation on the frontier, by attempting to avoid any sort of provocative act – even if that meant restraint from asserting what they perceived as their rights in the land.

Little more than eighteen months later, McGillivray’s attitude hardened.

His letter of 8 April 1787 to Superintendent James White opened with a long history of “chiefs of two towns in this nation, who, during the late war, were friendly to the State of Georgia,” and who reluctantly, “when the people of Augusta demanded a cession or grant of lands belonging to, and enjoyed as hunting ground by the Indians of this nation, … on the East of the Oconee river” promised to advocate for the allowance of the cession. Having returned to their homes, the chiefs’s promise was rejected by “a general convention … held at the

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25 McGillivray to Pickens, 5 September 1785, *op. cit.*, 18.
Teickibatiks town,” which rejection was communicated to the people of Augusta. The denunciation of the two chiefs’s promise (which they repeated during future visits to Georgia) had little effect; McGillivray asserted that “our just remonstrances were treated with contempt, and those lands were soon filled with settlers.” Still, the Creeks hesitated before the spilling of blood. “[W]e would rather consider [the Georgians] as friends, [and] we made another effort to awaken in them a sense of justice and equity; but, we found from experience, that entreaty could not prevail.”

In October 1786, McGillivray asserted, “[W]e were invited, by commissioners of the State of Georgia, to meet them, in conference, at the Oconee, professing a sincere desire for an amicable adjustment of our disputes, and pledging their sacred honors for the safety and good treatment of all those that should attend and meet them.” The few chiefs who did attend, “merely from motives of curiosity, … were surprised to find an armed body of men, prepared for, and professing hostile intentions, than peaceable commissioners” who extorted from the attending chiefs, as the price of their safety, more cessions of land. McGillivray obliquely suggested that “the army and its commissioners,” having extracted the grants of land, then opened fire on the Indians; “the lives of some of our chiefs were required, as well as some innocent traders, as a sacrifice to appease their anger,” he wrote. Furthermore, “Assassins have been employed to effect

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76 McGillivray to James White, 8 April 1787, quoted as enclosure B. No. 2 in Knox to Washington, 6 July 1789, in Lowrie & Clarke, IV:18.

77 McGillivray to White, 8 April 1787, op. cit., 18.

78 McGillivray to White, 8 April 1787, op. cit., 18.

79 McGillivray to White, 8 April 1787, op. cit., 18.

80 McGillivray to White, 8 April 1787, op. cit., 18.
some part of their atrocious purposes.”

The carnage inflicted on the Creek town chiefs at the Oconee in May 1787 appears to have whetted the Georgians’s appetite of the Georgians for war, rather than having satisfied the it. Governor George Mathews wrote on 15 November 1787, apparently to Charles Thomson, secretary of Congress, that “the State [of Georgia] never can have a secure and lasting peace with that perfidious nation, until they have severely felt the effects of war,” and to that extent the Georgia Assembly had called up 3,000 militiamen and had authorized Mathews to call up another 1,500 men, “should the first not be adequate.”

McGillivray’s 8 April 1787 letter to White indicates that, whatever differences the Creek supremo may have had with the United States, he understood, and intended to emulate, the deeds of American patriots and freedom fighters on behalf of his own people. If he were to die in battle, McGillivray wrote, “I shall fall a victim in the noblest of causes – that of falling in maintaining the just rights of my country. I aspire to the honest ambition of meriting the appellation of the preserver of my country, equally with those chiefs among you, whom, from acting on such principles, you have exalted to the highest pitch of glory.” Thus did an Indian Horatio announce his opposition to the unrestrained white despoliation of his people’s ancient patrimony, serving notice to the United States that if they did not restrain their rambunctious southern citizens, the civic rhetoric and iconography that had inflamed the patriots during their own struggle for

81 McGillivray to White, 8 April 1787, op. cit., 18.

82 Governor George Mathews to uncertain recipient, 15 November, 1787, quoted as enclosure D. No. 1 in Knox to Washington, 6 July 1789, in Lowrie & Clarke, IV:23.

83 McGillivray to White, 8 April 1787, in Lowrie & Clarke, IV:18.
independence and effort at nation-building would soon be turned against them. He also threw in a slap at the Americans’s rhetorical device of condemning the Indians for doing what the white men themselves did. “[I]f, after every peaceable mode of obtaining a redress of grievances having proved fruitless,” McGillivray wrote, “recourse to arms to obtain it, be marks of the savage, and not of the soldier, what savages must the Americans be, and how much undeserved applause have your Cincinnatus, your Fabius, obtained.”

It is hard to say what effect, if any, McGillivray’s wrapping of himself in the rhetoric of American patriotism had. Certainly by September 1788, the Continental Congress had ordered American settlers on Cherokee lands to vacate their settlements.

“This measure,” McGillivray asserted to Andrew Moor, Virginia’s commissioner for treating with the Cherokees, “together with the talk from the Governor of Virginia, appears to have given much satisfaction to the Cherokees.” That was fine for the Cherokees; but for the Creeks, no resolution of their border dispute was in sight.

The fighting spirit of the Georgians quickly gave way to the realization that they had picked a fight with an enemy who possessed not only the ability but the will to inflict great harm on the people as well as the fortunes of the State. For the Georgians, the new Federal union appeared as the lifeline that could save them from being completely inundated by the aroused Indians. A sense of the Georgians’s attitude can be found in a letter from Hugh Williamson, who had been a delegate to the Constitutional Convention

84 McGillivray to White, 8 April 1787, op. cit., 18.

85 McGillivray to Andrew Moor, 4 January 1789, quoted as enclosure B. No. 3 in Knox to Washington, 6 July 1789, in Lowrie & Clarke, IV:19.

86 McGillivray to Moor, 4 January 1789, op. cit., 19.
from North Carolina, to President Washington on 21 May 1789. Williamson wrote, “the People who live near the Sea Coast are far from being neutrals on this Subject [of the Constitutional government]; They declare that they must remove out of the State or perish with their Families unless we come into the Union.”

It is noteworthy that Williamson asserted that, in the case of the North Carolinians, their potential distress was economic. He observed that “the Bankers … a numerous hardy Race, live by the coasting Trade & raise no Provisions. The Alien Impost on their small Vessels would destroy them.”

Therefore, it was better for those fishermen and coastwise traders who navigated along the Outer Banks off the coasts of southern Virginia and North Carolina to join the Union so that they would not be treated as foreigners for tax purposes.

For the Georgians, union had both economic and security aspects. Georgians were quick to embrace the unified polity created by the Constitution; Georgia was the fourth state to ratify the Constitution, on 31 December 1787. Georgians’s eagerness for the Federal Union was not a sign that they were any more willing than the residents of any other state to yield their sovereignty, but because they needed a powerful, well-equipped, wealthy ally to prevent the Georgians from being overwhelmed by a war with the Creek Nation that the Georgians themselves had precipitated.

By January 1789, McGillivray’s blustery rhetoric to the representatives of the United States had changed to a more conciliatory tone when addressing the agents of individual states. To Moor, McGillivray asserted that “The gentlemen, my friends, do me

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justice when they inform you that I am desirous of peace.”

In McGillivray’s diplomatic reality, it was not McGillivray and the Creeks who desired conflict with the Americans, but the Americans who desired to make war on the Creeks. McGillivray, having protested his desire for peace, continued, “I have been now five years in laboring to bring out [peace] with the State of Georgia, but in vain; more than a twelvemonth after the general peace was spent by us in representing to them, in friendly terms, the cruelty and injustice of their proceedings, of wresting forcibly from us a large portion of our hunting lands.”

Despite McGillivray’s self-described failure to achieve peace with the Georgians, he was still on the hustings. In a letter to South Carolina Governor Thomas Pinckney on 26 February 1789, McGillivray stated that “I am returned, a month or two since, from a tour through the principal of the Lower [Creek] towns and Seminoles, which I made for the purpose of urging them to a strict observance of the truce.”

This, he assured the governor, would ensure that “no complaints will be made for any breaches of it throughout the winter.” McGillivray declined to speculate whether the Creeks would have cause to complain of Georgians’s, or South Carolinians’s breaches of the truce during the winter. Nonetheless, the issue remained simmering in the background of the Creeks’s faceoff with the Georgians.

No matter how energetically McGillivray sought to build peace between the people of his confederation and the American settlers pushing roughly against the

89 McGillivray to Moor, 4 January 1789, op. cit., 19.

90 McGillivray to Moor, 4 January 1789, op. cit., 19.

91 McGillivray to Thomas Pinckney, 26 February 1789, quoted as enclosure B. No. 4 in Knox to Washington, 6 July 1789, in Lowrie & Clarke, IV:20.

92 McGillivray to Pinckney, 26 February 1789, op. cit., 20.
frontier, there was still the smoldering casus belli of the dispute over the validity of the land cessions. At least part of the problem that plagued the southwestern borderland of the United States was the fact that the Georgians and the Creeks were approaching the problem from different cultural perspectives. The central aspect of the respective cultures that created such problems lay in the fact that the Georgians were culturally homogeneous, while the Creek culture was more diverse.

Andrew Frank wrote that ethnic Creeks, particularly the dominant Muskogee, took a very broad view of what constituted a “Creek.” The Indians practiced, almost as a matter of course, assimilation of outsiders into their culture, both as a means of growing their population and to replace members of their kinship network who had succumbed either to disease or to battle injuries. Frank identified “six particular types of ethnic outsiders” whom the Creeks adopted, but took particular pains to note that membership in one of the tribes of what he termed the “Creek Confederation” was not based on race, but on adherence to the cultural mores of Creek society and culture.93 He wrote,

> a pan-Indian identity would slowly emerge in the nineteenth century, and race would eventually become an important factor of Native identity in the twentieth century, but this was not the case during the eighteenth and early nineteenth centuries. [The] Creeks … occasionally adopted various ethnic outsiders and embraced them as kin. They did not believe themselves to be, nor did they behave as if they were, a part of a biologically connected group called Indians.

Creeks neither understood nor used the language of blood quantum or hybridity … These biological or racial attributes simply did not determine Creek identities. Similarly, Creeks did not possess a singular or essentialist understanding of Creek culture. Instead they recognized that their boundaries existed in flux, with new peoples and technologies constantly entering their community.94

The problem, as Frank noted, was that “throughout the eighteenth century many

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93 Frank, 4.

94 Frank, 5-6.
European Americans … shared a belief that immutable differences separated humankind into several races.”

In a sense, the conflict between the Creeks and the Georgians was one of cultural identity as much as of incompatible notions of land tenure, or legal “fair play.” There does not appear to have been, from the Creek standpoint, any substantive difference between themselves and the Georgians. A Creek’s status as *este mvskoke*, a “fellow Creek,” was not something with which a Creek was born, but rather something he enjoyed by adherence to the rules of his society. To be sure, the Creeks understood a difference between *este mvskoke* and their “Indian countrymen,” non-natives who had been adopted into the community. But a member of the community was a member, regardless of his past.

It is perhaps facile to attribute this dispute solely to cultural differences in understanding of the meaning of land tenure and land transfer. There are simply too many questions involved in discerning the facts to be able to draw a black-and-white picture of who intended what, when. Were the two chiefs acting only on behalf of their own towns? If so, it would not be unreasonable for them to order the land in question off-limits to their own subjects. But if, as Secretary Knox framed the Creeks’s argument in his report to the president on 6 July 1789, “the lands ceded were the property of the whole nation,” it does not seem that the Americans would have any right to occupy the land in question without first having extinguished the claims of all of the former owners.

Nonetheless, the Georgians insisted upon the validity of the cessions. Even as the State of Georgia stood firm in asserting the rights of its citizens to the disputed lands,

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95 Frank, 6.

96 Knox to Washington, 6 July 1789, op. cit., 15.
voices were rising among Georgia’s neighbors in opposition. Arthur Campbell, a
Virginian who had established himself as a man of affairs in western North Carolina,
wrote to President Washington on 10 May 1789 that “Georgia might make some
concessions, and be more moderate in their speculations on Indian territory.”
Campbell, who had fought with Joseph Martin against the Cherokees in western Virginia
during the Revolutionary War, had no excess love for the Indians. In the same letter, he
wrote, regarding McGillivray, that “the insolence of the Indian half-breed, ought to be
checked, or rather that he may gradually be rendered a useless tool to the powers that
flatter him.”

Notwithstanding the erosion of support in neighboring districts, the Georgians
continued to hew to the line they had established two years before. The Georgia
Assembly, on 23 October 1787, considered the history of that state’s treaties with the
Creeks, referred to above. After rehearsing the provisions of the three treaties, the
Assembly’s committee reported that they “cannot forbear, here, to observe, that, during
the course of all these transactions, the communications were made in solemn, open, and
ancient form, and the articles of the treaties were mutually respected.”

On 26 October 1787, Congress instructed treaty commissioners Richard Winn,
(who had replaced Pickens as Superintendent of Indian Affairs), Georgia Governor
George Mathews, and Pickens that “several circumstances render[ ] it probable that
hostilities may have commenced, or are on the eve of commencing between … the State

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99 Georgia House of Assembly, minutes of session of 23 October 1787, quoted as enclosure D. No. 2 in
Knox to Washington, 6 July 1789, in Lowrie & Clarke, IV:23.
of Georgia and the Creek nation of Indians.”¹⁰⁰ The “utter denial, on the part of the Creeks, of the validity of the three treaties, stated to have been made by them with the State of Georgia”¹⁰¹ had precipitated open warfare between the Creeks and the Georgians. That war would continue through July 1789; as Secretary Knox reported to the president on 6 July, “hostilities still rage between the State of Georgia, and the Creek Indians.”¹⁰²

The commissioners’s instructions of 26 October 1787 ordered them to “so conduct the matter that the States may not conceive their legislative rights in any manner infringed,” and to bear in mind that “the present treaty having for its principal object the restoration of peace, no cession of land is to be demanded of the Indian tribes.”¹⁰³ As late as April 1789, Pickens and Henry Osborne, who appears to have replaced Winn as a commissioner, assured the Creeks that “we now tell you that we want no new grants; our object is to make a peace, and to unite us all under our great chief warrior and President.”¹⁰⁴ The assurances of Pickens and Osborne appear to have fallen on receptive ears; on 30 June, the commissioners wrote to Washington that “we are happy to inform your Excellency from good authority that the Creeks are very generally disposed for peace. We are well assured that all the Head men of that nation with upwards of two

¹⁰⁰ President Washington, “Instructions to the Commissioners for negotiating a treaty with the tribes of Indians in the Southern Department, for the purpose of establishing peace between the United States and the said tribes,” 26 October 1787, quoted as enclosure F in Knox to Washington, 6 July 1789, in Lowrie & Clarke, IV:26.

¹⁰¹ Knox to Washington, 6 July 1789, op. cit., 16.

¹⁰² Knox to Washington, 6 July 1789, op. cit., 16.

¹⁰³ “Instructions to the Commissioners …,” 26 October 1787, in Knox to Washington, 6 July 1789, in Lowrie & Clarke, IV:16.

¹⁰⁴ Andrew Pickens and Henry Osborne, “A talk, lately sent by the Commissioners of Indian affairs in the Southern Department, to the Creeks’ correspondent,” quoted as enclosure G in Knox to Washington, 6 July 1789, in Lowrie & Clarke, IV:31.
thousand Indians will attend the Treaty in September, and we have the fairest prospects of establishing a permanent peace with the Creeks on such terms as will be pleasing to the Indians, satisfactory to the State of Georgia, and honorable to the Union.”

The instructions not to infringe upon the “legislative rights” appears to have been a corollary result of the Hopewell treaty of 17 April 1786; on 7 July 1789, Secretary Knox reported to President Washington that “the State of North Carolina, by their agent, protested against the said treaty as infringing and violating the legislative rights of that State.” Not merely the state of North Carolina proved intransigent; on 4 October 1789, Governor Walton wrote to the United States commissioners, Benjamin Lincoln, Cyrus Griffin and David Humphreys, that regarding the Oconee (Augusta) and Galphinton treaties,

in the spring of 1783, the Cherokees, attended by a few Creeks, came down to Augusta, talked the matter over, avowed their claims to the lands in question; agreed to and signed a treaty; and, in the autumn of the same year, the Creeks, chiefly of the Lower towns, also came down; talked their matter over; avowed their claim; and agreed to and signed a treaty on their part, whereby the state obtained the relinquishment of the right, or claim of right, of both nations, to the lands therein described and bounded. These treaties were laid before the Legislature, with all that order of business and deliberation required by public and fair proceedings …

Furthermore, Walton asserted as his own eyewitness that “at neither [treaty negotiation] were there any men in arms, or the smallest coercion used; the conduct of the Indians was voluntary, and while, on their part, they were rendering satisfaction, they also received

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106 Knox to Washington, 7 July 1789, in Lowrie & Clarke, IV:38.

107 Governor George Walton to Benjamin Lincoln, Cyrus Griffin and David Humphreys, 4 October 1789, quoted in Knox to Washington, 31 December 1789, in Lowrie & Clarke, IV:76-77.
valuable considerations in presents.”

It was not, the Georgian asserted, “until a considerable time afterwards, that any umbrage was taken by the upper Creeks, when a new motive … appeared to have sprung up in the nation, which pretended, … an equal claim to the hunting grounds on the Oconee.” Thus the old arguments, from the Creeks that the cessions of land were invalid because they were offered only by the chiefs of a few towns that had attended the treaty parley, and from the Americans that the cessions were valid because incorporated in a treaty bargained for openly, where consideration changed hands, took another turn.

The historical record plainly does not contain the whole truth of whether the Creeks attended en masse. The “truth” that is in the record is not entirely unspun, or unshaded. With so many different agendas clashing at the remote end of an uncertain line of communication, sorting out the truth can be an exercise in frustration. Were the Indians present en masse, and McGillivray deliberately understated the native representation in order to give credibility to his claim that the land cessions were invalid because they were not agreed to by the whole Creek nation? Were there only a few, idly-curious Indians in attendance, and Walton overstated the figure to give credibility to his claim that the land cessions were valid, because given by the whole Creek nation? The answer to both questions, based solely on the reading of the various apologies, is a firm “Yes.” Absent a careful count of 225-year-old footprints left in a campsite that has been long abandoned, no one will ever be able to know who attended, or did not attend, the negotiations.

108 Walton to Lincoln et al., 4 October 1789, in Knox to Washington, 31 December 1789, in Lowrie & Clarke, IV:77.

109 Walton to Lincoln et al., 4 October 1789, in Knox to Washington, 31 December 1789, op. cit., 77.
That statement must be qualified as “pre-constitutional negotiations.” Things were different under the constitutional scheme; where individual states could not come to terms that would produce a general, more-or-less stable peace with the Indians on their borders, there was the strong Constitutional government, which could impose peace by fiat. The problem was getting the negotiations actually underway.

On 20 August 1789, the House passed “An act providing for the expenses which may attend negotiations or treaties with the Indian tribes, and the appointment of Commissioners for managing the same,” having agreed, the previous day, to a Senate amendment. The same day, having signed the act, President Washington nominated Benjamin Lincoln, one of his Revolutionary War generals, as one of the commissioners to treat with the Indians. The president cited urgency of securing Lincoln’s appointment, stating that “it will not be possible for the public to avail itself of his services … unless his appointment can be forwarded to him by the mail which will leave this place to-morrow morning.”

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appointed Cyrus Griffin and David Humphreys as the other members of the commission on 21 August 1789; the Senate approved their nominations the same day.¹¹²

Chapter 3

The Abortive 1789 Negotiations, and the Treaty of New York, 1790

In his “Instructions to the Commissioners for treating with the Southern Indians,” dated 29 August 1789, President Washington, via Secretary Knox, impressed upon Lincoln, Griffin and Humphreys the importance of clearing up the longstanding “they said/they said” dispute between the Indians and whites.

“The first great object of your mission is to negotiate and establish peace between the State of Georgia and the Creek nation,” the president commanded. “The whole nation must be fully represented, and solemnly acknowledged to be so by the Creeks themselves.”

There was to be no more of the Georgians saying, “The Indians were all there,” and the Indians saying, “No, we were not,” which is essentially the central mechanism by which the dispute between the two parties had been kept alive for the better part of fifteen years.

By way of “negotiat[ing] and establish[ing] peace,” Lincoln and his fellows were to form an inquest to determine whether the disputed treaties (Augusta, Galphinton and Shoulderbone) were legitimate or not. If so, the Creeks were to be advised that if they “should obstinately refuse to confirm the same to Georgia … that the arms of the Union

\[113\] George Washington, “Instructions to the Commissioners for treating with the Southern Indians,” 29 August 1789, quoted in Knox to Washington, 4 January 1790, in Lowrie & Clarke, IV:65.
Beatty, Michael, UMSL, 2009, p.66

will be called forth for the protection of Georgia.” If not, the commissioners were instructed to forbear “to urge or persuade the Creeks to a renewal or confirmation thereof.”

That appears to be a fairly even-handed approach to the matter; Lincoln, Griffin and Humphreys would determine which party was in the right, and act accordingly. It is interesting that the commissioners’s instructions were couched in terms of how they would deal with the Creeks. If the Creeks were in the wrong, they were to be told either to live up to the agreement, or face the wrath of the United States; if they were in the right, they should not be encouraged to accede to the Georgians’s demands, but there was no instruction that Lincoln and his fellows should counsel the Georgians to desist from their claims to the disputed land.

Moreover, the president noted that Georgia has proceeded on the principle that the cession stated to have been made at Augusta, in 1783, was fairly obtained .... Should, therefore, the result of your investigation be unfavorable to the claims of Georgia, it would be highly embarrassing to that State to relinquish the said lands to the Creeks. Hence, it will be an important accommodation to Georgia to obtain from the Creeks a regular conveyance of the said lands lying between the Ogechee and Oconee.

In other words, “don’t embarrass the Georgians.” A sign of the General Government’s desperation to have the troubles with the Creeks resolved may be found in the instruction that, if the 1783 and 1785 treaties were invalid, and the lands in question “have not been fairly purchased of the real proprietors by Georgia, it ought to be done. In case the Creeks, therefore, would be willing to make a proper conveyance for a given sum, you

114 Washington, “Instructions to the Commissioners for treating with the Southern Indians,” 29 August 1789, quoted in Knox to Washington, 4 January 1790, op. cit., 65.

115 “Instructions to the Commissioners,” 29 August 1789, in Knox to Washington, 4 January 1790, op. cit., 65.
will stipulate that the same shall be paid by Georgia at a certain period, or, in case of failure, by the United States.” 116 One way or another, the land was going to be bought, fairly and squarely, and removed as a bone of contention between Indians and the Americans, even if the United States had to buy it for itself. This probably would have led to disputes between the Federal government and the citizens of Georgia, as to whether or not the Georgians could continue to live on the land they had already settled under state grants.

As it turned out, the instructions were moot, as the commissioners failed (through no fault of their own) to negotiate the proposed treaty. Once again, the fine hand of McGillivray appears in the record. Although McGillivray’s motives are by no means clear, it is certain that he was not entirely at fault, nor the American commissioners entirely blameless, for the failure of the negotiation.

Scarcely had the ink dried on their instructions than the commissioners embarked from New York on 31 August 1789, and arrived in Savannah on 10 September. Office practice appears to have dominated the commission’s efforts for the next several days, as a flurry of correspondence went to Pickens and Osborne, respectively the superintendent of Indian Affairs and commissioner for the Southern Department. The first order of business was for the commissioners to report their presence in the territory; they did this on 11 September 1789. 117 The next day, the commissioners reported to Secretary Knox that “Mr. McGillivray was actually on his way to the place for holding the treaty” and

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116 “Instructions to the Commissioners,” 29 August 1789, in Knox to Washington, 4 January 1790, op. cit., 65.

117 Benjamin Lincoln, Cyrus Griffin and David Humphreys to Georgia Governor George Walton and to Superintendent of Indian Affairs Andrew Pickens and Commissioner for the Southern Department Henry Osborne, 11 September 1789, quoted as enclosure A. in Knox to Washington, 4 January 1790, op. cit., 68-69.
had been in the vicinity since 2 September. “The number of Indians who attend him, is said to be between three and four thousand.”

“From Savannah we transmitted friendly talks to the Cherokees, Chickasaws, and Choctaws,” the commissioners reported, including an acknowledgement of the “truce concluded with your nation [the Cherokees] by the commissioner of North Carolina” on 16 June. Similar messages expressing the desire for peace and confirmation of treaty rights and obligations went to the Chickasaws and Choctaws.

By 17 September, the commissioners were in Augusta, whence they reported their arrival to Governor Walton. The next day, the Georgia Executive Council, having considered the commissioners’s communications with the governor and examined their commission from the War Department, “ordered, that the said commissioners be assured, that every assistance in the power of the State shall be given, which may be necessary to give facility and effect to their negotiations with the Creek Indians.”

The General Government of the United States and the State of Georgia were both on board; the time for stubborn adherence to partisan interpretations of old treaties was past. The only party missing was the redoubtable McGillivray.

A day after arriving in Augusta, Lincoln and Humphreys pressed on toward Rock Landing, the designated venue for the negotiations; Cyrus Griffin was “unavoidably

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119 “A message to the Cherokee nation of Indians, from the commissioners plenipotentiary for restoring the establishing peace and amity between the United States of America and all the Indian nations situated within the limits of the said States, southward of the river Ohio,” n.d., quoted in Knox to Washington, 4 January 1790, op. cit., 69.


121 Georgia Executive Council, 18 September 1789, quoted in “Report of the Commissioners for treating with the Southern Indians,” op. cit., 71.
detained on the road,” and joined the party on the evening of 22 September. Upon arrival at Rock Landing on 20 September, Lincoln and Humphreys advised McGillivray of their presence; he responded the same day, asserting that “Alexander McGillivray, and the rest of the chiefs, are very glad to hear of the arrival of the honorable the commissioners of the United States of America. … A few principal chiefs intend to visit them this forenoon.”

“The Cussetah king, the Tallasee [sic] king, and the Hallowing king, attended the commissioners accordingly,” the commissioners reported.

Negotiations then proceeded in an apparently normal fashion for several days; on 23 September, “the day was employed by the commissioners in completing the draught of a treaty, and other communications to be laid before the great council of the nation.”

Then the fun began. The commissioners reported that “at the conference between General Lincoln and Mr. McGillivray, it was agreed that the Creeks should attend the commissioners the next day at 11 o’clock, to hear what they had to communicate. However, late in the same evening, it was understood that it would be a matter of convenience for the Indians to receive the talks on the west side of the Oconee,” a request to which the commissioners acceded. Accordingly, the next morning, they crossed the Oconee and participated in the “ceremony of black drink,” to which they had been invited, apparently as a sign of inclusion in the deliberative process characteristic of

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Creek society. The commissioners gave a talk, and presented the draft treaty for consideration by the chiefs.

The treaty as drafted was unremarkable; it began with an assertion of “perpetual peace and friendship between all the citizens of the United States of America, and all the towns, tribes, and individuals, of the Upper and Lower Creeks.” A boundary line between the Creeks and the State of Georgia, was described, and “the Supreme Executive of the United States solemnly guarantie[d] to the Creeks all their remaining territory, against all aggression or unjust usurpation whatever, and will support the said guarantee, if necessary, by a line of military posts.” United States law was invoked for the punishment of inter-racial crime, without regard to the race of either the alleged perpetrator or the alleged victim. Furthermore, Article 10 prescribed that “it is understood that the punishment of the innocent, under the idea of retaliation, is unjust, and shall never be practiced on either side.” Article 12 made the interesting provision that “The Creeks shall give notice to the citizens of the United States, of any designs which they may know, or suspect to be formed, in any neighboring tribe, or by any person whosoever, against the peace, free trade, and interest, of the United States,” but contained no reciprocal obligation for the United States to give the Creeks any warning of “any designs which they may know, or suspect to be formed, … by any person whosoever, against the peace, free trade, and interest,” of the Creek nation.

The next day, the commissioners received a note from McGillivray, stating that

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127 “Report of the Commissioners for treating with the Southern Indians,” op. cit., 73.

128 “Articles of peace and amity agreed upon between the President of the United States of America, in behalf of the said States, by the underwritten commissioners plenipotentiary, on the one part, and the undersigned kings, head-men, and warriors, of all the Creeks, in behalf of themselves and the Creek nation, on the other,” unsigned draft treaty quoted in “Report of the Commissioners for treating with the Southern Indians,” op. cit, 73-74.
the chiefs had been parleying late into the night, and were unhappy about the definition of the boundary line. The first sign of waffle was McGillivray’s observation that “it was my decision to let the matter stand as it was for the present – the hunting season being at hand. … [The chiefs] resolve to break up to depart; it would be proper to give some presents, that they may not complain of losing their time, &c. &c.”129 The commissioners responded that “we hope and trust that [the chiefs] will not separate without affording us [the satisfaction of knowing, in writing, the chiefs’s indispensable terms], since we are as well prepared for concluding a treaty now, as we shall be at any other time. It is by no means probable, that the United States will send another commission to them.”130 Such diplomatese certainly requires no translation. McGillivray apparently not only understood the commissioners plainly, but anticipated them. His response left the commissioners scratching their heads.

Their report, despite its deadpan language, nonetheless conveys a sense of their amazement at how the negotiations broke down. They wrote:

during this stage of the business, Mr. McGillivray solemnly promised that he would pass the Oconee, and have a full and free conference with the commissioners upon the subject of the negotiations; and not more than an hour before his abrupt departure, he repeated the promise to one of them, that he would state his objections to the draught of the treaty, either in conversation or writing, the same afternoon. Very soon after this, he sent a verbal message, that he was constrained to fall back four or five miles, for the purpose of obtaining better forage for his horses, and that he hoped that the commissioners would not misconstrue his intentions.131

In fact, McGillivray cast suspicion upon himself by the fact “that he had retreated to a greater distance,” and no amount of persuasion, from either Senator William Few, Jr. of

129 “Report of the Commissioners for treating with the Southern Indians, op. cit., 74.

130 “Report of the Commissioners for treating with the Southern Indians, op. cit., 74.

131 “Report of the Commissioners for treating with the Southern Indians, op. cit., 74.
Georgia, or Commissioner Pickens, “Colonel Saunders, of Georgia,” or even McGillivray’s fellow chief, the Hallowing king, could persuade McGillivray to return to the negotiating place.\textsuperscript{132} McGillivray asserted, in a letter to William Panton on 8 October 1789, that the negotiations had broken down over the Americans’s insistence on certain treaty provisions that would have impeached the Creeks’s pre-existing treaty obligations toward the Spanish. “To spare myself the mortification of a disagreeable interview,” McGillivray told Panton, “I decamped without the ceremony of taking leave.”\textsuperscript{133}

“In the mean time,” the commissioners later reported, “all the other kings and head-men, attending at the quarters of the commissioners, addressed them through the White Bird king,” who said, notably,

although nothing should be done at this time about the treaty, I hope that it may be done hereafter, and that, in the mean time, peace and quietness will be kept on both sides.

When we get home, all our nation will hear the talks; and they will be peaceable and quiet, for that is the wish of them all.

I have little more to say at present, but that we are not going off affronted, but in peace and friendship.\textsuperscript{134}

Affronted or not, the lesser Creek chiefs followed their paramount chief away from the treaty parley, and on 28 September, the commissioners reported to Secretary Knox their “mortification to inform you that the parties have separated without forming a treaty.”\textsuperscript{135}

In drafting their report, the commissioners stated that they were “decidedly of opinion,

\textsuperscript{132} “Report of the Commissioners for treating with the Southern Indians,” \textit{op. cit.}, 74.


\textsuperscript{134} “Report of the Commissioners for treating with the Southern Indians,” \textit{op. cit.}, 75.

\textsuperscript{135} “Report of the Commissioners for treating with the Southern Indians,” \textit{op. cit.}, 76.
that the failure of a treaty at this time with the Creek nation, can be attributed only to
their principal chief, Mr. Alexander McGillivray.” As proof, they cited “Mr
McGillivray’s own declarations: that, without obtaining a full equivalent for the
sacrifice, he would not renounce the close connexion which he had formed with the
Spanish Government in the hour of distress – a connexion honorable and lucrative to
himself, and advantageous to the Creek nation.¹³⁶

There is another reason, unstated by the
commissioners in their report, which may have
contributed to the failure of the negotiations on
the banks of the Oconee. That reason may have
taken the form of a cultural faux pas by the
commissioners, who demonstrated, perhaps
inadvertently, what the Creeks perceived as
contempt for the Indians’s deliberative process.
Lincoln, Humphreys and Griffin may have given
offense by their ability to hold their caffeine.

Andrew Frank wrote concerning the
ceremony of black drink that “the customs surrounding the black drink served to
minimize mistrust among Creeks and between Creeks and outsiders. Creeks drank this
heavily caffeinated tea before councils, … and [on] other occasions.”¹³⁷ Black drink was
brewed “from the leaves and stems of Yaupon holly (Ilex vomitoria Ait.),” according to

¹³⁶ “Report of the Commissioners for treating with the Southern Indians,” op. cit., 77-78.

¹³⁷ Frank, 22.
Charles Hudson asserted that three to six cups of “strong coffee” contains 0.5 to 1.0 grams of caffeine, and speculated that a cup of black drink would contain three to six times as much caffeine. The purgative effect of the caffeine in the tea, equivalent to as much as 36 cups of coffee, was meant to purify the drinker, purging him of any sort of weakness or distraction that would impair his ability to perform his duties, or abide by the social mores of his village. Frank noted that the Creeks “offered the tea to guests and expected that it would literally and symbolically cleanse the individual who drank it. Participants confirmed the cleansing aspect of the ritual by vomiting the tea and the contents of their stomachs.”

Vomiting appears to have been a reaction of those drinkers who had not become acclimated to the hyper-dose of caffeine. Hudson observed that “the puzzling thing about black drink is that it did not always induce vomiting. The Indians sometimes drank it for hours at a time as a social beverage, without vomiting. European traders and government officials who had dealings with the Indians in the eighteenth century drank it in this fashion in company with the Indians, and they did not vomit.” There are two important points to note from Hudson’s observation, both relating to the social aspect of drinking of black drink. First, Frank leaves unsaid in this passage whether black drink as a social beverage was of the same strength as black drink used in rituals. The question thus arises, was “ritual” black drink diluted to produce the social beverage? More

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139 Charles M. Hudson, The Southeastern Indians (Knoxville, TN: The University of Tennessee Press, 1976), 228.

140 Frank, 22-3.

141 Hudson, Black Drink, 3-4.
relevant to the present argument is the observation that European traders did not vomit. Were they drinking a weaker beverage, which was not burdened with ritual implications? The fact that non-Creeks were able, in a social setting, to drink black drink without vomiting suggests a weaker caffeine load than the beverage used ritually. But Lincoln, Humphreys and Griffin were engaged in the *ritual* drinking of black drink.

Vomiting appears to have been the expected response to the ingestion of such a large dose of caffeine in such a short time period. Frank cited the case of Moravian Christian missionaries who came into Creek territory sometime before 1825, and participated in the ceremony of black drink without vomiting. “Drinking the tea was not enough to become welcome in the community,” Frank wrote. “The missionaries apparently alienated the Creeks by keeping their drink down. They remained polluted outsiders, and perhaps as a result the missionaries soon found themselves unwelcome in the community.” Frank’s summation is concise: “For outsiders to be welcome in Creek communities, the ritual needed to be complete.”

Clues to the relationship between the black drink ceremony of 24 September 1789 and the ultimate failure of the 1789 negotiations are found in what the commissioners did not write. They reported that “at the time appointed, the commissioners attended the ceremony of *black drink*, and were conducted to the great square of the encampment … The commissioners then proceeded to business …”[Italics in original.] Since Lincoln, Humphreys and Griffin were drinking the ritual form of the beverage, they would be expected to complete the ritual by vomiting the contents of their stomachs, thus purifying themselves, before entering into substantive negotiations. There is no mention of having

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142 Frank, 23.

143 “Report of the Commissioners for treating with the Southern Indians,” *op. cit.*, 73.
been indisposed by the black drink, much less having vomited. Humphreys, Lincoln and Griffin all “kept their drink down.” It is probable that their failure to complete the Creeks’s purgation ritual was a significant factor in the Indians’s reluctance to come definitely to terms at Oconee in the September 1789.

On the other hand, there was a certain measure of disdain on McGillivray’s part toward Humphreys, who took the lead in giving formal talks to the Indians. It is not clear from the commissioners’s report which of the three Americans did most of the talking in the dialogue that constituted the substantive negotiations. Lincoln, Humphreys and Griffin may have shared the duty; Lincoln may have been the lead negotiator on the American side, since he had been the higher-ranking officer during the Revolutionary War. McGillivray’s antipathy toward Humphreys shows in the former’s letter to William Panton, written on 8 May 1790 from McGillivray’s home base at Little Talassie.

Discussing the appointment of Willett as Washington’s envoy, the paramount chief wrote, “his being Commissioned I find is in Consequence of that puppy Humphries [sic] report to the president, it being a very unfavorable one and asserted that I would not treat on any terms whatever ….”

The transcript of the commissioners’s report, in the so-called American State Papers series, does not indicate which of the commissioners actually drafted the report. It is difficult to determine how McGillivray came to the conclusion that it was Humphreys who had maligned him. One can only speculate that, during the negotiations, Humphreys had in some way given offense to McGillivray, or the two men had offended each other, and McGillivray’s opinion was poisoned thereby. McGillivray’s use of the term “puppy” to describe Humphreys, who was only about eighteen months his junior, is interesting.

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It is clear that the *faux pas* of the commissioners’s failure, or refusal, to vomit upon drinking the black drink spoiled the ceremony on 24 September 1789. This presents an intriguing insight into the root causes behind the failure of the Rock Landing parley. McGillivray’s claim to William Panton, in the 8 October 1789 letter, that the treaty that the Americans had proposed the previous month was objectionable because it would have required the Creeks to abjure a pre-existing treaty has a ring of sincerity to it. Nonetheless, it sounds false; such an unscrupulous character as McGillivray, cast in the role of the righteous principal adhering to agreements signed, sealed and delivered, has neither the ring of sincerity nor the appearance of truthfulness.

The principal stumbling block to the conclusion of the treaty seems to have been McGillivray’s determination to look out for his own financial interests. McGillivray apparently preferred profits to peace, although his unwillingness to treat with the Americans in the fall of 1789 on his home soil changed, in less than a year, to a willingness to travel to New York for further negotiations. The bait that attracted him to the American capital was nothing less than a “full equivalent for the sacrifice” that he made by abandoning the Spanish.

The chain of events by which the leaders of the Creek nation, including Alexander McGillivray, were enticed to New York to conclude a treaty is not immediately clear from Congressional records. The report of the commissioners, described above, does not refer to an invitation having been sent after the withdrawing McGillivray. Nonetheless, by August 1790, with the hunting season again impending, at least informal negotiations were well advanced in the capital of the United States.

It is interesting to note that simultaneously with the Federal government’s
unofficial, but no less earnest negotiations with the Creek chieftains on a definitive
solution to the border dispute, Congress undertook to establish a legal framework to
regularize land transactions in general between the Indian nations beyond the frontier and
the citizens of the United States. On 22 July 1790, President Washington signed the first
trade and intercourse act with the Indian nations. Prucha observed that the series of trade
and intercourse acts, “which were originally designed to implement the treaties [that
were, from time to time, made with the Indians] and enforce them against obstreperous
whites, gradually came to embody the basic features of federal Indian policy.”¹⁴⁵ The
relevant section of the Act provided that land sales by Indians, either individually or as
“any nation or tribe of Indians within the United States,” to either individual citizens or to
any State, were only valid if “the same shall be made and duly executed at some public
treaty, held under the authority of the United States.”¹⁴⁶ Federal exasperation with the
sullen contretemps on the Georgia frontier appears to have driven Congress to ensure
that, in the future, no such endless dispute could take place, by consolidating the power to
negotiate land transfers with the Indians in the General Government’s hands.

Negotiations with the Creeks proceeded with speed and smoothness. In a rare
departure from his usual scrupulous care to keep Congress informed of what was
transpiring, Washington withheld information from the legislature that he ordinarily
would have disclosed. Indeed, it was not until 4 August 1790 that the president advised
the Senate that “the adjustment of the terms of a treaty is far advanced, between the

¹⁴⁵ Documents of United States Indian Policy, ed. Francis Paul Prucha (Lincoln, NE: University of Nebraska Press, 1975), 14.

United States and the chiefs of the Creek Indians, now in this city, in behalf of themselves and the whole Creek nation.”

These informal negotiations had been conducted by Colonel Marinus Willett, a New York veteran of the French and Indian War and the Revolution, who had been “sheriff of the city and county of New York from 1784 to 1788.” Willett’s assignment as envoy to the Creeks was official, but informal: Washington recorded in his diary on Wednesday, 10 March 1790, that he “had a long conversation with Colo. Willet [sic], who was engaged to go as a private Agent, but for public purposes, to Mr. McGillivray.” Furthermore, Willett’s name does not appear in either the Senate Journal or the Senate Executive Journal for the Second Session of the First Congress, which met during that period. Washington signed Willett’s passport “and other Papers necessary for his setting out on this business” two days later. Washington’s employment of Willett, in Willett’s private capacity, on official business is a mark of the prudent coolness with which Washington approached relations with the Creeks. Willett, according to Jackson and Twohig, was “an Antifederalist New York merchant.”

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148 Abbot, W.W. and Dorothy Twohig, footnote 2 to Leonard Bleecker, letter to George Washington, 4 June 1789, in The Papers of George Washington, op. cit., 2:442. It appears Willett’s appointment was informal, as his name does not appear in either the Senate Journal, nor the Senate Executive Journal, for the Second Session of the First Congress, which met during the relevant period.


151 Jackson and Twohig, footnote to the diary entry referred to in Note 142.
Washington had discussed with Secretary Knox, on 10 January 1790, “the policy and advantages … of bringing Mr. Alexr. McGillivray Chief of the Creek Nation here. I requested that a plan might be reported by which Governm. might not appear to be the Agent in it, or suffer in its dignity if the attempt to get him here should not succeed.”¹⁵² More than peace on the southwestern border was at stake as the United States became more deeply involved in the contretemps between Georgia and the Creeks: The credibility of the new union was the real issue in trying to resolve the Georgians’s dispute with their Indian neighbors. The ability of the United States to deliver the benefits that supposedly would accrue from the strong Constitutional scheme of government was the only source of influence that Federal envoys, both formal (Humphreys, Lincoln and Griffin) or informal (Willett) had. If the United States blundered into another treaty parley like the abortive negotiations the previous fall, and failed a second time to obtain the McGillivray’s commitment to a binding agreement, then the influence of the General Government, both within its own borders or beyond, would be eliminated.

The process of bringing the Creek chiefs to the negotiating table in New York got assistance from the Spanish, according to Ellis. “[McGillivray] was persuaded to attend

the conference with the Americans … by Esteban Miró, the Spanish governor in New Orleans. Miró obviously did not want McGillivray to sign a treaty with the Americans, but he feared that an unwillingness to negotiate would lead to a full-scale war on the southern frontier.” ¹⁵³ This was another example of Bailey’s maxim that the United States benefited from the hardships of European colonial administration. Spanish insecurity in Louisiana and West Florida required that Miró’s client, McGillivray, at least make a show of accommodating the Americans.

Unfortunately, Spanish encouragement of the Creek chiefs’s attendance at the New York parley was not enough to ensure the success of the negotiation. Washington had to ensure that the Creeks (that is, McGillivray) were sincerely willing to conclude an agreement, before making the negotiations public.

A major consideration affecting the viability of U.S.-Creek relations was the “present arrangements of the trade with the Creeks,” which “is almost exclusively in the hands of a company of British merchants, who, by agreement, make their importations of goods from England, into the Spanish ports.” Trade was a means toward the “political management” of the Creeks; the president warned that “the United States cannot possess any security for the performance of treaties with the Creeks, while their trade is liable to be interrupted or withheld, at the caprice of two foreign Powers.” ¹⁵⁴ Washington did not need to add that those “two foreign Powers,” the United Kingdom and the Most Catholic Kingdom of Spain, were hostile to United States commercial interests, and jealous of the prospect of American expansion into the periphery of Spain’s crumbling empire in North America.

¹⁵³ Ellis, American Creation, 145.
¹⁵⁴ Washington to Senate, 4 August 1790, in Lowrie & Clarke, IV:80.
The president, observing the necessity of “form[ing] new channels for the commerce of the Creeks through the United States,” warned of the propriety of taking a measured approach. “[P]resent arrangements cannot be suddenly broken, without the greatest violation of faith and morals,” Washington wrote. To pave the way to weaning the Creeks away from their trade with British merchants, the president proposed to the Senate a secret article to be included in the treaty then under negotiation.\textsuperscript{155}

That article asserted that “The commerce necessary for the Creek nation shall be carried on through the ports, and by the citizens of the United States,” provided that “effectual arrangements shall be made … on or before the first day of August, one thousand seven hundred and ninety-two.”\textsuperscript{156} (Italics mine.) This language effectively threw the responsibility for the success or failure of the diplomatic-economic gambit into the lap of Congress, which would be required to pass the enabling legislation in fairly short order. The use of the mandatory word “shall” assumed that that provision would be acceptable to the Creeks, and that they would be willing to make such a concession, abandoning their established relationships with British traders to take up with the \textit{arriviste} Americans.

As noted above, McGillivray was determined, at least on paper, to stick with the friends who had stuck with him. Absent a carrot (some sort of reward, or flattery to McGillivray’s vanity) to accompany the stick (mandatory trade with U.S. citizens, to the exclusion of non-U.S. citizens), that provision could have been the making or breaking of the proposed treaty. The single word “shall” thus became the fulcrum upon which the whole weight of the proposed treaty rested.

\textsuperscript{155} Washington to Senate, 4 August 1790, \textit{op. cit.}, 80.

\textsuperscript{156} Washington to Senate, 4 August 1790, \textit{op. cit.}, 80.
Two days after Washington’s proposal of the secret article, informal negotiations with the Creeks had advanced to the point that, as the president reported to the Senate, “It therefore becomes necessary that a proper person be appointed and authorized to treat with their chiefs, and to conclude a treaty with them. For this purpose, I nominate to you Henry Knox.”\textsuperscript{157} The Senate responded with alacrity, suspending their own rule regarding nominations, “so far as to take into consideration the above recited message at this time.”\textsuperscript{158} Knox’s confirmation was apparently a formality; the Senate Executive Journal does not report any debate on the matter.

Writing of “what Knox and Washington envisioned as the outcome of the new policy [as] a series of Indian enclaves or homelands east of the Mississippi whose political and geographic integrity would be protected by federal law,” Ellis posed the question facing the Washington Administration as “Would it work? The only way to find out was to try it out, the only question being what tribe or confederation of tribes to select as the ideal test case. Knox, in fact, had already made that decision.”\textsuperscript{159} This appears to make the insertion of the Federal government into the Creek/Georgia dispute a convenient pretext for implementing the new policy. In fact, Knox did not spontaneously seize upon the Creeks as a test case. He had been receiving reports, from Georgia officials as well as the United States’s own Indian negotiators, to say nothing of the Indians themselves, for three years before the parley that lead to the Treaty of New York. Ellis admitted as much, when he wrote, “Knox had spent the preceding three years as de facto secretary of war under the Articles and was therefore at the center of the wind

\textsuperscript{157} Washington to Senate, 6 August 1790, in Lowrie & Clarke, IV:81.

\textsuperscript{158} Senate Executive Journal, Friday, 6 August 1790, \textit{op. cit.}, 57.

\textsuperscript{159} Ellis, \textit{American Creation}, 140.
tunnel for all correspondence on Indian affairs. As such, he was in a position to read the
most plaintive please from various Indian chiefs at the receiving end of American
policy.”\textsuperscript{160} Indeed, Ellis’s assertion that “in July of 1789 [Knox] began sending
Washington extensive reports on the Creek Nation …” misses the point that the secretary
of war had made the southwestern Indians the subject of official concern since the
beginning of the year.\textsuperscript{161}

The day after nominating Knox, Washington submitted to the Senate “a treaty
between the United States and the chiefs of the Creek nation now in this city.” The
president expressed his expectation that the treaty “will … in its consequences, be the
means of firmly attaching the Creeks and the neighboring tribes to the interests of the
United States.”\textsuperscript{162} First, the original bone of contention, the validity of the land cessions
claimed by Georgia in the 1783 and 1785 treaties, presented itself as a potential threat to
the successful consummation of the negotiation. The President wrote that

\begin{quote}
it is to be hoped, that [the present treaty] will afford solid grounds of satisfaction
to the State of Georgia, as it contains a regular, full, and definitive relinquishment,
on the part of the Creek nation, of the Oconee land, in the utmost extent in which
it has been claimed by that State, and thus extinguishes the principal cause of
those hostilities, from which it has, more than once, experienced such severe
calamities.

But, although the most valuable of the disputed land is included, yet there is a
certain claim of Georgia, arising out of the [Galphinton] treaty … which tract of
land the Creeks \textit{in this city} absolutely refuse to yield.\textsuperscript{163} (Italics mine.)
\end{quote}

Again, the specter of endless dispute over the validity of a Creek land cession arose.

There is nothing in the record to suggest that all of the Creek chiefs attended the

\begin{footnotesize}
\textsuperscript{160} Ellis, \textit{American Creation}, 136-7.
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\textsuperscript{161} Ellis, \textit{American Creation}, 140.
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\textsuperscript{162} Washington to Senate, 7 August 1790, in Lowrie & Clarke, IV:81.
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\textsuperscript{163} Washington to Senate, 7 August 1790, \textit{op. cit.}, 81.
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negotiation in New York City; otherwise, who would have been left to manage the
nation’s affairs in absence of the emissaries? On the other hand, there is nothing in the
record to prove that any of the Creek chiefs did not attend the New York parley.

If, in New York in the summer of 1790, a few of the chiefs “absolutely refuse[d]
to yield” the territory, and their wishes were respected by the Americans, while other
chiefs left at home were willing to cede the land in the interest of bringing endemic
warfare to an end, was this not a fissure opened up within the Creek hierarchy, which
could be the source of the tribe’s undoing? Furthermore, would not the disparate
attitudes toward the lands in question provide fertile soil for the continuance of the
endless cycle of haggling and bloodshed that had already marred Indian/white relations
for the better part of a decade?

In reality, it appears that the approval of only one Creek chieftain, the paramount
chief McGillivray, was necessary to eliminate all barriers to the swift conclusion of a
treaty. McGillivray was not one to be brought easily to compromise; his antipathy
toward the Georgians was too deep-seated, and too intense, for entreaty and appeals to
peace to be successful. Washington knew this, and McGillivray knew that Washington
knew his value. As Ellis put it, “the man leading the Creek delegation into New York
City … had been avidly pursued by Washington as a potential ally.”

Despite his high-flung rhetoric, as referred to above, and his willingness to fling
the tropes of American iconography back in the Americans’s faces, McGillivray appears,
at heart, to have been after only one goal: the advancement of McGillivray in the eyes of
men. Barnes wrote that “McGillivray’s motives were certainly not completely unselfish;
hopes for compensation for the confiscation of his father’s estates, for example, were an

important reason for meeting Washington.”

It appears from Barnes’s discussion that McGillivray was capable of being both selfish, as regards his familial honor (or at least the family wealth) and altruistic, when standing up for the rights of his people generally.

Barnes recorded that

in 1790, speculators from the Yazoo Company approached McGillivray, asking him to associate himself with the project. With McGillivray’s guarantee of safety from Indian attack, their land would be vastly more attractive and therefore more profitable for potential investors. McGillivray refused their offer, determined to resist any attempts to settle whites on land claimed by southern Indian Nations. This rejection of a potentially lucrative arrangement goes some way to refuting the charge that McGillivray was motivated only by self-interest.

To the question of whether McGillivray was a selfish, egomaniacl narcissist who only understood the need to keep an eye out for the main chance, or whether he was a selfless defender of his people, the answer must again be a firm “Yes.” Even if McGillivray had achieved all of his financial goals in New York, receiving both reparation for the property from which his father had been despoiled during the Revolutionary War and a bribe to ensure his cooperation with future American expansion, it is doubtful whether he would have been converted a sincere friend of the United States. The hate and the hurt that had been accumulating in McGillivray’s heart for so many years had, by the summer of 1790, become too deeply ingrained into his outlook on the world to be erased with a little gold, whether in the form of coins, or uniform braid.

It was not only anger over past slights that clouded his judgment about the Americans and their strength and motives relative to the Creek Nation. Although a young man, born in 1758 or 1759, McGillivray was, by 1790, in poor health. Ellis wrote

165 Barnes, 117.

that the 30-year-old paramount chief of the Creeks “suffered from migraine headaches and acute rheumatism that often incapacitated him for weeks at a time. He also labored under several self-inflicted diseases, including chronic alcoholism and syphilis sufficiently severe that his fingernails kept falling out.”\textsuperscript{167} McGillivray’s alcoholism played at least a contributing role in his dealings with the United States. In another analysis of McGillivray’s performance in New York, Ellis wrote, “if some of the insinuations in the New York press can be believed, McGillivray was blissfully oblivious to burdensome knowledge of any sort, because he was drinking heavily throughout the conference.”\textsuperscript{168} One could argue that Creeks were in as faulty, or at least as compromised, a position in New York in 1790, as they had been at Augusta in 1783, or at Galphin in 1785. Before, the default of leadership had consisted of an inadequate number of chiefs attending the treaty parley with the Georgians. By 1790, with all of the village chiefs in attendance in New York, the Creek delegation was functionally undermanned by the incapacity of the paramount chief.

Although McGillivray drank heavily, he was “sufficiently sober … to assure that a confidential segment of the treaty … made him a brigadier general in the American army with an annual salary of $1,200.”\textsuperscript{169} Not satisfied with putting himself up for sale to the Americans, McGillivray attempted to excite a bidding war between the United States and Spain. “Supremely confident and devious to the end,” Ellis wrote, “[McGillivray] hedged his bet on Washington’s promise of protection by reopening negotiations with the Spanish, whom he invited to make him an offer (i.e., bribe) that

\textsuperscript{167} Ellis, \textit{American Creation}, 143.

\textsuperscript{168} Ellis, “The McGillivray Moment,” \textit{op. cit.} 60.

\textsuperscript{169} Ellis, “The McGillivray Moment,” \textit{op. cit.}, 60.
topped his American commission as a brigadier general.”\textsuperscript{170} If in elevating himself, McGillivray could bring peace and stability and prosperity to his people, so much the better; but the essential criterion was that McGillivray should be rendered stable and prosperous.

By granting the Creeks what amounted to “most-favored-nation” status, Washington opened the door for McGillivray to take control of the Creek nation’s import and export trade into his own hands, thus enriching himself. The right of the Creeks generally (not specifically McGillivray) to import and export goods without payment of American duties was specifically limited to American ports by the secret article that Washington proposed on 4 August 1790, and which the Senate the same day approved for inclusion in the draft treaty.

There does not appear to be any reference in the Senate records to the president having proposed for Senate pre-approval a plan to confer a generalship on McGillivray. Given Washington’s rectitude in consulting the Senate before acting, especially where Senate approval of the act would be mandatory for the executive act’s validity, it is difficult to imagine that the president would not have floated the trial balloon in front of the Senate to get some sense of what the upper house’s attitude would be toward using an officership of the United States as either a bargaining tool, or as a bribe in the process of bringing peace to the southwestern frontier. Furthermore, even if Washington (or Knox, at Washington’s instigation, or with his approval) \textit{had} promised McGillivray a general’s commission, there is no sign in the Senate’s records, as late as the end of 1792, that such a commission ever came before the Senate for consideration.

The treaty that President Washington submitted to the Senate on Saturday, 7

\textsuperscript{170} Ellis, “The McGillivray Moment,” \textit{op. cit.}, 64.
August 1790, appeared, by its plain terms, to effect a solution to the smoldering border dispute. Concise almost to the point of brevity, the treaty managed to address, publicly or in secret, every issue that had plagued Indian/white relations in Georgia since the much-maligned treaties of Augusta and Galphinton. “Perpetual peace and friendship” was pledged between the United States and “all the individuals, towns, and tribes, of the Upper, Middle, and Lower Creeks and Seminoles, composing the Creek nation of Indians.” Furthermore, the Creeks “acknowledge[d] themselves, and the said parts of the Creek nation, to be under the protection of the United States of America, and of no other sovereign whosoever, …” and that there would be no more treaty-making between the Creeks and any state, or individual.\footnote{\textit{A Treaty of peace and friendship, made and concluded between the President of the United States of America, on the part and behalf of the said States, and the undersigned kings, chiefs, and warriors, of the Creek nation of Indians, on the part and behalf of the said nation.” Quoted in Washington to Senate, 7 August 1790, in Lowrie & Clarke, IV:81.}

The issue of American prisoners held hostage in Indian lands, a feature of Arthur St. Clair’s treaties with the nations northwest of the Ohio, reappears in the Treaty of New York. Article Three provided that “The Creek nation shall deliver, as soon as practicable, … all citizens of the United States, white inhabitants or negroes, who are now prisoners in any part of the said nation” by 1 June 1791. If the prisoners were not delivered by then, “the Governor of Georgia may empower three persons to repair to the said nation, in order to claim and receive such prisoners and negroes.”\footnote{\textit{A Treaty of peace and friendship …“ in Washington to Senate, 7 August 1790, \textit{op. cit.}, IV:81.}

Having dealt with the issue of repatriation of American citizens (with a singular infelicitous choice of words that could arguably have included “negroes” under the heading of “citizens”), the treaty moved to the heart of the matter that had riven relations
between the Creeks and Georgia. The boundary line between the two nations was fixed in exquisite detail. The treaty specified that “in order to preclude forever all disputes relatively to the head or source of the main south branch of the river Oconee, at the place where it shall be intersected by the [boundary] line aforesaid, from the Currahee mountain, the same shall be ascertained by an able surveyor, on the part of the United States, who shall be assisted by three old citizens of Georgia, who may be appointed by the governor … and three old Creek chiefs, to be appointed by the said nation.” This army was to meet at Rock Landing, site of the aborted negotiations of 1789, in October 1791. It would then “proceed to ascertain the said head or source of the main south branch of the said river, at the place where it shall be intersected by the line aforesaid,” which place was to be “rendered distinct and well known … marked by a line of felled trees at least twenty feet wide, and the trees chopped on each side,” from the mountain to the head of the river, and on both sides of the river for twenty miles, “or as much further as may be necessary to mark distinctly the said boundary.”

Having established a mechanism for determining and adequately marking the boundary between Indian and American land, the United States undertook to deliver consideration for the land the Creeks were expected to cede by “caus[ing] certain valuable Indian goods, now in the State of Georgia, to be delivered to the said Creek nation; and the said United States will also cause the sum of one thousand and five hundred dollars to be paid annually to the said Creek nation.”

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173 See Appendix 1, p. 124.
174 “Treaty of peace and friendship …” in Washington to Senate, 7 August 1790, op. cit., 82.
175 “Treaty of peace and friendship …” in Washington to Senate, 7 August 1790, op. cit., 82.
176 “Treaty of peace and friendship …” in Washington to Senate, 7 August 1790, op. cit., 82.
was to find resolution in an early and primitive form of installment-plan purchase, although no mortgage was given for the real estate that the State of Georgia was to acquire. Instead of a lump-sum payment, the United States undertook to pay the Creeks an annuity, for an unspecified period. In return, “the undersigned kings, chiefs, and warriors, do hereby, for themselves and the whole Creek nation, their heirs, and descendants, for the considerations above-mentioned, release, quit claim, relinquish, and cede, all the land to the northward and eastward of the boundary herein described.”

This scrivener’s field day gave the United States what President Washington had instructed commissioners Lincoln, Griffin and Humphreys to acquire as the goal of the 1789 parley at Rock Landing: a “regular conveyance” of the disputed land, which the Georgia negotiators should have ensured they got at Augusta in 1783.

Finally, in the Treaty of New York, all of the elements of a successful real estate transaction were present: adequate consideration, consent of the whole nation, and no less than four specific synonyms indicating that the Indians intended (at least, according to white man’s language) to give up their claim to their territory. The only thing missing was the ritual acknowledgment by the Creeks of receipt and adequacy of the consideration, but that is a lawyer’s quibble. The signatures of twenty-four chiefs, including McGillivray (or their respective marks; the text, reduced to type, does not specify how they signed) were on a piece of paper that specifically renounced the claim of the Creeks to the land that forms approximately half of the modern state of Georgia, and parts of Alabama and Florida. A foundation for peace was at hand.

Almost instantly it dissolved. Ellis’s eulogy over the Treaty of New York is brutally concise. He wrote, “The Treaty … began to unravel even before the echo of the

177 “Treaty of peace and friendship …” in Washington to Senate, 7 August 1790, op. cit., IV:82.
Indians’ song had died out.”178 Article Four of the treaty provided for defining the boundary and cession of the land north and east thereof. Article Five promptly laid the foundation for the intractable warfare that would plague Indian/white relations for most of the next thirty years, until the forcible removal of the Indians under the orders of President Andrew Jackson. “The United States solemnly guaranty to the Creek nation, all their lands within the limits of the United States, to the westward and southward of the boundary described by the preceding article.”179 In light of American expansionism, which was the root and first flower of the doctrine of Manifest Destiny, the United States’s guarantee of land within its own borders was at best a hollow promise, which the United States itself would soon violate.

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Chapter 4

The Washington Administration and the “Empire of Liberty”

The vesting of authority “implement a coherent national policy toward the Indian tribes east of the Mississippi,” according to Ellis, “effectively placed control of policy in the hands of three people: President George Washington, Secretary of State Thomas Jefferson, and Secretary of War Henry Knox.”\(^{180}\) Of the three, only Washington and Knox took up their duties in the spring of 1789. Jefferson was not even appointed Secretary of State until September 1789, and did not take up his duties until March 1790, upon his return to the United States from France.\(^{181}\) The central intellectual figure in the formation of the Federal government’s Indian policy during the first year of Washington’s presidency was Secretary Knox, who had established himself during the Revolutionary War as Washington’s tactical and strategic amanuensis. During the Revolution, Ellis observed, Knox “became, next to Nathanael Greene, [Washington’s] most trusted lieutenant.”\(^{182}\) “Throughout the War for Independence,” Ellis wrote, “Washington and Knox had engaged in countless conversations …, gauging the prospects of military action against the British army in multiple contexts, always balancing the strategic stakes against the limited resources of the Continental Army. On the basis of this truly searing experience, both men had learned to think together in a thoroughly

\(^{180}\) Ellis, *American Creation*, 128.


\(^{182}\) Ellis, *American Creation*, 137.
realistic fashion.” The absence of a chief diplomat in the spring and summer of 1789, combined with Knox’s experience as head administrator of military affairs during the Confederation period, made Knox the obvious choice to formulate United States policy toward the Indians. Ellis noted that “since Knox had essentially been doing the job [as chief policymaker vis-à-vis the Indians] for the past three years …, had all the relevant information at his fingertips, and in fact was the primary advocate for a basic change in American policy, Jefferson’s absence made little difference.” Based on Knox’s established reputation as arguably Washington’s most trusted counselor, the advice that the Secretary of War gave would have a profound influence on the policy that the Federal authorities actually implemented.

Secretary Knox’s report of 15 June 1789, informed by Brigadier General Josiah Harmar, commanding U.S. troops on the frontier, referred to “several murders [that] have been lately committed on the inhabitants, by small parties of Indians … Some of the said murders having been perpetrated on the South side of the Ohio, the inhabitants on the waters of that river are exceedingly alarmed.” It is significant that Knox hastened to note that “The injuries and murders have been so reciprocal, that it would be a point of critical investigation to know on which side they have been the greatest.” This is consonant with Arthur St. Clair’s report to President Washington of 14 September 1789, when he asserted that “it is not to be expected … that the Kentucky people will, or can, submit patiently to the cruelties and depredations of those savages; they are in the habits

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183 Ellis, American Creation, 148.

184 Ellis, American Creation, 139.


of retaliation, perhaps without attending precisely to the nations from which the injuries are received."\textsuperscript{187} Knox parroted St. Clair’s observation in his own report to Washington on 4 January 1790, stating “that the people of Kentucky are entitled to be defended, there can be no doubt.”\textsuperscript{188} Clearly, the white settlers on the frontier were not content merely to sit and wait for assistance and vengeance from the General Government; but by taking matters into their own hands, they appear to have created new difficulties for the central administration, as well as exacerbating old sources of conflict.

Knox’s report of 15 June 1789 is significant for a number of phrases that the secretary used in framing his analysis, argument and recommendations as to government policy. As Ellis put it, “Knox concurred with Washington that a profound moral issue sat squarely in the middle” of the United States government’s deliberations over the question of how to deal with the Indian nations who already owned and occupied the land, and the whites who wanted that same land.\textsuperscript{189} The situation, which Ellis rightly called a “dilemma,”\textsuperscript{190} required the Washington Administration to satisfy the whites without either trampling on the Indians’s rights, or provoking a “hot” war that could consume the fragile Union. Knox expressed the moral aspect of the government’s dilemma when he wrote, “the Indians, being the prior occupants, possess the right of the soil. The time has arrived when it is highly expedient that a liberal system of justice should be adopted for the various Indian tribes within the limits of the United States. … The principle of the Indian right to the lands they possess being thus conceded [in the various treaties

\textsuperscript{187} Arthur St. Clair to George Washington, 14 September 1789, in Lowrie & Clarke, IV:58.

\textsuperscript{188} Knox to Washington, 4 January 1790, in Lowrie & Clarke, IV:60.

\textsuperscript{189} Ellis, 54.

\textsuperscript{190} Ellis, 54.
concluded at Fort Harmar, in Ohio, regarding which see below], the dignity and interest of the nation will be advanced by making it the basis of future administration of justice towards the Indian tribes.”

Furthermore, on 4 January 1790, Knox asserted “that the Indians possess the natural rights of man, and that they ought not wantonly to be divested thereof, cannot be well denied.”

This is not the sort of language one expects from a political regime contemplating genocide. Rather, it is the language of a magistracy existing in a politically, militarily and economically parlous state, cognizant of its weakness and plainly aware of its need to cultivate allies, or at least good will, on its doorstep. Less than a decade after achieving independence, the United States was in no position to indulge in racial, or economic imperialism.

Barely three weeks after reporting on the possibility of sending Federal troops against the Wabash, and rejecting the idea as prohibitively expensive, even if politically feasible, Knox turned his attention back toward the Creeks, observing that “the critical situation of affairs between the State of Georgia and the Creek nation, requires a more particular consideration.” It was not merely the Creeks who absorbed the Secretary of War’s attention; indeed, “it will appear that the interest of all the Indian nations south of the Ohio, as far as the same may relate to the whites, is so blended together as to render the circumstance highly probable, that, in case of a war, they may make it one common cause.”

Thus, the United States could find itself facing on the field of battle not merely the Creeks, but the Cherokees, Seminoles and others, including the Spanish, whose

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192 Knox to Washington, 4 January 1790, in Lowrie & Clarke, IV:60.

193 Knox to Washington, 7 July 1789, in Lowrie & Clarke, IV:52.
“jealousy that Power entertains of the extension of the United States, would lead them into considerable expense to build up, if possible, an impassable barrier. They will, therefore, endeavor to form and cement such an union of the Southern Indians.”\textsuperscript{194} The Spanish threat was, not surprisingly, a powerful bargaining chip in the hands of the redoubtable McGillivray, although Knox maintained a healthy skepticism. “Mr. McGillivray has stated that Spain is bound by treaty to protect the Creeks in their hunting grounds,” Knox wrote. “Although it may be prudent to doubt this assertion for the present, yet it is certain that Spain actually claims a considerable part of the territory ceded by Great Britain to the United States.”\textsuperscript{195}

Even without considering what Spanish forces could enter any potential conflict with the southern Indians, Knox noted that “When the force of the Creeks is estimated, and the probable combinations they might make with the other Indian nations, the [American] army ought not to be calculated at less than 5,000 men.”\textsuperscript{196} Of that number, about 3,500 would be effective in combat. The cost of the whole force, which “would [probably] be necessary for the term of two years … could not be calculated at less than one million five hundred thousand dollars annually.”\textsuperscript{197} A campaign against the Creeks could not be done on the cheap: “A less army than the one herein proposed, would probably be utterly inadequate to the object, an [\textit{sic}] useless expense, and disgraceful to the nation,” Knox opined.\textsuperscript{198}

\begin{itemize}
\item \textsuperscript{194} Knox to Washington, 7 July 1789,\textit{ op. cit.}, 52.
\item \textsuperscript{195} Knox to Washington, 7 July 1789,\textit{ op. cit.}, 52.
\item \textsuperscript{196} Knox to Washington, 7 July 1789,\textit{ op. cit.}, 52.
\item \textsuperscript{197} Knox to Washington, 7 July 1789,\textit{ op. cit.}, 53.
\item \textsuperscript{198} Knox to Washington, 7 July 1789,\textit{ op. cit.}, 53.
\end{itemize}
Where the money would come from for such an enormous undertaking, when Knox had just reported the unfeasibility of a $200,000-per-year campaign to the Ohio River, was left unsaid. Furthermore, even if war could be avoided by conclusion of a peace treaty, “the boundaries between the whites and Indians must be protected by a body of at least five hundred troops.”

This is not to say that the republic’s sword was, and remained, securely sheathed, while the Washington Administration brandished only the peace pipe. Indeed, throughout (and even before) Washington’s first term, Secretary of War Knox reported repeatedly on his department’s preparations for war on the frontier.

The first such report, dated 26 July 1788, opened with the warning that if the United States were to go to war against the Indians, they must do so not merely with an exit strategy in place, but with the firm resolve to finish the business in a single stroke. “[U]nless rigorous exertions be made in the first instance, calculated to terminate effectually the contest, in one campaign, the United States will hazard the event of being drawn into a tedious, expensive, and inglorious war,” Knox warned. Having emphasized the importance of a clean, brisk, successful campaign, Knox proposed an army of 2,800 “non-commissioned officers and privates of the different species of troops, to be raised for the term of nine months.”

Significantly, Knox argued against the use of regular United States forces; his plan called for Georgia to provide one 700-man regiment of infantry and five “companies” of cavalry, at seventy men per company; South Carolina to provide another regiment of infantry and two “companies” of artillery, also each of

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199 Knox to Washington, 7 July 1789, *op. cit.*, 53.

200 Knox to Congress, 26 July 1788, quoted as enclosure E. No. 1 in Knox to Washington, 6 July 1789, in Lowrie & Clarke, IV:25.
seventy men; and North Carolina to provide a third infantry regiment and three more “companies” of cavalry.  

The soldiery was to be raised by the several states, under the supervision of the War Department, but, significantly, “the said troops should be paid by the states in which they are respectively raised, according to the rates of pay established for the troops of the United States.” Weapons, specifically “ten pieces of light field artillery, with their necessary apparatus, and a suitable quantity of ammunition,” would be United States equipment, shipped to Savannah, Georgia and “addressed to the major general who may be appointed for the expedition,” Knox suggested. The whole operation could be completed for the staggering sum of $450,000, the secretary opined, which may explain why it was never undertaken.  

Barely a year later, the War Department’s focus had shifted to the ongoing unrest on the northwestern frontier. On 15 June 1789, Knox reported, mooting a campaign against the Wabash, that “to raise, pay, feed, arm, and equip 1900 additional men, with their necessary officers for six months, and to provide every thing in the hospital and quartermaster’s line, would require the sum of 200,000 dollars; a sum far exceeding the ability of the United States to advance, consistently with a due regard to other indispensable objects.” Knox assumed that an army of sufficient size to meet the estimated 2,000 Wabash warriors would itself have to number at least 2,500 men. “The regular troops of the United States on the frontiers, are less than six hundred; of that number, not more than four hundred could be collected from the posts for the purpose of

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201 Knox to Congress, 26 July 1788, *op. cit.*, 25


the expedition,” he wrote.$^{204}$

Since Knox only projected the cost of the increased force (1,900 men) required to bring the army to its necessary strength, it is not unreasonable to suppose (although Knox did not specifically recite the figure) that the total cost of the expedition would be in the range of $265,000. Even if the money could be found, Knox continued, “it is very possible that this sum may not effect the object intended.” Only a sober consideration of public justice, “which ought in all cases to govern the conduct of a nation,” could determine whether such an expenditure, and the results thereof, were either feasible, or justified.$^{205}$

Significantly, the 1789 plan of campaign called for the use of Federal troops to campaign against the Indians. This appears to have been the fruit of the difficulty that the General Government had, even under the constitutional scheme of government, in ensuring that the several states actually mustered the proposed levies of men, and that the states actually shouldered the financial obligations attendant on such a campaign. It is noteworthy that Knox’s proposal to send to the northwestern frontier a force of 2,500 men (equivalent to 89.2% of the 2800-man state-militia force proposed the previous year for the southwestern frontier) for only six months (as opposed to nine months for the state levies) reduced the proposed cost of the expedition from $450,000 to approximately $265,000, a 41.1% reduction. Regrettably, Knox did not break out allowances for uniforms and camp equipment, or costs of rations in the 1789 proposal, unlike his

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estimate for the 1788 expedition.\textsuperscript{206}

War was not the only option available to the Washington Administration, nor even the only feasible application of such limited forces as the United States would be able to muster for duty in Indian territory. Arthur Campbell’s letter to President Washington of 10 May 1789 had included the suggestion that “a detachment of the American Regulars, posted on the Tenasee river, near the Muscle Shoals [in present-day northwest Alabama], may if under a faithful and intelligent Officer, awe our enemies, encourage our friends, conciliate all; or if that cannot be effected, foment divisions, and play off the interests, and views of one Tribe, against that of another.”\textsuperscript{207} While Campbell had the Chickasaws in mind with this suggestion, it is not unreasonable to suppose that the deployment of the Army to central Georgia, along the border between Georgia and the Creek Nation, might have had the same calming effect on tensions between whites and Indians. The counter-argument to that statement is that a body of soldiers in garrison is almost as expensive to maintain as a similar-sized body on campaign.

Furthermore, maintaining peace by force of arms does nothing to address, or ameliorate the competing claims between the Georgians and the Creeks, nor to disabuse either party of its assumptions as to the rightness of its cause. Complicating the issue of the use of force to maintain the peace was the problem of how to maintain peace once the Army was withdrawn. Campbell closed his letter with the trenchant observation that “it may be of little avail to have a fundamental law, if there is not a sett of Men, diffused

\textsuperscript{206} Knox to Washington, 15 June 1789, \textit{op. cit.}, 13. For the estimated costs of the 1788 expedition against the Creeks, see Knox to Congress, 26 July 1788, in Lowrie & Clarke, IV:25.

\textsuperscript{207} Campbell to Washington, 10 May 1789, in The Papers of George Washington, 2:254.
over the Country and specially appointed to be Conservators and to make known violations.”

One sinister suggestion in Knox’s 7 July 1789 proposal for the maintenance of the southwestern frontier was that “all offences committed by individuals, contrary to the treaties, should be tried by a court martial, agreeably to a law to be made for that purpose.” Although Knox did not suggest a title for such an act, it might appropriately have been styled “The Military Commissions Act of 1789.” Six months later, Knox observed, again to the president, that “the lawless whites, as well as Indians, will be deterred from the commission of murders when they shall be convinced that punishment will ultimately follow detection.”

By the beginning of 1790, Knox’s patience with military half-measures appears to have run out. In a report to President Washington on 4 January 1790, Knox decries the 800-man Army of the United States as “utterly inadequate” for a range of missions that included “to prevent the usurpation of the lands of the United States; to facilitate the surveying and selling the same, … and for the protection of the frontiers, from Georgia to lake Erie.”

To Knox, the United States was in a “damned whether we do or not” position. “[I]n either event of peace or war, with the Creeks,” the Secretary wrote, “the establishment of a line of military posts on the Southwestern frontier, appears to be highly requisite. No peace with the Indians can be preserved, unless by a military force.”

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209 Knox to Washington, 7 July 1789, in Lowrie & Clarke, IV:53.

210 Knox to Washington, 4 January 1790, in Lowrie & Clarke, IV:60.

211 Knox to Washington, 4 January 1790, op. cit., 60.
The previously-proposed scheme “to erect a line of posts of that extent, and to leave small guards for the public arsenal,” would require an army fully twice the size of the one existing, adding a second regiment of infantry, and increasing the size of the infantry regiments from 560 enlisted men each to 700 enlisted men each. The single, 240-man battalion of artillery was apparently sufficient for Knox’s needs.\(^\text{212}\)

Notwithstanding Knox’s sober meditations on the means and feasibility of making war against the Indians on the frontier, it appears that in the secretary’s view, at least as early as 1789, the Indian peoples were not a nuisance to be eradicated and their land colonized by the Americans. North Callahan asserted that “in Henry Knox, the American Indians had one of their best friends. He had toward them the kind and considerate attitude of a John Eliot, and in his counsels to the heads of the government, especially to Washington, Knox continually urged friendly moderation toward the tribes … But though kind, Knox was, when necessary, equally firm.”\(^\text{213}\) It appears that Knox’s sober assessment of the relative strength of the United States, as compared to that of the Indian nations against which the U.S. would have to campaign, tempered President Washington’s eagerness, such as it was, for a southwestern campaign. Knox, the bookseller-turned-artilleryman hero of the Revolutionary War, seems to have acquired enough of a humanistic bent from reading his wares that he was able to act as a voice of restraint in the councils of war that met in New York through 1790. In his 7 July 1789 report to the president, Knox asserted that “it would reflect honor on the new Government, and be attended with happy effects, were a declarative law to be passed,

\(^{212}\) Knox to Washington, 4 January 1790, op. cit., 60.

that the Indian tribes possess the right of the soil of all lands within their limits, respectively, and that they are not to be divested thereof, but in consequence of fair and bona fide purchases."

The following January, Knox returned to that theme in another report to the president. On 4 January 1790, after discussing the structure and capabilities (or lack thereof) of the United States Army, Knox ended his report proper with a series of observations on the rights of the Indians. He wrote:

"by the directions of Congress, of the 2nd of July, 1788, to the Governor of the Western territory, to extinguish the Indian claims to lands they had ceded to the United States, and to obtain regular conveyances of the same, it would appear, that they conceded the Indian right to the soil.

That the Indians possess the natural rights of man, and that they ought not wantonly to be divested thereof, cannot be well denied.

Were these rights ascertained and declared by law; were it enacted that the Indians possess the right to all their territory which they have not fairly conveyed, and that they should not be divested thereof, but in consequence of open treaties, made under the authority of the United States, the foundation of peace and justice would be laid."

Although Knox recognized, at least tacitly, the Jeffersonian need and desirability of converting peripatetic foragers into stationary pastoralists, it is equally clear that neither genocide, nor even the wholesale dispossession of the Indians from their lands, was an acceptable course of action from the War Department’s viewpoint.

That said, Knox was certainly not unaware, nor even (apparently) particularly disapprobative of the notion that expansion of the white population could work an Indian diaspora by economic means. "As population shall increase, and approach the Indian boundaries," the secretary observed, "game will be diminished, and new purchases may be made for small considerations. This has been, and probably will be, the inevitable

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214 Knox to Washington, 7 July 1789, in Lowrie & Clarke, IV:53.

consequence of cultivation.” In other words, there was no compelling need for Americans forcibly to dispossess the Indians from the land. Mere expansion of the white population would place sufficient pressure on the supply of game that continued Indian occupation of the land would become unfeasible.

Knox recognized this fact, and anticipating Thomas Jefferson’s doctrine of an “empire of liberty” inhabited by farmers who were tied to the land by the roots of the crops they raised, suggested that the Indians could both be converted into farmers and inculcated with “a love for exclusive property, [which] would be a happy commencement of the business” by “making presents, from time to time, to the chiefs or their wives, of sheep and other domestic animals.” Of course, the supernatural should not be neglected, Knox opined. “Missionaries, of excellent moral character, should be appointed to reside in [Indian] nation[s],” he wrote, anticipating another key plank of the Jeffersonian schema.

While Knox was apparently willing to squeeze the Indians off the land (or at least turn them into Christian livestock husbandmen), he eschewed the notion of genocide. On 4 January 1790, he asserted to Washington that “the principles of justice, which ought to dictate the conduct of every nation, seems to forbid the idea of attempting to extirpate the Wabash Indians, until it shall appear that they cannot be brought to treat on reasonable terms.” First the carrot; then, if necessary, the stick.

Thus it appears that Knox considered the Indians, if not the moral and cultural equals of the whites, certainly better than vermin to be eradicated like mice from a field

216 Knox to Washington, 4 January 1790, *op. cit.*, 61.


218 Knox to Washington, 4 January 1790, in Lowrie & Clarke, IV:61.
of grain. They possessed certain rights of property, defined, sanctified and defended in the common-law tradition that the Americans had inherited from the English, which the General Government of the United States was bound to respect. Indian land could under certain conditions be alienated from the natives, but only by an open, orderly process of purchase and sale for a “fair price,” the whole transaction to be spelled out in solemn, public treaties, subject to review under the provisions of the U.S. Constitution.

Arguably, this liberal attitude toward the rights and considerations of the Indian peoples may be seen as characteristic of the Washington Administration’s cautious approach to the danger of provoking a general war with the Indian nations. Washington, even before assuming the presidency, had demonstrated his willingness to use force against the Indians, and would continue to do so throughout both of his terms: the dispatch of General Anthony Wayne, in the summer and fall of 1794, to the Northwest Territory, is a case in point. Nonetheless, Washington was not so irascible an expansionist as to risk the security of the fledgling republic by allowing his administration to become entrapped in a war against a coalition of enemies that it could not defeat, and survive. Washington was unwilling to risk the survival of the nation in order to indulge his craving for ever more land. Indeed, Ellis suggested that Washington was pro-Indian. Writing in the context of “the apparently inevitable tragedy so clear to [modern observers],” he noted that “Washington went so far as to declare that a truly just Indian policy was one of his highest priorities, that failure on this score would damage his reputation and ‘stain the nation.’”

A concrete example of Washington’s attitude toward the sanctity of the treaties the United States made with the Indians is found in his message to the Senate of 11

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219 Ellis, American Creation, 129.
August 1790, while the Creek Treaty was under consideration. “Although the treaty with the Creeks may be regarded as the main foundation of the future peace and prosperity of the south-western frontier of the United States,” the president wrote, “the treaties which have been entered into with the other tribes in that quarter, must be faithfully performed on our parts.” Washington asserted that strict observance of U.S. treaty obligations was necessary “in order fully to effect so desirable an object.”

The Washington Administration is unique in United States history in that it was the only non-partisan administration. The Washington Administration was neither Federalist, nor Republican, nor Democratic; it was simply the consensus choice for the first team to implement the new Constitution. The appointment of Colonel Willett, an Anti-Federalist, to negotiate with the Creeks on behalf of the Government appears to illustrate the non-partisan nature of the Washington Administration, or at least President Washington’s disposition to rise above factionalism. Although political factions in American politics had not yet begun to harden into parties, Willett’s adherence to the faction that opposed the faction that supported the Administration would otherwise have tended to disqualify Willett from a position requiring discretion in the conduct of the public business. At the civilian head of the military establishment stood General Henry Knox, the Boston bookseller-turned-artilleryman who had been one of General Washington’s chief collaborators during the Revolutionary War. So intimate was Knox’s relationship with the Commander-in-Chief that he became, as Callahan puts it, “a virtual projection of Washington.”

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221 Callahan, viii.
If Knox was a projection of Washington, then Washington, the first First Magistrate of the new constitutional regime, must have been a type of Knox. That is, the plebeian, New England-bred Secretary of War expressed through his administrative control of the process of treaty-making and gunpoint quasi-diplomacy the policy of the patrician, Virginian president.
Chapter 5

Conclusions

The treaties that the United States made, in the first years of independence from Great Britain, represented a temporizing effort by a weak, infant republic to quell unrest on distant, unsettled frontiers. The young republic was in no condition to impose its will by fiat on hinterlands that were several weeks’ travel away from the seat of power. The United States had only recently cast off the yoke of British colonial control and shouldered the burden of responsibility for government, which it was only marginally prepared or competent to carry. Adding to the difficulties of distance was the fact that Congress, under the Articles of Confederation, was riven by the internal dissensions inherent in a coalition of states that considered themselves sovereign and to a degree superior to a central administration.

The intractable dispute with the Creek nation was arguably the most conspicuous example of the baneful effects that the General Government of the United States suffered as a result of individual states pursuing their independent diplomatic policies. In the first flush of independence from Britain, the mother country’s limitations on colonial expansionism fell away, leaving the former subjects, now masters of their own destiny, to indulge their boisterous appetite for expansion. British limitations on the right, or license, of colonial expansion rested primarily on the British government’s disinclination to expand the burdens of administering a territorially aggrandizing empire in America. To a lesser extent, an aversion to antagonizing Spanish colonial interests in Florida and
around the coast of the Gulf of Mexico, at a time when war with Spain was not politically desirable, played a secondary, but significant role. Barnes observed, regarding United States relations with Spain, that “Congress had by no means consolidated its authority in the southwest by 1790 but significant steps in that process had been made.”

Unfortunately for the United States, continuation of that progress lay at the whim of U.S. citizens upon whom the General Government could not rely to bear their share of the burden of fostering good relations across the southwestern border. Ellis rightly located the center of power in the new republic when he wrote that “ultimate power lay with those white settlers streaming over the Appalachians into Indian Country, a relentless tide that swept all treaties, promises, excellent intentions, and moral considerations to the far banks of history.” Unfortunately, in giving credit where credit was due, Ellis undermined his own argument that the United States’s Indian policy was un-republican, in that it was coercive – a trait of imperial governments, “the imperial way of doing business,” in Ellis’s phrase. Mark Neels summarized the distasteful nature of imperial polity when he wrote, “allowing this white encroachment on Indian land to continue, Knox concluded, was both un-republican and against the principles of the late revolution.”

Imperialistic coercion was precisely the sort of behavior that Americans had only recently fought a war to overthrow, and which they could scarcely be expected to

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222 Barnes, 118.

223 Ellis, American Creation, 130.

224 Ellis, American Creation, 139.

embrace as the fundamental intellectual idea behind their government’s policy toward the Indians.\textsuperscript{226} Ellis went so far as to write that “the promises the governments [of the several states, as well as the United States] were making to the tribes were never even intended to be kept. They were willful and duplicitous misrepresentations (i.e., lies) designed to establish only temporary borders with Indian Country that would steadily recede until they reached the Mississippi.”\textsuperscript{227} That the borders were temporary is certain; by the end of the 1780s, expansion of white men into the territory beyond the western mountains had already begun its inexorable consumption of the Indians’s traditional grounds. The argument that the treaty provisions were intentionally “willful and duplicitous misrepresentations” is untenable in the face of the implicit assertion that the United States’s negotiators were incorrigible liars. The argument that the United States had no intention of living up to its treaty obligations fails in the face of the plain language of Washington’s message to Congress of 11 August 1790, quoted above. Like it or not, the Washington Administration was committed, at the time the United States was establishing its relationships with the Indian tribes on the frontier, to living up to the agreements that it had made with the Indians, and those it had inherited from the Confederation Congress. There is considerable evidence that the leaders of the infant United States did not like the situation in which they were forced to operate. The weakness of the United States, which the Constitutional scheme of government did not cure overnight, required the required Washington and his subordinates to compromise their impulse to expand ever deeper into Indian territory, feeding ever more virgin farmland into their insatiable desire for wealth. In this regard, the magistrates were of a

\textsuperscript{226} Ellis, \textit{American Creation}, 131.

\textsuperscript{227} Ellis, \textit{American Creation}, 137.
mind with the yeomen: they wanted more and yet ever more territory. The difference was that the public officials, unlike the public at large, were bound by a sense of responsibility to avoid threats to the public safety. The individual yeoman farmer, whose vision extended only as far as his own fence line, only saw the world in terms that encompassed his own ability to deal with the world. The danger that the yeoman saw was limited in scope to what he could eliminate with his own firearm, or those of his family, hired hands if any, or immediate neighbors. Federal officials, taking a longer view, apprehended a much more serious, less tractable danger to the stability and survival of the republic.

It was well that the British government was willing to restrain His Majesty’s subjects from further depredations against U.S. citizens. The U.S. government was less able to impose, or cajole, the same sort of restraint from its citizens. With Britain and its political agenda removed from the equation, the Georgians were free to follow their expansionistic inclination without check from any higher authority. The fact that their negotiations with the Indians failed to bring enduring peace to the frontier, and eventually required the intervention of a higher authority to resolve the ongoing crisis, represents a fundamental element of the process of constructing the political entity of the United States of America.

As noted, the doctrine of federalism took a step forward in the Washington Administration’s intervention in the Indian/white dispute over the Georgia frontier lands. The inability or unwillingness of the government of Georgia to come to a stable solution of the dispute over the Creek lands presented a situation in which only the unified power of the General Government could draft and impose a global solution. The failure of that
global solution, while it indicts the effectiveness of diplomacy to reach a solution, does not impeach the growing role of the central government in establishing its authority over the states. Some tasks are better left to an entity, in this case the United States, which derives its authority from a broader – and more impartial – base than the public authorities of any one State.

It is equally apparent from a review of the entire diplomatic process between the State of Georgia and later the United States of America, on one hand, and the Creek Nation on the other, that there is a limit to the ability of broad-based political authority to achieve results, especially where cultural, as well as political, boundaries are crossed. As Barnes put it, “neither American officials nor tribal leaders could impose treaty boundaries on the native or white settler population, and in any case the United States was only one of many parties who negotiated land cessions.”

Treaty-making is a process fraught with potential complications as, frequently, different cultural systems attempt to reach an arrangement that is fair and equitable. It is a process conducted by negotiators who come to their task often with radically-different understandings of the meanings of “fair” and “equitable,” and widely-diverging agendas upon which they propose to base the negotiation process itself, as well as aspirations from which they derive their demands. The history of the United States’s treaty-making efforts with the United Kingdom, where two ethnically-similar polities clashed repeatedly, and repeatedly returned to negotiate issues that had once been settled, illustrates the difficulty inherent in treaty-making between similar cultures. The degree to which treaty-making can be complicated by cultural differences is the most obvious characteristic of the United States’s efforts to develop a diplomatic *Pax Americana* with the numerous and diverse

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228 Barnes, 14.
Indian tribes on its western frontiers.

Further complicating the process of treaty-making, both for the diplomat and for the latter-day analyst, is the fact that negotiators do not negotiate in a spirit of selfless disinterest. Individual and collective agendas dominate and warp the goals of negotiation. Negotiators may not hold constant criteria for what constitutes the “success” of the negotiation throughout the whole process. The steady evolution of social and political mores over time may render the means and criteria for success as unintelligible to future observers and critics, as they were to the opposite negotiator at the time of the events in question.

The treaties that Arthur St. Clair negotiated with the Wyandots et al. and the Six Nations (less the Mohawks) in January 1789 were redolent with the propriety that characterized transactions between white men. This represented the moral values of the leaders of the infant United States, as well as their realization of the parlous political and military state in which they came to the negotiating table. The intellectual formation of the United States’s negotiators had taken place within the framework of English common and statutory law; the process of colonial expansion into the trackless lands of North America had pushed the law of alienation and transfer of real property to the forefront of practical jurisprudence. Arguably, the greatest shibboleth of English law regarding real property was that land transfers should be objective, conducted at arm’s length, and result in quiet title to the land. Given that intellectual background, and the political necessity of buying time for the new republic to gather strength and find firm footing, the studied formality, and frankly even-handed treatment of the Indians’s land cessions on the northwestern frontier are apt illustrations of the nascent republic’s attitude toward the
reality of the situation in which it existed.

Neels observed that “land cessions from treaties conducted by the Confederation Congress with the Six Nations of the Iroquois at Fort Stainwix [sic] … and the Wyandots at Fort McIntosh … did not directly express the purchase of land.…”²²⁹ (Italics in original.) This problematic assertion points up the difficulty of textual analysis carried too close to the archival document. Neels is correct to state that the land was not specifically purchased by the terms of any of Arthur St. Clair’s treaties; what St. Clair treated for was the definition of the boundary line between Indian territory and white territory. Nonetheless, Neels missed the fundamental legal effect of the plain language of the treaties, which was to exchange both title and possession to a defined plot of land in exchange for valuable consideration given and acknowledged.

The situation in Georgia was fundamentally different from that on the northwestern frontier in two significant aspects. First, most notably, the Georgians were negotiating across the national frontier, whereas in the northwest, the territory beyond the Ohio River was a part of the United States as per the Treaty of Paris, but not yet incorporated into the Union (or, to be precise, into the Confederation). Second, the Georgians were living up to their pretension to be a sovereign State, by attempting to push the frontier beyond what had been agreed in the Treaty of Paris, into lands at least nominally claimed by another European colonial power – significantly, one that was not party to the Treaty of Paris. The potential for Georgia having bitten off more than it could chew was significant, since Spain was not likely to tolerate any campaign by American citizens that might threaten Spain’s mineral claims – primarily the silver mines of Mexico.

²²⁹ Neels, 19.
Unfortunately for them, and unhappily for the progress of relations between the
Indians and their white neighbors, the Georgians’s reach exceeded their grasp. Their
eager willingness to anoint a bargain made with only a subgroup of Creek chieftains (the
treaty of Augusta, in 1783, confirmed by the treaty of Galphinton, in 1785) as binding
upon the whole Creek nation was good only so far as the Creeks were willing to accept
the legitimacy of the deal. The fact is that the Creeks refused to allow themselves to be
either hoodwinked, or browbeaten into accepting a cession of valuable hunting land that,
*by the Creeks's application of the principles of English contract law*, was invalid because
not all interested parties had participated in the negotiation. The deal recited in the
Augusta and Galphinton treaties may have been good for the Creeks, in terms of the price
per acre that the Georgians offered. Nonetheless, the Indians, influenced by Alexander
McGillivray’s visceral loathing of the Georgians, were under no obligation, moral or
legal, to accede to an arrangement that was invalid according to white man’s law.

The Creek nation operated as a political entity under a form of federalism,
whereby each of the town chiefs was essentially autonomous. The whole council of town
chiefs constituted a “supreme tribunal” of sorts, albeit under the influence, if not the
actual direction, of the paramount chief, who appears to have been *primus inter pares* in
the manner of the British prime minister. The council of town chiefs appears to have had
the ultimate competence to deal with matters relating to the economic patrimony of the
whole nation. As Frank put it, “ethnic and cultural diversity forced upon the Creeks a
flexible political structure.”²³⁰ This adaptive strength also had the effect of weakening
Creek unity, as seen in the contretemps with the Georgians over the validity of land
cession made by only a few town chiefs. Frank qualified his statement on Creek

²³⁰ Frank, 23.
flexibility by noting that “collective Creek actions in the eighteenth century resulted from temporary coalitions of cooperating autonomous units. Each of the approximately fifty Creek villages acted autonomously, and villages did not necessarily heed the desires of fellow villages.”

Clearly the Creeks, who constituted one polity with a diversity of ethnic backgrounds, were not a monolithic political entity. Frank noted that “land cessions and treaties promoted by leaders of one village might be condemned by those in another,” which is the exact situation that led to the intractable dispute with the State of Georgia. “In times of war some Creek villages might remain neutral,” Frank continued, “while others lined up on opposing sides.” The problem was that white men did not fully appreciate, or chose to ignore this application of the principle of unity in diversity. “Unfortunately,” Frank wrote, “European Americans frequently assumed that the Creeks acted as a single entity, not as coalitions of villages or clans. Consequently, they viewed internal dissent among the Creeks as signs of ‘Indian instability’ and proof that they could not be trusted to keep their word.” The combination of the decentralized nature of Creek politics, and white men’s incorrect assumptions as to the true nature of Creek unity, is the definition of the problem that festered on the southwestern border of the United States from 1784 on.

Furthermore, it is clear that the Georgians did not come into court with clean hands, as the Dane Committee’s report of 3 August 1787 observed. If one strips away the bureaucratese in the Dane Committee’s report, it become clear that the Georgians were
just as guilty of encroaching on lands not ceded to them by the Augusta, Galphinton, and Shoulderbone treaties as the Creeks allegedly were guilty of trespassing on the lands that they had, apparently, ceded to the Georgians. *Nihil malorum non fecit rex*, according to the old legal maxim: the king can do no evil. But the Georgians were not kings, and they did evil. Obviously, the Georgians did not consider as evil their dogged campaign to enter into and take possession of the lands they “fairly and squarely” purchased from the Creeks; they were acting under the impulse that would crystallize and find definition in the 1840s as “Manifest Destiny.” It is equally true that one of the fundamental functions of government, the exercise of the so-called “police power,” has as its end the protection of citizens from violence and threats to their personal safety and the safety of their property. In a universal sense, the policy of the government of the State of Georgia to encourage and promote settlement by their citizens on land that the Creek nation continued to claim as their own, arguably represents, not merely a failure, but a refusal of the government to protect its citizens.

The means and ends that the United States pursued in advancing and administering its policy toward the Indian peoples in the period before the War of 1812 represents the moral nadir of the process of constructing “The United States of America.” This repetition of gestures of goodwill arguably had a diplomatic purpose. By putting the provisions of Indian cessions in writing on multiple occasions, the United States’s commissioners were building a legalistic framework for justification for future aggressive, or hostile actions toward the Indians. This practice of pledging the good name of the United States of America, in confirming and guaranteeing the Indians’s perpetual rights to the land allocated to them, raises the troubling specter of U.S.
duplicity in dealing with the First Nations on the new republic’s frontiers. The fundamental disconnect between the U.S.’s guarantees of perpetual Indian possession of the land (a particular feature of treaties made on the southwestern frontier) and the escalating tide of violence and dispossession which the United States directed toward those Indian nations, leads the observer to the conclusion that either the United States government experienced a profound, fundamental policy shift between the administrations of George Washington and James Madison, or that the United States had been negotiating all along without intending to honor the obligations that it undertook.

There is a fundamental incongruity apparent in United States treaty making with the Indian nations on the western frontier during the Federalist and Jeffersonian periods. This disconnect comes into sharp focus when viewed through the lens of the Jeffersonian “Empire of Liberty” and the latent doctrine of Manifest Destiny. As has unfortunately been the case so often in United States history, the issue comes down, ultimately, to a squabble over land. One could argue that focusing on possession of the land minimizes the aspect of racism inherent in the United States’s relations with the Indians. There was, certainly, a “white-versus-red” dichotomy present in white men’s expansion across North America. Nonetheless, the expansion of English-speaking white men does not appear to have had solely, or even primarily a racial impetus. It is important to remember that Americans were as determined to dispossess Spanish- and French-speaking white men from their territories, as they were to drive the Indians from their ancestral lands.

A fundamental theme running through United States treaty making from the Confederation period onward is the idea that a more or less permeable boundary could be erected between the land occupied by Americans, and that reserved to the Indians. The
United States purchased tracts of land from the Indians, either in exchange for ready cash, or the equivalent value of trade goods, or for the promise of an annuity of a specified sum of money – sometimes for both, sometimes for a “down payment” in cash and an annuity in trade goods. As part of the terms of purchase and sale, a “bright-line” boundary was, at least under the terms of the treaty, erected between the white territory and the Indian territory. Note that, before the War of 1812, the reservations made to the Indian nations were generally within the bounds of the United States as defined in the Treaty of Paris. It was not until well after the acquisition of Louisiana, in the post-War of 1812 period, that the United States began reserving tracts of land west of the Mississippi River to Indian nations who had sold their “traditional” territories east of the Mississippi to the United States.

Those boundaries were, of course, of little moment to the relentlessly-expanding white population. Despite the Federal government’s efforts (as after the Treaty of Hopewell, for example) to order the American settlers off the Indians reservations, the “General Government” of the United States lacked the capacity to enforce its order for the settlers to quit their illegal settlements. Indeed, it would not be until after the United States had determined to remove and ghettoize the Indians by force, that the United States Army possessed the manpower and other resources to carry out the removal.

With the advent of the Jeffersonians in 1801, the United States’s policy regarding relations with the Indian nations shifted, from carving up the area east of the Mississippi River into blocs, or “spheres of influence,” to segregating and ghettoizing the Indians outside the borders of the United States. Another inherent policy conflict appears in consideration of Jefferson’s plan to remove the Indians from the United States by
Beatty, Michael, UMSL, 2009, p.121

segregating them in the natural-resources bonanza of Louisiana. The United States, dominated at that time by the Tidewater/Piedmont aristocracy of Virginia, was already casting covetous glances at the bounty on the far side of the Mississippi. Despite the self-evident conflict of moving the Indians into the land that he most wanted to exploit, Jefferson proceeded, by diplomatic means, to execute just such a policy of segregation. He then closed the trap upon himself by purchasing the Louisiana treasure trove in 1803.

The problem that the rapacious, insatiable American hunger for new land exposed was that reservations to Indian nations (on either side of the Mississippi) were made open-ended, as far as term of tenure was concerned. That is, either the Indians’ tenure was to be in accord with the manner in which they had held their traditional lands (which, lacking a concept of tenure for a term of years, or mechanism for reversion in the absence of heirs, was perpetual), or, as in the case of the 1816 Chickasaw Treaty, was based on an indefinite, and indeterminate period, namely, the continued occupation of the land, which could only be terminated negatively, by the failure or refusal of the Indians to continue to occupy the land. Reservations to the Indians were guaranteed by the United States, which bound itself contractually to honor the Indians’ claims. Under the Jeffersonian regime, the policies of free expansion of white settlement and removal of those Indian nations that refused to conform to Jefferson’s hierarchy of vocation operated at variance from the young republic’s prior commitments, and seriously impeached the credibility of the commitments which the United States undertook after 1801.

This view has serious ramifications for the consideration of the United States’s commitment to fairness and equitable dealing with the Indian nations. It appears that the United States Government and its agents were intentionally duplicitous in guaranteeing
the Indian nations’s tenure of the land grants made to them under the various treaties. The alternative explanation is that the Federal Government and its agents were unsophisticated in the arts of practical governance, and out of touch with the goals and aspirations of their people. Neither possibility holds much water.

During the period in question, most of the executives, representatives and diplomats serving the United States had been born in Britain, or in British colonies and had been trained in law and governance by teachers and mentors who had, themselves, been trained in colonial institutions deeply imbued with the spirit of English common and statutory law. To the extent that they may have had little practical, hands-on experience in the exercise of sovereign power, nonetheless, they were thoroughly grounded in the philosophical basis of governance. In a word, the government of the United States during the period in question was in the hands of men who knew what they were doing, and knew how to go about doing what was necessary to build a new republic.

The notion that the new republic’s leaders were out of touch with the common man is also unsupportable. The elders of American society could still remember the reaction of colonists to the Proclamation of 1763, which banned settlement west of the Allegheny Mountains, counter to the expansionist drive of the Americans. There is no credible way that the leaders of the United States could have claimed ignorance of their countrymen’s tendency, and insatiable drive to expand ever westward.

Relations between the white settlers and the Indians in whose midst they (intermittently) lived constitute low-intensity warfare that characterized and plagued the settlers’s attitude toward the central government and that government’s efforts to construct a stable, secure, bilateral modus vivendi on the Western frontier.
The last word belongs to Henry Southerland and Jerry Brown. They wrote, “Even after the Indian wars in the South were over, and the Creeks removed to Arkansas and Oklahoma, the legal debate over whether the Indians should be repaid for the myriad frauds perpetrated against them had not been settled.”

234 Southerland and Brown, 134.
Appendix 1

The Boundary between the Creek Nation and the State of Georgia, According to the Treaty of New York, 1790

“The boundary between the citizens of the United States and the Creek nation, is, and shall be, from where the old line strikes the river Savannah; thence, up the said river, to a place on the most northern branch of the same, commonly called the Keowee, where a northeast line, to be drawn from the top of the Occunna mountain shall intersect; thence, along the said line, in a southwest direction to Tugelo river; thence, to the top of the Currahee mountain; thence to the head or source of the main south branch of the Oconee river, called the Appalachee; thence, down the middle of the said main south branch and river Oconee, to its confluence with the Oakmulgee, which form the river Altamaha; and thence, down the middle of the said Altamaha, to the old line on the said river; and thence, along the said old line, to the river St. Mary’s.”

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235 “Treaty of peace and friendship . . .” in Washington to Senate, 7 August 1790, op. cit., 81-2. See Map 1, p. 21, for a graphic representation of the the treaty line.
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