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# Review of Colin Calloway, *Pen and Ink Witchcraft: Treaties and Treaty Making in American Indian History*

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point. Possibly, some readers of this journal may find Barber's approach to history impressionistic, and his source base narrow. For the constitutional historian, however, *The Fallacies of States' Rights* will reward close study as much for the questions it raises as for the answers it offers.

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Colin G. Calloway, *Pen & Ink Witchcraft: Treaties and Treaty Making in American Indian History*, New York: Oxford University Press, 2013. Pp. Xii + 374. \$34.95 cloth (ISBN 978-0-19-991730-3). doi:10.1017/S0738248015000176

Treaties with Native nations are foundational in federal Indian law and policy, and historians and legal scholars have written many great works on the subject. Colin Calloway's new book, however, stands out for giving at once a finely detailed portrait of the participants and motivations involved in the treaties and the changing place of those treaties in United States-tribal relations and treaty making.

Calloway focuses on negotiation of three transformational treaties, the 1768 Treaty at Fort Stanwix, the 1835 Treaty at New Echota, and the 1867 Treaty at Medicine Lodge, providing such a richly painted narrative that one can almost feel oneself seated among the observers. Each discussion of a particular treaty is preceded by a chapter on the role of treaties in that era, and followed by an examination of the role of the treaty in subsequent events, so that the book provides a valuable history of shifting Indian policy.

Calloway's narrative counters the common perception that treaties were "typically conducted in but a few days on hot, dry plains between midlevel federal bureaucrats and seemingly ragtag Indian leaders" (Charles F. Wilkinson, *American Indians, Time, and the Law* [1986], 121). Despite the coercion and threats involved, tribal negotiators were not pawns, but rather insisted on and strategically acted to preserve their rights. Although there were secret side deals and bribes, treaties were often negotiated before an audience of thousands of Indian and European-American observers. Women sometimes played influential roles, although British and American negotiators discouraged their participation, and failed to record their remarks in official transcripts. Respect for tribal diplomatic traditions and sovereignty did decrease over the period. But even at Medicine Lodge, near the close of the treaty era, Americans spent huge sums hosting 5,000 tribal participants; were accompanied by hundreds of reporters, interpreters, and aides; and waited for weeks as the Cheyenne

completed their Medicine Arrow ceremony before deigning to attend. The American observers were awed as 500 Cheyenne warriors finally “galloped in, chanting in unison, and firing their pistols in the air” (209).

Despite the ceremony surrounding the negotiations, “pen and ink witch-craft” transformed treaties into “things” the Indians “never intended” (106, quoting Ottawa war chief Egushawa). British and Americans wrote, rewrote, and interpreted treaties to deprive tribes of the rights they tried to preserve. At Medicine Lodge in particular, the written treaties failed to include hunting rights, on which the tribal signers had insisted, and inserted provisions regarding mandatory Western schooling and allotment, which they had rejected. This, plus the failure to provide the rations promised to make up for lost hunting ground or restrain whites from reserved lands, led to violation of the written treaty, and helped justify war, and ultimately the end of treaty making in 1871.

Negotiators also deliberately signed treaties with those who lacked the authority to cede land. A few years after the Royal Proclamation of 1763 prohibited settlement west of the Appalachians, British commissioner William Johnson (both an in-law of the Iroquois and a land speculator) negotiated the Treaty of Fort Stanwix with the Iroquois to push the settlement line westward, knowing that the treaty included territory of many other tribes. Indeed, treaties with the Cherokee and Creek Nations negotiated at the same time as Fort Stanwix reserved part of the ceded land to them. The Iroquois agreed to cede land of other tribes both to assert their dominance in the area and gain protection for their own lands, which were east of the 1763 line. But the treaty encouraged settlers to flood west—including into areas not ceded at Fort Stanwix—and the resulting conflicts and the feeble efforts of the British government to prevent settlement contributed to tribal decline and American desires for independence. Seventy years later, individuals signed the Treaty of New Echota, despite tribal law punishing further land cessions by death, while the Cherokee leadership was in Washington, DC. The treaty led to the Trail of Tears, years of internal violence, as well as the Cherokee division between Confederate and Union sides in the Civil War. Throughout the treaty-making period, the United States signed treaties first with tribes without claims to the ceded land, in order to pressure tribes with stronger claims to sign.

*Pen and Ink Witchcraft* also makes clear the different interests within British and American treaty partners. Fort Stanwix was driven significantly by the interests of traders and land speculators, and intervened in territorial conflicts involving Pennsylvania, Connecticut, and Virginia. New Echota was part of the conflict between Georgia and the federal government that reached the Supreme Court in *Worcester v. Georgia*. Medicine Lodge involved railroads interested in expansion and land sales, and fueled conflicts between the Executive, the Senate, and the House of Representatives over control of Indian affairs. In each case, settlers trespassed on treaty-protected lands, and the central

government failed to restrain them, sometimes even hoping that resulting conflicts would provide an excuse for further land cessions.

Although this is a disheartening tale of broken promises, Calloway closes on a hopeful note. The same pen and ink witchcraft that gave force to written words over negotiator intentions now supports tribal rights across Indian country, contributing to the kind of continuing government-to-government relationship that tribal negotiators insisted on so long ago.

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Gordon A. Madsen, Jeffrey N. Walker, and John W. Welch, eds., *Sustaining the Law: Joseph Smith's Legal Encounters*, Provo, Utah: BYU Studies, 2014. Pp. Xix + 573. \$24.95 cloth (ISBN: 978-1-93896-70-5).  
doi:10.1017/S0738248015000188

Since his murder in 1844, historians have presented Joseph Smith, Jr., the founder of Mormonism, as everything from a beatified prophet to a lecherous charlatan to, in the assessment of Harold Bloom, “an authentic religious genius” (*The American Religion: The Emergence of the Post-Christian Nation* [New York: Simon & Schuster, 1993], 96–97). Few historians, however, have appreciated the extent to which Smith was a legal actor.

This volume illustrates the central role of law in Smith's life and in the founding of the movement he created. In recent years, The Church of Jesus Christ of Latter-Day Saints has been methodically producing a scholarly edition of all of Smith's known papers, including all of the legal documents related to his life. This volume of essays consists largely of research flowing out of this project. It reveals, to an extent not previously appreciated, how ubiquitous legal conflict was in Smith's life.

As is often the case with collections, the quality of these essays is uneven. The best of them uses a sophisticated reading of new legal sources to reframe key events in Mormon history. Jeffery Walker's paper on land law in Missouri is a good example. Beginning in 1831, Mormons began settling in Jackson County, Missouri as part of Smith's effort to build the New Jerusalem. Cosmic ambition soon clashed with local politics, however, and in 1833, mobs pushed Smith's followers out of Jackson County. They relocated in northern counties in the state and began once again building their new Zion.