

— CHAPTER THREE —

Indian Treaties and Indian Schools

The religious right version of American history is full of tales about government efforts to promote Christianity to the Indians. The reason for the large number of lies on this subject is the availability of material that can be turned into lies. There were no actual instances, for example, of the early Congresses passing legislation that aided sectarian schools for children who were American citizens. There was, however, a good deal of cooperation between the government and the Indian mission schools of the 1800s. Although the government's reasons for this were always secular, the fact that this cooperation existed means there are actual acts, reports, etc., that can be misrepresented or misquoted to support claims that the government aided sectarian schools. The same is true of Indian treaties. Congress never funded the building of churches for the American people. It did, however, appropriate funds to fulfill treaty provisions, which occasionally included things such as the building of a church.

The most popular of the Indian treaty stories involves a treaty signed by Thomas Jefferson in 1803. Almost every religious right American history book and website contains some version of this story.

This is the version found in William Federer's book *America's God and Country*: "On December 3, 1803, it was recommended by President Thomas Jefferson that the Congress of the United States pass a treaty

with the Kaskaskia Indians. Included in this treaty was the annual support to a Catholic missionary priest of \$100, to be paid out of the Federal treasury. Later in 1806 and 1807, two similar treaties were made with the Wyandotte and Cherokee tribes.”

During his presidency, Thomas Jefferson signed over forty treaties with various Indian nations. The treaty with the Kaskaskia is the only one that contained anything having to do with religion. No other Indian treaty signed by Jefferson, including the other two listed by William Federer, contained any mention of religion.

The following is the third article from the 1803 treaty with the Kaskaskia.

And whereas the greater part of the said tribe have been baptized and received into the Catholic Church, to which they are much attached, the United States will give annually, for seven years, one hundred dollars toward the support of a priest of that religion, who will engage to perform for said tribe the duties of his office, and also to instruct as many of their children as possible, in the rudiments of literature, and the United States will further give the sum of three hundred dollars, to assist the said tribe in the erection of a church.¹

The Kaskaskia treaty is used by different religious right authors in different ways. For those attempting to prove that Jefferson was a devout Christian, it is evidence that he wanted to promote Christianity to the Indians. Much more often, however, it is used as evidence that he approved of using government funds to promote religion.

The problem with using this provision as evidence that Jefferson approved of using government funds to promote religion is that it was in a treaty with a sovereign nation. Unless a treaty provision threatened the rights or interests of Americans, there was no constitutional reason not to allow it, even if that same provision would be unconstitutional in a law made by Congress. This was made very clear in a lengthy 1796 debate in the House of Representatives on the treaty

1. Richard Peters, ed., *The Public Statutes at Large of the United States of America*, vol. 7, (Boston: Charles C. Little and James Brown, 1846), 79.

making power, excerpts of which appear later in this chapter.

The problem with using the provision as evidence that Jefferson was trying to promote Christianity to the Indians is that the Kaskaskia were already Catholic, and had been for some time. Article 3 of the treaty even begins by stating that “*the greater part of the said tribe have been baptized and received into the Catholic Church.*” The support of a priest and help building a church were provisions that the Kaskaskia asked for, not things the government recommended or pushed on them.

The Kaskaskia Indians began converting to Catholicism over a century before this treaty. A Jesuit priest from France, Father Jacques Marquette, first encountered the tribe in 1673 while exploring the Mississippi River with Louis Jolliet. Jolliet had hoped that the Mississippi would lead them to the Pacific Ocean, but when they reached what is now Arkansas, they were told by the natives that it flowed into the Gulf of Mexico. Fearing that if they continued they might be captured by the Spanish, they turned around. On their way back up the Mississippi, they met and befriended the Kaskaskia, who told them about a short cut back to Quebec. Upon leaving, Father Marquette promised that he would come back. He kept his promise, returning in 1675 and establishing the Immaculate Conception mission.

The Kaskaskia were one of a loose confederation of tribes known as the Illinois. At the time that Father Marquette established his mission, the Illinois population is estimated to have been well over ten thousand, the Kaskaskia being one of the larger tribes. During the 1700s, their numbers dwindled due to epidemics, attacks by other tribes, and intermarriage with the French. By the time the treaty was signed in 1803, only about two hundred and fifty Illinois were left. No longer able to defend themselves against other tribes, the remaining Illinois wanted the protection of the United States. In exchange for a promise of protection and a few other provisions, the Illinois, represented by the Kaskaskia chief Jean Baptiste DuQuoin, ceded almost nine million acres to the United States.

Almost every version of the Kaskaskia story contains the second claim in William Federer’s version, that Jefferson signed two other Indian treaties that contained provisions for Christian ministers – one with the Wyandots in 1806, and one with the Cherokees in 1807. This lie usually comes in the form of an implication. The statement that

the Kaskaskia treaty contained a provision for a priest is immediately followed by a phrase such as “*two similar treaties were enacted during Jefferson’s administration,*” implying, of course, that the similarity was a provision for a priest.

These other two treaties first became part of the Kaskaskia story in Robert L. Cord’s 1982 book *Separation of Church and State: Historical Fact and Current Fiction*. Cord, however, did not lie about these treaties. This is a case of the Liars for Jesus misquoting one of their own to create a better lie. While Cord’s book does contain its share of lies, this isn’t one of them. Cord in no way implies that these other two treaties contained religious provisions. In fact, he mentions them specifically because they *did not* contain religious provisions. What they did contain were provisions for money that wasn’t designated for a particular purpose. Cord uses these provisions to argue that Jefferson, if he had wanted to avoid provisions for religious purposes in the Kaskaskia treaty, could have done so with a similar provision that did not specify what the money was for.

The following is Cord’s argument: “Lest it be argued to the contrary, if Jefferson had thought the ‘Kaskaskia Priest-Church Treaty Provision’ was unconstitutional, he could have followed other alternatives. An unspecified lump sum of money could have been put into the Kaskaskia treaty together with another provision for an annual unspecified stipend with which the Indians could have built their church and paid their priest. Such unspecified sums and annual stipends were not uncommon and were provided for in at least two other Indian treaties made during the Jefferson Administration – one with the Wyandots and other tribes, proclaimed April 24, 1806, and another with the Cherokee nation, proclaimed May 23, 1807.”

Cord’s words were first twisted by John Eidsmoe in his 1987 book *Christianity and the Constitution*.

According to Eidsmoe: “In 1803 President Jefferson recommended that Congress pass a treaty with the

Kaskaskia Indians which provided, among other things, a stipend of \$100 annually for seven years from the Federal Treasury for the support of a Catholic priest to minister to the Kaskaskia Indians. This and two similar treaties were enacted during Jefferson's administration – one with the Wyandotte Indians and other tribes in 1806, and one with the Cherokees in 1807.”

Eidsmoe gives the impression that this is what appears in Cord's book by summing up the paragraph containing his altered version of the story with this sentence: “*Citing these and other facts, Professor Robert Cord concludes, ‘These historical facts indicate that Jefferson ...did not see the First Amendment and the Establishment Clause requiring ‘complete independence of religion and government’.*”

David Barton, in his 1991 book *The Myth of Separation*, copies Eidsmoe's version of the story word for word, presenting it as a quote. He does not, however, cite Eidsmoe as the source of this quote. Barton cites Daniel Dreisbach's 1987 book *Real Threat and Mere Shadow: Religious Liberty and the First Amendment*. But, Dreisbach's book contains nothing even close to Eidsmoe's lie. Dreisbach, like Cord, does not in any way imply that these other two treaties contained religious provisions. Dreisbach doesn't even mention these treaties in the text of his book. He uses Cord's argument that the Kaskaskia could have been given money for an unspecified purpose, but names the other two treaties only in a footnote.

This story is a good example of how the religious right lies evolve, and, by being copied from book to book, and then to the internet, eventually lose any connection to their original sources. Robert Cord, whose book was published in 1982, mentions the other two treaties, but does not imply that they contained religious provisions. Daniel Dreisbach, whose book was published in 1987, uses these treaties for the same reason as Cord. John Eidsmoe, whose book was also published in 1987, twists Cord's words and creates the lie. David Barton, in 1991, copies Eidsmoe's lie, but cites Dreisbach as his source. In 2000, William Federer, whose version of the lie appears at the beginning of this chapter, cites both Dreisbach and Barton. In 2003, the lie appears in D. James Kennedy's book *What If America Were A*

Christian Nation Again?, with no source except William Federer's book. Various forms of the lie are now found on Christian American history websites, many of which, like the following, change the one Catholic priest into plural Christian missionaries.

This is one popular internet version: "As President of the United States, Jefferson negotiated treaties with the Kaskaskia, Cherokee, and Wyandot tribes, wherein he provided – at the government's expense – Christian missionaries to the Indians."

The following are the articles from the Wyandot and Cherokee treaties, which, although containing no mention of religion whatsoever, are cited by both Barton and Federer among the sources for their claims.

Article IV of the 1806 Treaty with the Wyandots, etc.:

The United States, to reserve harmony, manifest their liberality, and in consideration of the cession made in the preceding article, will, every year forever hereafter, at Detroit, or some other convenient place, pay and deliver to the Wyandot, Munsee, and Delaware nations, and those of the Shawanee and Seneca nations who reside with the Wyandots, the sum of eight hundred and twenty five dollars, current money of the United States, and the further sum of one hundred and seventy five dollars, making in the whole an annuity of one thousand dollars; which last sum of one hundred and seventy five dollars, has been secured to the President, in trust for said nations, by the Connecticut land company, and by the company incorporated by the name of "the proprietors of the half million acres of land lying south of lake Erie, called Sufferer's Land," payable annually as aforesaid, and to be divided between said nations, from time to time, in such proportions as said nations, with the approbation of the President, shall agree.²

2. Richard Peters, ed., *The Public Statutes at Large of the United States of America*, vol. 7, (Boston: Charles C. Little and James Brown, 1846), 88.

Article II of the 1807 Treaty with the Cherokees:

The said Henry Dearborn on the part of the United States hereby stipulates and agrees that in consideration of the relinquishment of title by the Cherokees, as stated in the preceding article, the United States will pay to the Cherokee nation two thousand dollars in money as soon as this convention shall be duly ratified by the government of the United States; and two thousand dollars in each of the four succeeding years, amounting in the whole to ten thousand dollars; and that a grist mill shall within one year from the date hereof, be built in the Cherokee country, for the use of the nation, at such place as shall be considered most convenient; that the said Cherokees shall be furnished with a machine for cleaning cotton; and also, that the old Cherokee chief, called the Black Fox, shall be paid annually one hundred dollars by the United States during his life.³

As already mentioned, neither Robert Cord nor Daniel Dreisbach lie about the Wyandot or Cherokee treaties. These two authors take a different approach. In addition to their speculation that the specifically religious provisions in the Kaskaskia treaty could have been avoided with an unspecific provision, they do a little blurring of the government's separation of powers. Because the First Amendment specifies that "*Congress shall make no law respecting an establishment of religion...*," Cord and Dreisbach imply that *Congress* had the power to reject the Kaskaskia treaty. The point they attempt to make is that if Congress didn't approve of government funding of religion, they would not have appropriated the funds for the treaty's religious provisions. To make it appear as if Congress had this kind of power over the execution of treaties, Cord and Dreisbach need to play with some dates.

According to Dreisbach: "Before formal ratification in December 1803, Jefferson presented both Houses of Congress the treaty in order to secure the necessary

3. Richard Peters, ed., *The Public Statutes at Large of the United States of America*, vol. 7, (Boston: Charles C. Little and James Brown, 1846), 102.

funds to execute the treaty's provisions."

According to Cord: "The Proclamation of the Ratified Treaty was issued on December 23, 1803, approximately one month after Jefferson laid it before both Houses of Congress 'in their legislative capacity' on November 25, 1803, presumably for the appropriation of necessary funds to execute the treaty commitments."

What Cord and Dreisbach do here is use the *proclamation* date to make it look as if the Kaskaskia treaty wasn't ratified until December 23, 1803. They need the ratification date to be after November 25, the date the treaty was laid before Congress, in order to give the impression that Congress had the power to reject it. Cord cleverly makes a practice of using the proclamation dates, rather than the ratification dates, for other treaties in his book so that this one won't stand out.

The Kaskaskia treaty, of course, would not have been laid before Congress until it was ratified. The actual ratification date was November 24, 1803. The following was Jefferson's November 25 message to Congress.

To the Senate and House of Representatives of the United States:

The treaty with the Kaskaskia Indians being ratified, with the advice and consent of the Senate, it is now laid before both Houses in their legislative capacity. It will inform them of the obligations which the United States thereby contract, and particularly that of taking the tribe under their future protection; and that the ceded country is submitted to their immediate possession and disposal.⁴

Robert Cord does two other things to strengthen the impression that Congress could have rejected the religious treaty provisions by withholding the funding for them.

4. *Journal of the House of Representatives of the United States, 1801-1804*, vol. 4, 8th Cong., 1st Sess., (Washington D.C.: Gales and Seaton, 1826), 458.

The first, which is also used by Daniel Dreisbach, is to imply that the primary reason the treaty was laid before Congress was for the appropriation of funds. Cord's speculation that this was "*presumably for the appropriation of necessary funds to execute the treaty commitments*" is deliberately misleading. Of course this would be *presumed*. That Congress would appropriate the necessary funds to execute the treaty's provisions was a given. The treaty was laid before Congress to "*inform them of the obligations which the United States thereby contract,*" not to get their opinion or approval.

The second is making a point of quoting the words "*in their legislative capacity*" from Jefferson's message. By stating that the treaty was "*laid before both houses in their legislative capacity,*" Jefferson was merely making the distinction between the Senate acting in its executive, or "*advice and consent*" capacity, and the Senate acting in its legislative capacity. In other words, the Senate's opportunity to object to the treaty had come and gone, and their role from this point on was to make any laws necessary to execute the treaty's provisions. Cord, whose story requires that Congress have the power to refuse to fund the treaty's religious provisions, uses the words "*in their legislative capacity*" to give his readers the impression that Congress had some legislative power to do this.

To understand why Robert Cord's notion that Congress could have withheld the funds for the Kaskaskia treaty is so far-fetched, it's helpful to look at a debate in the House of Representatives seven years earlier. This lengthy debate, which took place in March and April of 1796, came about as the result of the very unpopular Jay Treaty with Great Britain. Up until this time, the treaty making process as laid out in the Constitution had gone smoothly. But the unpopularity, as well as the secrecy, of the Jay Treaty raised questions over what right, if any, Congress had to refuse to make the laws necessary execute a treaty.

Shortly after the Jay Treaty was made public, the House of Representatives began to receive petitions from all over the country, some urging the House to pass the laws necessary for its execution, but just as many urging them to refuse to pass these laws. It was obvious from these petitions that the people thought that Congress had the authority, or at least should have the authority, to refuse to execute this treaty. Up until this point, nobody had given the possibility of such a power much thought because no other treaty had ever been