### **Contents**

Introduction, 3

## Part I The Medieval and Renaissance Origins of the Status of the American Indian in Western Legal Thought

### 1. The Medieval Discourse of Crusade, 13

Truth: Papal Discourse, 15

The Church Universal, 15

Reform Discourse, 18

Civilian Discourse, 26

Power: Crusading Discourse, 29

Holy War, 29

Urban's Spanish Crusade, 32

The First Call to Crusade, 34

The Instruments of Crusade, 37

Knowledge: Humanist Discourse, 41

Secular Humanism, 42

Innocent's Synthesis, 43

### 2. The Perfect Instrument of Empire: The Colonizing Discourse of Renaissance Spain, 59

The Lithuanian Controversy, 59

The Intra-European Crusade of the Teutonic Knights, 60

The Constance Debates on the Rights of Infidels, 62

The Iberian Crusades in Africa, 67

The Portuguese Appeal to Conquer and Convert the Canary Islands, 67

The Papal Response: Romanus Pontifex, 71

The Spanish Bulls, 74

The New World's First Entrepreneurs, 74

The Discovery Era's First Contract for the Conquest of the New World, 78

Instruments of Empire, 81

Governor Columbus, 81

The Encomienda, 83

The Dominicans in the New World, 85

The Laws of Burgos, 86

The Requerimiento, 88

Victoria's "On the Indians Lately Discovered," 93

The Inquisitions into Indian Capacity, 93

Franciscus de Victoria, 96

Victoria's Lecture, 97

A Guardianship over the Indians, 103

#### Part II Protestant Discourses

# 3. The Protestant Translation of Medieval and Renaissance Discourses on the Rights and Status of American Indians, 121

The English Reformation, 122

The Reformation's Transformation of English Society, 122

A Prefatory Colonizing Discourse, 126

The Elizabethan Restoration, 131

Laissez-Faire Discourse, 132

Perfecting Colonizing Praxis: The Merchants' Foray, 134

Elizabethan Colonialism: Elizabeth's Irish Wars, 136

#### 4. The Elizabethan Wars for America, 151

The First Protestant Crusade to America, 151

Sir Humphrey Gilbert: Elizabethan Terrorist, 151

The Early Colonizing Efforts of Sir Humphrey Gilbert, 157

Early New World Colonizing Discourses, 160

The New World Crusade of Sir Humphrey Gilbert, 162

Appropriated Discourses, 163

Cantabrigian Calvinism, 163

Peckham's "True Reporte," 165

The Black Legend of Spanish "Cruelties" in the New World, 173

The Second Elizabethan Crusade to America, 174

Sir Walter Raleigh: The First Great Puritan Hero, 174

The Virginia Venture of Sir Walter Raleigh, 177

#### 5. The English Conquest of Virginia, 193

The Bridge Builders Between the Medieval and the Enlightenment Visions of the American Indian in Western Legal Thought, 194

Alberico Gentili's Oxonian Discourse, 194

Sir Edward Coke and the English Common Law Presumption of the King's Right to Wage War Against Infidels, 199

The Invasion of America, 201

The Virginia Company's Tactics and Strategy, 201

The Jamestown Venture, 205

The War for America, 212

A Discourse of Conquest, 218

## Part III The Norman Yoke: The American Indian and the Settling of United States Colonizing Legal Theory

#### 6. The Norman Yoke, 233

Discourses of Containment: The Old Northwest and the Proclamation of 1763, 233

An Indian Reserve on the Frontier, 233

The Proclamation of 1763, 235

The Imperial Plan of 1764, 238

Discourses of Resistance, 241

The Crown and the Colonists' Competing Discourses on and Claims

to the Indian Frontier, 245

Locke's Theory and the Indians' "Wastelands," 246

Locke's Theory Applied: The Colonial Radicals' Praxis

on the Indian Frontier, 249

The Norman Yoke Applied to America, 251

The American By-products of the Norman Yoke, 255

Benjamin Franklin: Syndicalist, 256

The "Suffering" Traders, 259

The Vandalia Colony, 262

Thomas Jefferson: Revolutionary, 265

Discursive Chaos on the Frontiers of American Colonizing Discourse, 271

Chaos in the Continental Congress, 271

Camden-Yorke, 275

#### 7. The Colonists' War for America, 287

The Patriots' Discourses, 288

The Players and the Play, 289

The "Plain Facts" of the "Public Good," 292

The Norman Yoke Revived to Decide the Rights and Status

of American Indian Tribes, 305

Johnson v. McIntosh and United States Colonizing Legal Theory, 308

Fletcher v. Peck: A Dangerous Contest Compromised, 308

Daniel Webster for the Plaintiff, 309

Defendant McIntosh's Rebuttal, 310

Chief Justice Marshall's Discourse of Conquest, 312

Conclusion, 325

Bibliography, 335

Index, 343