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President Jefferson, Governor Clinton and the Iroquois, 1800-1802

Jefferson's "Revolution of 1800."

Control of federal and New York State governments by one party between 1796 and 1800 resulted in an amicable working relationship in formulating tribal policy. The same was true after 1800, but the party in control of both federal and New York State governments was the Jeffersonian Republicans rather than the Hamiltonian Federalists. After 1800, federal and State governments collaboratively *reversed* many of the tribal policies collaboratively developed in the preceding years. Describing Jefferson's election as "the revolution of 1800" exaggerates Jefferson's aspirations, but the shift from Adams to Jefferson at the national level and from Jay back to Clinton at the State level did have important consequences for tribal policy, within the context of a national shift toward greater state autonomy.

Discussions of the nation's first three Presidents rarely focus on tribal policy, which many commentators assume remained unchanged from 1789 onwards. In fact, the tribal policies of Washington, Adams and Jefferson differed significantly, in ways that reveal much about their respective strengths and weaknesses as leaders. President Washington placed a high value on consistency, and his tribal policy manifested the same firm qualities of mind and character he displayed in approaching almost everything. No one ever penned a better portrait of Washington's style of leadership than Abigail Adams, the wife of Washington's Vice President, who marveled in a 1790 letter to her sister that Washington

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has so happy a faculty of appearing to accommodate and yet carrying his point that if he was not really one of the best intentioned men in the world, he might be a very dangerous man. He is polite with dignity, affable without formality, distant without haughtiness, grave without austerity, modest, wise, and good. These are traits in his character which peculiarly fit him for the exalted station he holds, and God grant that he may hold it with the same applause and universal satisfaction for many, many years, as it is my firm opinion that no other man could rule over this great people and consolidate them into one mighty empire but he who is set over us.¹

Washington's character was not only his strength but his message as well. His way of dealing with people and issues was to try to be concrete and fair, without getting so deeply involved as to appear partisan. Speaking sensibly when everyone else was shouting, Washington ended up being the only U.S. leader trusted to make the toughest decisions. Washington was twice elected President *unanimously*, receiving the vote of every last member of the electoral college, a feat never equaled since, and certainly not by his ever-controversial successor John Adams.

In tribal policy, Washington led by manifestations of intelligent restraint, and not by defining an agenda. A law and order man, he prized decent behavior above all, and left the formulation of abstract principles to others. Reticence was his creed, and sometimes he left his meaning unclear, allowing more scope to subordinates than was good for them. Humane and painstakingly applied, Washington's tribal policy was not wrought into a comprehensive system. As Washington's Secretary of State, Jefferson attempted to fashion such a system but was frustrated by Alexander Hamilton's dislike for any constraints on governmental discretion, and Washington's attempt to avoid a complete rupture in his Cabinet.

Washington did not involve Vice President Adams to any great extent in governmental

¹ David McCullough, *John Adams*, New York: Simon and Schuster, 2001, 413.

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decision-making, on tribal or other matters. Nor did Adams have a sizeable personal following. Upon becoming President, Adams felt obliged to retain officials such as Secretary of State Timothy Pickering, who had entered Washington's Cabinet in its final years, rather than doing what Washington had done in 1789, start fresh with the best persons available.

In 1783, Benjamin Franklin aptly described Adams as a person who “means well for his country, is always an honest man, often a wise one, but sometimes and in some things, absolutely out of his senses.”² On tribal policy, Adams was both “wise” regarding general principles and at times “absolutely out of his senses” as when he accepted Robert Morris's corruptly negotiated Big Tree Treaty.

One strength Adams brought to the Presidency was his background as a practicing Massachusetts attorney, experience which included work in the Maine District of Massachusetts. Adams was familiar with the legal status of Maine's pro-French tribes, whose “Indian Title” had been punitively extinguished by Massachusetts during the 1754-60 war with France, as New York State later expropriated the lands of pro-British tribes during the Revolutionary War. Adams used his familiarity with Maine's tribes to good advantage in Paris in 1782 while negotiating the boundary between the United States and British Canada. His *Diary* entry of November 10, 1782, recounts his explanation to the French foreign minister regarding how the British Governor of the Province of Massachusetts Bay declared forfeit all the aboriginal “Indian Title” of the tribes in northern Maine because they had taken up the hatchet on the side of France: “I took out of my Pocket and shewed him,” recalled Adams, “the Record of Governour

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Pownals solemn Act of burying a Leaden Plate with this Inscription, May 23, 1759. Province of Massachusetts Bay. Penobscot. Dominions of Great Britain. Possession confirmed by Thomas Pownal Governor.”³

Sixteen years later, in his Second Annual Message to Congress, dated December 8, 1798, Adams again turned his attention to northern Maine, in a discussion of border problems still facing the United States. Along the southern U.S. border with Spanish Florida, Adams recommended not attempting to Arun a line over lands to which the Indian title had not been extinguished.” Regarding the north, Adams reported in contrast that an amicable resolution of boundary issues between the United States and Great Britain had been achieved, based on historical records of “grants of land which have been made by the respective adjoining Governments.” Since all “Indian Title” in the District of Maine had been extinguished and the tribes of Maine now occupied lands granted to them by the Massachusetts Government, a final determination of the location of the international border could be made without a need to take aboriginal “Indian Title” claims into account.

Politically speaking, the proudly contrarian President Adams did almost everything wrong. Meanwhile Vice President Jefferson was doing almost everything right, politically speaking. Though a “philosopher,” Jefferson was also a hard-working political leader who

² McCullough 285.

³ *Diary and Autobiography of John Adams*, L.H. Butterfield, ed., Cambridge: Harvard University Press, 1961, 48.

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wanted to help his numerous supporters. Deeply interested in tribes, Jefferson went much further than his predecessors in thinking through a coherent tribal policy that would take all possibilities into account. He could also be blinded by his own theories to the need to allow for anomalies and exceptions. Nor was he above sacrificing tribal interests when they collided with other political objectives. A party leader, Jefferson sought allies in each state, and made political calculations--- though not always openly, since this was still considered problematic. Outside the south, New York State was central to Jefferson's strategizing, and crucial to his triumph in 1800, as well as to his re-election in 1804.

Because of the wholly unexpected tie vote between Jefferson and Aaron Burr in electoral college balloting for President, and Burr's equally unexpected attempt to wrest the Presidency from Jefferson, New Yorker Burr had destroyed his credibility even before he was sworn in as Jefferson's Vice President in March of 1801. As a result, Jefferson turned to New York Governor George Clinton in an attempt to build a new power base in this indispensable northern State. Clinton became Jefferson's Vice Presidential running mate in 1804, climaxing three years in which Jefferson actively courted Clinton. Under Jefferson, Clinton was allowed to exercise control over all aspects of tribal policy within New York State, even including relations with the Senecas, in marked contrast to Secretary of War Pickering's 1795 attempt to rein in Clinton as a supposedly reckless lawbreaker.

George Clinton: Friend of Washington, Ally of Jefferson.

Four men---George Clinton, John Jay, Alexander Hamilton and Aaron Burr---dominated

New York politics in the early national era. Unlike Hamilton and Burr who resembled blazing meteors, Clinton and Jay were New York's pole stars, defining opposed political positions that have endured with modifications down to the present. Clinton was pro-France and pro-upstate New York, Jay pro-Britain and pro-New York City. Clinton was a strong believer in states' rights, Jay emphasized the importance of the national government, but without disparaging the role of states, as had Hamilton. Also unlike Hamilton and Burr, who despised each other and stirred strong emotions in others as well, Clinton and Jay managed to avoid inflicting real damage on one another throughout decades of strenuous political combat. Characteristically, when it appeared that Jay was likely to defeat the incumbent Clinton in 1795, Clinton decided to retire, citing poor health. Similarly, in 1801 when it appeared that Clinton would defeat him, Jay decided to retire. Between them, Jay and Clinton monopolized the office of Governor from 1777 to 1804 without ever directly competing against each other except in 1792, when the result turned on the invalidation of a few disputed ballots.

Though today little-remembered, and when remembered most often negatively, Clinton in his day was even more influential than Jay within New York State, and far more so than Burr or Hamilton. Clinton had gained the lasting admiration and gratitude of General Washington in 1777, when he responded to Washington's urgent plea that he take personal command of efforts to prevent British troops from ascending the Hudson to join forces with General Burgoyne's army advancing south from Canada toward Saratoga.

Throughout the War, Clinton worked hard for the common national cause. After the War, Clinton became increasingly worried that other states might conspire within the Continental Congress to injure New York interests. An early post-War crisis in the relations of the State and

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the Continental Congress focused on whether Continental or New York troops would garrison British-occupied forts in northern and western New York State slated to be handed over by terms of the 1783 Treaty of Paris.⁴ Hamilton advocated Continental garrisoning, Clinton insisted on State garrisoning. (As it turned out, British troops did not withdraw until 1796.)

In 1787-88, Hamilton and Clinton again battled publicly regarding the drafting and ratification of the Constitution. Hamilton supported the centralizing Constitution, Clinton was concerned about the Constitution's possible adverse impact on New York interests. In the midst of this controversy, Hamilton appealed to General Washington for support against Clinton, but the retired Commander-in-Chief calmly assured Hamilton that

For both of you I have the highest esteem and regard....When the situation of this country calls loudly for unanimity and vigor, it is to be lamented that Gentlemen of talents and character should disagree in their sentiments for promoting the public weal; but unfortunately, this has ever been, and more than probably ever will be the case, in the affairs of man.⁵

At this time, James Madison, Hamilton and Jay were hard at work writing the *Federalist Papers*, in large part to try to persuade New York's pivotal Clintonians to ratify the Constitution. In the summer of 1788, Clinton presided over New York's ratifying convention, in a manner never forgotten by a twenty-five-year-old spectator named James Kent, later to be known as Chancellor Kent. Though he did not share Clinton's skepticism about the

⁴ John P. Kaminski, *George Clinton, Yeoman Politician of the New Republic*, Madison: Madison House, 1993, 86-89.

⁵ Washington to Hamilton, October 18, 1787, quoted in Kaminski 128.

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Constitution, Kent was impressed by “the simplicity and unpretending good sense of Clinton,” unquestionably the convention’s most influential single figure. Kent was

favorably struck with the dignity with which he presided, and with his unassuming and modest pretensions as a speaker. It is impossible not to feel respect for such a man, and for a young person not to be somewhat over-awed in his presence, when it is apparent in all his actions and deportment that he possessed great decision of character and a stern inflexibility of purpose.⁶

Guided by Clinton, the convention did finally ratify the Constitution, but with a strong recommendation that a Bill of Rights be added to it. Although Clinton criticized the original Constitution, he did so like Jefferson in a constructive manner that contributed to the quick adoption of the first ten amendments.

In 1789, Hamilton supported John Adams for Vice President, not because of any fondness for Adams but simply to stop Clinton’s candidacy. Without solid New York State support, Clinton’s Vice Presidential hopes were dashed. Hamilton viewed Clinton as dangerously hostile to the Constitution, and likely to damage the federal government if ever in a position to do so. But Clinton’s long years of service under the Constitution as New York Governor and U.S. Vice President make clear that Clinton was not a threat to the nation. Like Jefferson, Clinton was despised by Hamilton and his protégé Pickering, but President Washington saw merit in all four of these mutual antagonists, and made it possible for all of them to contribute valuable service to their common nation.

⁶ Kaminski 163.

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After leaving the Governorship on July 1, 1795, Clinton had more time to devote to private business. Meanwhile, as he neared the end of his expense-account-only service to the nation, President Washington was spending more time thinking about his financial future. This led to a series of exchanges between Clinton and Washington regarding their joint business venture launched in 1783 when they purchased a large tract of land in the Mohawk River Valley, with the intention of selling it off gradually. On November 17, 1795, Clinton had written Washington apologizing that “My ill state of health for upwards of a year past has prevented me in a great degree from paying attention to business and of course our joint interest has been in some measure neglected.” Clinton also observed discreetly that the President’s proceeds had been slowed because deeds for every small tract sold had to be sent to Washington for his signature, and inquired whether Washington might be willing to give his power of attorney to someone in New York State.

On November 23, 1795, the President assured Clinton that “My inquiries after your health have been constant, and my concern for the ill state of it has been sincere” and added,

I beg you will not suffer the business, in which I am jointly interested, give you a moment’s concern, for I can assure you it has never occupied a thought of mine. But in order to make the transacting of it as easy to you, and as convenient to others as the case is susceptible of, I will empower you to act for me.

On December 17, 1795, Clinton sent the necessary document for Washington’s signature, explaining that it would have to be witnessed by two persons, one of whom “should be a person coming hither that he may prove it before a proper Officer in the State.” Alternatively, Clinton suggested that the President could execute it “before one of the Justices of the Supreme Court of

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the United States” because New York State would accept this as “sufficient and perhaps it may be more convenient to you.”

With the sale process thus consolidated in Clinton’s hands, he was able to send Washington more frequent checks. On February 28, 1797, five days before his term ended, Washington thanked Clinton for a “draught on the Cashier of the Bank of Pennsylvania” and suggested that “Future payments can be made by draughts on the Bank of Alexandria or Columbia.” The reason? Washington could scarcely contain his eagerness as he confided,

As early in next week as I can make arrangements for it, my journey for Mount Vernon will commence, twenty miles from which I think it is not likely I shall ever be again. But if business, inclination, or any other cause should ever induce you to visit that hemisphere, I can assure you with much truth that I shall be extremely happy to see you under the shade of my vine and fig tree.

Mrs. Washington unites cordially with me in every good wish for you, Mrs. Clinton and family and with sincere esteem and affectionate regard I am my dear Sir, your obedient servant, George Washington.⁷

Perhaps fittingly, Washington died in December of 1799, in the final days of the eighteenth century, the Enlightenment ethos of which he so admirably embodied. Washington thus did not live to see the first electoral defeat of an incumbent President and the ascendancy of Thomas Jefferson as the embodiment of the republic’s second phase.

Jefferson replaced Adams as President on March 4, 1801. Clinton replaced Jay as New York Governor on July 1, 1801. Within months, a number of New York State tribal treaty conferences were convened, which were handled in quite a different manner than under the

⁷ All the above quotations are from GWP.

preceding Federalist administrations of Washington and Adams. Treaty conferences were held in 1802 with three of the four groups negotiated with during the years 1796-98: the “Seven Nations of Canada,” the Oneidas and the Senecas.

The “Seven Nations” Treaty Conference.

The first of these conferences (which produced no treaty) involved land at Saint Regis. During negotiations leading to the signing of the May 31, 1796, “Seven Nations” Treaty, William Constable and Daniel McCormick had agreed to sell two separate square mile tracts they owned to the State, so that the State could then grant these tracts to the Saint Regis community for their use. No compensation had been stipulated, however, and a price for one of these tracts remained in dispute, meaning that the 1796 federal Treaty could not be implemented in its entirety. Altering a federal treaty could not be done by the State but could be done by another federal treaty. So on April 9, 1801, the New York Legislature authorized then-Governor Jay to apply for a federal treaty commissioner. This request was made by the newly installed Governor Clinton in a letter to Secretary of War Henry Dearborn dated November 26, 1801.⁸ President Jefferson on February 2, 1802, nominated New Yorker John Tayler to serve as a federal treaty commissioner for this purpose.⁹

Clinton himself may well have suggested Tayler. A trader familiar with the Iroquois

⁸ ASPIA1:655. Clinton’s letter is for some reason no longer in the War Office files. See National Archives, *Register of Letters Received by the Secretary of War, 1800-60*.

⁹ Franklin B. Hough, *A History of Saint Lawrence and Franklin Counties, New York*, Albany: Little & Co., 1853 151-2.

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language from an early age, Tayler had served under General Philip Schuyler in the Revolutionary War, and in 1785 was made Agent to New York State's Board of Indian Commissioners, in effect their executive secretary. Tayler helped negotiate the Oneida-New York State Treaty of 1785, and in 1788-89 facilitated the State treaties with the Oneidas, Onondagas and Cayugas that extinguished their "Indian Title" and granted them State reservations. In later years, Tayler would become President of the New York Senate and Lieutenant Governor.¹⁰ The appointment of a New York official who had served for almost two decades under Governor Clinton to represent the federal government at a treaty negotiation within New York State would have been unimaginable during the Washington and Adams administrations.

As it turned out, the disputed square mile promised the Saint Regis community in 1796 was obtained after all, just prior to the treaty called to discuss the matter. This seems to have resulted from willingness at Saint Regis to lease the square mile in question, presumably to its former owners, with the income used to support a school for Saint Regis children.¹¹

The original 1796 federal treaty extinguishing the aboriginal "Indian Title" claims of the "Seven Nations of Canada" having now been fully implemented, the federal government's responsibility ended and the Saint Regis community came wholly under State supervision. The State's assumption that Saint Regis would henceforth be within its ordinary jurisdiction was reflected in a March 26, 1802, Act of the Legislature providing

¹⁰ Hough 83, 118, 402, 432.

¹¹ Hough *History* 154.

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That it shall and may be lawful for the said Saint Regis Indians, on the first Tuesday of May next, and on the first Tuesday of May in every year thereafter, to hold a town meeting on their said reservation, within the state, and by a majority of male Indians above twenty-one years of age, to choose a clerk, who shall keep order in such meeting, and enter in a book to be provided by him for that purpose, the proceedings of the said meetings. And be it further enacted, That it shall and may be lawful for the said tribe, at any such meeting aforesaid, to make such rules, orders and regulations, respecting the improvement of any other of their lands in the said reservation, as they shall judge necessary, and to choose trustees for carrying the same into execution, if they shall judge such trustees to be necessary.¹²

By a series of transactions beginning in 1816, lands reserved by the State for the use of the Saint Regis community were sold back to the State without recourse to the federal treaty procedure. Though still an “Indian Tribe,” the Saint Regis community held no “Indian Title” land necessitating federal treaty involvement.

The Oneida Treaty.

In February of 1802, a number of Oneida “Sachems, Chiefs and Warriors” visited Albany and “represented to the Legislature...their desire and willingness to cede, grant and release to the People of the State of New York certain parts and portions of the Lands heretofore reserved to them” by the State. In response, the Legislature on February 23 and 24, 1802,

¹² Hough *History* 154.

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Resolved that his Excellency the Governor be and he is hereby authorized and requested together with the Surveyor General, and such other Person as his Excellency may for that purpose appoint to treat with the Indians now in this City for the purchase of such part of the Land in their Reservation as they may be inclined to Sell, which Treaty when ratified by the Agent on the part of the United States shall be binding and conclusive on this State.¹³

This language had no obvious connection either to past State practice or to the current federal practice of extinguishing “Indian Title” claims through the full federal treaty process. The “Agent on the part of the United States” presumably referred to Israel Chapin, Jr. Governor Clinton may have preferred to deal with a federal treaty commissioner appointed by Jefferson than with Captain Chapin, a Pickering appointee. This may explain why, once the involvement of Chapin was proposed, Clinton countered by asking Jefferson to appoint a federal treaty commissioner, expecting that this would be Clinton’s own subordinate John Tayler.

In a February 20, 1802, letter to Secretary of War Dearborn, Governor Clinton requested appointment of a federal treaty commissioner to supervise the Oneida negotiation. But the Oneida “Sachems, Chiefs and Warriors” in Albany were eager to return home, so Clinton agreed to negotiate a “preliminary” agreement with them, on the understanding that it would have to be confirmed later, once a federal treaty commissioner had been appointed. On March 5, 1802, this “preliminary” agreement was completed. The same day, Secretary Dearborn informed President

¹³ Whipple 252.

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Jefferson that Governor Clinton had requested “that a commissioner, on the part of the United States, might be appointed to attend a treaty with the Oneida Indians, for the purchase of about ten thousand acres of land, which that nation is desirous of selling, and which has, heretofore, been leased out to white people.” On March 9, Jefferson recommended to the Senate that the Oneida negotiation be also assigned to John Taylor.¹⁴ The “preliminary” Oneida Treaty of March 5, 1802, was confirmed in the presence of Federal Treaty Commissioner Talyer on June 4, 1802, at what the confirming document referred to as “their Village in the State of New York.”¹⁵ On December 27, 1802, President Jefferson forwarded the Oneida Treaty to the Senate. On December 31, the Senate unanimously consented to it. But then “for reasons that cannot now be ascertained” this Treaty was not ratified or proclaimed by President Jefferson.¹⁶

Neither the 1798 nor the 1802 Oneida land sale resulted in State-federal controversy. In 1798, the New York Legislature and Governor Jay seem to have believed initially that a federal treaty commissioner was not required. Jay applied for one belatedly, presumably in response to an Oneida request. In 1802, the procedure followed once again fit no clear pattern, suggesting extemporization amidst uncertainty.

The Seneca Treaties.

¹⁴ ASPIA 1: 663.

¹⁵ Texts of both documents are in Whipple 252-59.

¹⁶ Francis Paul Prucha, *American Indian Treaties, The History of a Political Anomaly*, Berkeley: University of California Press, 1994, 115.

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Three Seneca treaties were negotiated in 1802, all supervised, as was the Oneida Treaty, by Federal Treaty Commissioner Taylor. Two of these treaties modified the 1797 Big Tree Treaty, the third modified the 1794 Treaty of Canandaigua. In 1797, the Senecas had reluctantly agreed to confine themselves to eleven reservations totaling about 200,000 acres carved out of the more than three million acres they occupied in the Massachusetts preemption area. The Senecas also claimed a twelfth tract bordering the Niagara River, based on the 1794 Treaty of Canandaigua.

New York State had not been represented at either the 1794 Treaty or the 1797 Treaty, and both Treaties generated problems that might have been avoided had a New York State representative been present. As of 1802, the Senecas still possessed no land rights acknowledged by New York State, so a major objective of all the 1802 federally supervised Seneca Treaties was to allow New York State and the Senecas finally to come to terms.

The feature of the 1797 Treaty that had resulted in the most contention was its failure to specify precisely what the bounds of the eleven Seneca reservations within the Massachusetts preemption area were to be, or alternatively to provide for formal treaty confirmation of the bounds once surveyed. This omission opened the door to dishonest surveying. As Red Jacket explained to the Acting Secretary of War on February 10, 1801, “Not perfectly...understanding the manner in which the calculations in surveying would result, we gave directions, which on the survey being made agreeable thereto did not correspond with our intentions.”

The federally supervised 1797 debacle had led to anguished Seneca soul-searching, and then to the launching of a major religious self-help movement. Led by Cornplanter’s brother

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Handsome Lake, this movement sought to bolster Seneca resistance against allowing further sales of Seneca land. Becoming aware early in 1802 that new sales were being discussed, Handsome Lake, Cornplanter and several other chiefs journeyed to Washington, D.C., to appeal in person to President Jefferson. On March 10, Handsome Lake explained to Jefferson that

This is the third year since the Great Spirit appointed me to guide my people and give them knowledge, good from God. He directed me to begin with my own people first, and that is the reason why I have been so long in coming to my White Brothers.

I am very much troubled to find that my brothers, and my White Brothers, have gone astray. My brothers are lost because they make too much use of my White brother's Drink, but I hope that this is the last, and that they will not make use of any more. It is the reason why we do not love like Brothers. I have now come forward to make us love one another again, with your assistance.

Our White Brothers are lost for taking all our Land from us, but the great Spirit has told me to come and tell them of it. If we only step out of our doors, and look around, we can see all the little land we have left, and that little we hope and wish our White brothers will give us a writing on paper for it, so that we can hold it fast. If we do not settle all our business that we are now on, the Great Spirit will send a great Sickness among us all. But if we settle all our business, health and happiness will come.¹⁷

Jefferson instructed Secretary of War Dearborn to reply. On March 17, Dearborn assured Handsome Lake and his colleagues that Seneca lands enjoyed federal protection, and that the federal government would never compel the Senecas to sell any land against their will. *On the very same day*, Dearborn wrote Governor Clinton and Federal Treaty Commissioner Tayler

¹⁷ National Archives, *Secretary of War, Letters Sent, 1800-24*, Volume A, pp. 183-87. See also Anthony Wallace, *The Death and Rebirth of the Seneca*, New York: Vintage, 1972, 266-69.

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about the planned extinguishment of yet more Seneca land rights.

On March 9, one day before meeting with Handsome Lake, Jefferson had recommended to the Senate that Tayler's commission be expanded to encompass negotiations "with the Six Nations, generally, or with any of them." Jefferson's terminology seems to have been occasioned by the fact that New York State negotiations now underway included modifications of the 1794 federal Treaty, which had been with the "Six Nations," as well as of the 1797 Treaty, which had been explicitly with the Senecas. After Jefferson's recommendation was approved by the Senate, Dearborn on March 17 instructed Tayler that

Governor Clinton will notify you of the time and place of holding any such Conventions. You will act in some measure in the character of an umpire between the State and the said Indians in any bargains which may be made between the parties, and you will of course pay due attention to the interests of the Indians, and see that all transactions relative to our bargains are explicit and fair.

To Clinton, Dearborn wrote,

It has been considered, that all such bargains, between Individuals and any of the Indian nations should be made under the direction of the Governor of the State in which such Indians reside. Mr. Tayler will therefore attend to the negotiations between the aforesaid Agent [of the Holland Land Company] and the Senecas, by instructions from your Excellency when convenient for the parties.¹⁸

In other words, the federal government was excusing Massachusetts from further participation in treaties relating to the Massachusetts preemption right area of New York State, and acknowledging the valid interest of New York State in transactions that would have consequences for the State. Governor Clinton was requested to "direct" all three Seneca treaties

¹⁸ National Archives, *War Department, Letters Sent, 1800-24*, Volume A, 194-95.

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to be supervised by Federal Treaty Commissioner Tayler, both the two referring to the Massachusetts preemption right area as well as the one referring to Seneca claims touching the Niagara River, territory retained by New York State when preemption rights to most of western New York State were assigned to Massachusetts in 1786.

The two Tayler-supervised Seneca Treaties completed at Buffalo Creek on June 30, 1802, adjusted some of the problems generated by the 1797 plan to carve eleven reservations out of the Massachusetts preemption area. One of these Treaties involved a non-monetary land swap. By the other, the Senecas relinquished a two-square-mile tract no longer used as they consolidated their settlements.¹⁹

In charge of laying out the bounds of the various Seneca reservations authorized by the 1797 Treaty had been Joseph Ellicott, younger brother of the nation's best-known surveyor, Andrew Ellicott. In surveying the Buffalo Creek reservation created by the 1797 Treaty, Joseph Ellicott cleverly inserted a small but crucial gap between the northern end of this reservation and the southern end of the Seneca claim bordering the Niagara River. Into this gap, the town of New Amsterdam (later Buffalo) would be shoe-horned. In 1799, Ellicott proudly described his survey of the Buffalo Creek reservation as “so laid as not in the least to injure that spot or place designed by nature for the grand emporium of the Western world, I mean the mouth of Buffalo creek and the country contiguous thereto.”²⁰ In addition to depriving the Senecas of the future

¹⁹ Kappler 2:60-62.

²⁰ “Report of Mr. Ellicott concerning the State of the Survey of the Genessee lands made in 1798” in Robert W. Bingham, ed., *Joseph Ellicott Reports*, Buffalo: Buffalo Historical Society,

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site of downtown Buffalo, Ellicott had simultaneously generated a case for suggesting that the Senecas might wish to liquidate their now-separated claim to lands along the Niagara shoreline.

The chain of events leading to extinguishment of this claim began in the spring of 1801 when the U.S. Army started constructing a fort near Black Rock. Black Rock was a triangular slab one hundred feet wide and three hundred feet long rising four to five feet above the surface of the Niagara River. A natural breakwater, it created a small harbor second in regional importance only to the mouth of Buffalo Creek. (In 1825, Black Rock was blown to bits to produce the point of origin of the Erie Canal.²¹)

The U.S. Army began their fort on the shore near Black Rock under the impression that it was located on U.S. property. The Senecas complained to Federal Agent Israel Chapin, Jr., who on June 18, 1801, relayed their complaint to Secretary of War Dearborn. Dearborn, who had been in office only since March 5, made inquiries, and replied to Chapin, Jr. on July 10, 1801:

I have received your letter of the 18th ultimo. It was hitherto understood, that the land on part of which the new fort at Black Rock is erecting belonged to the United States; on further examination, however, this is found to be incorrect. You will therefore assure the Indians that we have no intention of appropriating any of their lands to our uses, without their permission, and that until accurate information can be obtained from Mr. Ellicott, on the subject, the progress of the works will be suspended.

The same day, Dearborn wrote urgently to Joseph Ellicott:

1937, 1:53. See also 1:86-95.

21 See Robert W. Bingham, *The Cradle of the Queen City, A History of Buffalo*, Buffalo: Buffalo Historical Society, 1931, 209-10.

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It being a matter of great importance to ascertain correctly the course of the line according to treaty, between the United States and the Seneca nation of Indians, particularly between lakes Erie and Ontario, presuming that you are fully acquainted therewith I request that you will be so obliging as to favor me as soon as possible with the information that you may possess on the subject, and especially whether Black Rock be within the Indian line or not.²²

On August 27, 1801, Ellicott sent Dearborn a “Map or Military Perspective of Niagara River and the Lands adjoining” and advised Dearborn that Black Rock was indeed “probably the most eligible” site “for the Erection of a Fortification” but that it was “yet the Property of the Seneca Nation.” Ellicott informed Dearborn however that the Senecas

are *extremely* anxious to sell their Claim to the Lands reserved by the State of New York including Black Rock, and I am at a Loss to determine what may have been the Policy of the State in neglecting to acquire this property of the Indians, as well as that of making no provisions for reestablishing the old carrying Place round the Falls of Niagara, thereby subjecting those Citizens and Inhabitants of the State and United States, who have to pass from Lake to Lake...to the disagreeable alternative of passing and transporting all their Property on the Canada Side.²³

Even the U.S. Mail route in these years ran overland from Canandaigua to Black Rock, then across by ferry to the Canadian side, then north overland to Lake Ontario, then back by water to Fort Niagara on the U.S. side.²⁴

Ellicott undoubtedly misrepresented Seneca disposition to sell what Red Jacket had worked so hard to obtain from Pickering at Canandaigua seven years earlier. As for the State’s reluctance to buy, this may well have reflected reluctance to concede that the Senecas had a valid

22 Dearborn to Chapin, Jr. and Dearborn to Ellicott, National Archives, *Secretary of War, Letters Sent 1800-1824*, p.90.

23 Ellicott to Dearborn, August 27, 1801, *Buffalo Historical Society Publications* 26:139-41.

24 Charles Norton, “The Old Black Rock Ferry,” *Buffalo Historical Society Publications* 1:96.

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claim in the first place. At Hartford in 1786, the State had explicitly reserved the Niagara shoreline for public purposes for the very reasons Ellicott cited, and had never consented to the 1794 federal guarantee of some of the State's wholly owned shoreline to the Senecas. The resulting benefit to the Canadian side may have been precisely what British officials hoped Red Jacket would achieve at Canandaigua. In any case, promoter-planner Ellicott recognized in the U.S. Army's felt need for Black Rock a new development capable of breaking the impasse obstructing the region's growth.

At Canandaigua in 1794, Pickering had distinguished the region southwest of Buffalo Creek, where "above seven hundred" Senecas resided, from the Niagara shore strip where almost no Senecas resided. This situation was unchanged; in 1802, according to Red Jacket, only "two families" of Senecas lived there year-round. But Black Rock was a great place for fishing, and the wooded shore of the Niagara River a great place for hunting.²⁵ The Senecas also did not want to be cut off from direct access to British trade and advice.

Unconcerned about such Seneca feelings, Ellicott succeeded in eliciting the response he desired from both federal and State officials. New York State readily grasped Ellicott's point that federal desire for Black Rock offered the State an opportunity to extinguish the Senecas' federally recognized Niagara River claim. The State therefore decided to insist on extinguishment of the *entire* Seneca claim as a preliminary to yielding to the federal request for a

²⁵ "Abstracts of speeches made by Seneca chiefs at a treaty held in Albany for the purchase of lands on the Niagara River, August 20, 1802," New York State Archives, *Legislative Assembly Papers*, 40:393-404.

small military post on one part of it.

On November 12, 1801, a preliminary discussion by the Senecas of this urgent State-federal proposal took place at Geneseo. In attendance were Federal Agent Israel Chapin, Jr. and interpreter Jasper Parrish, who acquired the impression from Red Jacket that the Senecas *might* be willing “to sell the strip of land along the Niagara River as it is a narrow strip and we fear encroachments, a party of men having made a beginning there last summer” Can apparent reference to the U.S. Army’s construction crew.²⁶

On March 5, 1802, Secretary of War Dearborn reported as fact to President Jefferson that “The Six Nations have...expressed a wish to dispose of a narrow strip of land, which they consider as useless to them, bordering on Niagara River.” On March 9, the day before he heard Handsome Lake flatly condemn any and all further Seneca land sales, Jefferson added the Black Rock fort negotiation to the federal tasks already assigned Federal Treaty Commissioner Tayler.²⁷ On March 19, the New York Legislature passed an Act approving the proposed plan for Black Rock. This Act referred to a Seneca “claim” to the Niagara shoreline, as distinct from the “reservation lands” of the Onondagas and Cayugas referred to elsewhere in the Act. The Legislature further stipulated that the federal government was to “pay the expense of holding the said treaty, or such part thereof as the person administering the Government of this State shall

²⁶ Talk by Red Jacket at Geneseo, November 12, 1801. New York Historical Society, *Henry O’Reilly Papers*, 14.

²⁷ ASPIA 1:663.

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judge reasonable.”²⁸

The Act also contained what might be called two publicly tendered bribes: offers to bestow one square mile each on Horatio Jones and Jasper Parrish, once the Senecas yielded their claim. While serving in the Revolutionary Army, Jones in 1781 at age eighteen had been captured by Senecas and adopted into their tribe. He learned their language and served as an interpreter and trader-middleman for the rest of his life. Parrish was captured in 1777 at age eleven, and remained with the Iroquois until 1784 when he was given up as a result of the Treaty of Fort Stanwix. Having like Jones learned the Iroquois language, Parrish also worked as an interpreter for the rest of his life.²⁹ Placing some of the land to be taken from the Senecas in the hands of Jones and Parrish seems to have been meant to reassure the Senecas that they would still be able to visit the Niagara shore.

Upon their arrival at Buffalo Creek on June 16, 1802, Federal Treaty Commissioner Tayler and New York Commissioners Ezra L’Hommedieu, Charles D. Cooper and Oliver Phelps were ceremonially greeted by Red Jacket. The State Commissioners announced that they were there to discuss price only and implied that all other questions had been previously decided, but the Commissioners were told they must wait while the Senecas conferred. Four days later, it became apparent that Handsome Lake and Red Jacket were locked in strenuous debate. As he had three months earlier in discussions with Jefferson and Dearborn, Handsome Lake explained

²⁸ ASPIA 1:668.

²⁹ Orasmus Turner, *Pioneer History of the Holland Purchase of Western New York*, Buffalo: Jewett, Thomas, 1850, 286-92.

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that “the Great Spirit...was angry with the Indians for selling so much of their Lands as they had done and forbid their selling any more and therefore their determination was not to sell.”³⁰ Handsome Lake further requested that the State “give up their right of Pre-emption” and grant the Senecas full fee title to the Niagara shore strip. In reply, the State Commissioners (according to their own report) “accused them of insincerity, deception and falsehood” and declared that “the State would not be imposed upon in this manner and in case they would not sell they must pay all our expenses.”

In an effort to placate the Commissioners, Handsome Lake suggested that the “Great Spirit and four Angels”

would not be displeased with them if they exchanged land acre for acre where they found it convenient and that they would exchange this land on the following conditions: they [New York State] would reserve to them and their posterity forever the privilege of passing the Bridge over Tonawanta [Creek] free from expence, if one should be built there subject to toll and also the right of crossing the ferry without pay. Also the small islands in the river opposite those lands with the meadows yielding hay adjoining the uplands and also two miles along the river, Black Rock being about the Centre extending a quarter of a mile from the water and for the remainder of the land we must give them as many acres to be annexed to four different reservations, to wit Buffalo, Allegany, Tonawanda and Cattaraugus.³¹

The Senecas were willing to give up their claim to most of the Niagara shore strip federally guaranteed to them in 1794Cbut not Black RockCin exchange for an equal amount of land,

³⁰ “Report of Commissioners appointed to hold a treaty between Senecas, Cayugas, and Onondagas and New York State,” July 13, 1802, New York State Archives, *Legislative Assembly Papers*, 40:373-80.

³¹ Report of Commissioners.

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approximately fifteen square miles, to be added to their four main reservations. This was a well-thought-out proposal, but was wholly unacceptable to Federal Treaty Commissioner Tayler, whose mandate was to acquire Black Rock for the federal government; as well as to New York State's Commissioners, who were unwilling even to consider adding land to the Senecas' other reservations, all of which were in the Massachusetts preemption area, and where the State could only acquire land by purchase on the open market. The State Commissioners informed the Senecas that an increase in the size of their other reservations was out of the question because "we had no lands adjoining their reservations which they well knew as we [i.e., New York State] had never purchased any land from them."

Alternatively, Handsome Lake offered to sell a small amount of land---but not Black Rock---if New York State

would give them ten dollars per acre and that there were other places to build forts besides Black Rock. They were answered that this proposition was the same as their former one in effect, it being only an excuse for their perfidy and base conduct, they knowing we could not give a tenth part of the money and that the land adjoining which they had sold and had been surveyed and laid out into lots might be bought for 8 or 10 shillings per acre, that we should still insist on their paying our expenses as this was a denial to sell as much as their former refusal. They then wished to close the Treaty, to cover up the fire as they called it.

Handsome Lake had prevailed.

Everyone from President Jefferson down through interpreters Parrish and Jones (each promised a square mile) had been behind this carefully prepared joint federal-State initiative, firmly committed to pressuring the Senecas into agreement; everyone, that is, except Federal Agent Israel Chapin, Jr. His July 6th letter to Secretary Dearborn reporting the collapse of the

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negotiation gave no indication he was aware how serious this setback was for federal-State policy, and in fact devoted much of his letter to a squabble concerning trade goods seized from a lame itinerant peddler woman named Mrs. Thompson, about which Dearborn had written him three weeks earlier. Noting that the Senecas were presently very “enthusiastic” (a word then connoting religious excitement), Chapin, Jr. expressed the bland hope that they would change their minds about Black Rock “by and by.”³²

Chapin, Jr.’s rambling letter, written on July 6th in Canandaigua, could not have reached Dearborn before Dearborn fired him on July 7th. Most likely, Dearborn had already heard of the collapse of Black Rock negotiations from other participants, and dismissed Chapin, Jr. on this basis. His firing without a single word of commendation after seven years on the job was abrupt, and no credible explanation was given. The ostensible reason was that Canandaigua, even though centrally located, was remote from any of the Iroquois settlementsCa situation that had existed from the day his father was first appointed in 1792.³³

No charges were made against Chapin, Jr., but veiled accusations abounded. Federal Treaty Commissioner Tayler wrote Dearborn on July 19 that “the conduct of the Indians on that occasion, appeared to me to be very uncandid and exceptionable, and which, from the observations I was enabled to make, I am induced to ascribe to some improper influence.”³⁴

32 *Henry O’Reilly Papers*, 14.

33 Dearborn to Chapin, Jr., July 7, 1802. National Archives, *Secretary of War, Letters Sent, 1800-1824*, p. 245.

34 ASPIA 1:666.

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Chapin, Jr. was the only “improper influence” actually at Buffalo Creek. He was moreover perceived as a conduit for Britishers across the Niagara River. The New York Commissioners also suspected that the Senecas had been influenced not to sell by persons interested in having the Carrying and Travelling on the west of the River and in preventing any military post being established at Black Rock.”³⁵ The British had withdrawn to the western side of the Niagara River in 1796, but of course preferred that the eastern side remain in Seneca hands rather than teeming with U.S. citizens, while the British Canadian shore emerged unchallenged as Niagara’s principal corridor of trade.

On September 4, 1802, after Chapin, Jr. protested his firing, Dearborn angrily accused him of dishonesty, official misconduct, and being “violently opposed to the present administration.”³⁶ The real reason for his firing seems to have been that Chapin, Jr., who had private trading interests stretching into British Canada, and a good relationship with the Senecas, didn’t want to jeopardize the personally profitable goodwill the Senecas felt for him by pressuring them into doing something they resisted. This made him more comfortable with the current situation at Niagara than any of the federal and State officials who had come long distances to change it.

Less than two months after the collapse of negotiations at Buffalo Creek, Red Jacket and a number of other chiefs (but not Handsome Lake or his brother Cornplanter) traveled to Albany

35 Report of Commissioners.

36 *Henry O’Reilly Papers* 14.

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to resume negotiating the Black Rock land sale opposed by Handsome Lake. The Red Jacket-led Senecas based at Buffalo Creek remained as they had been for the past year reluctantly inclined to accommodate State and federal desires, while Handsome Lake and Cornplanter from their Allegheny River base near the Pennsylvania border opposed all further sales.

Following the State Commissioners' failure at Buffalo Creek, Governor Clinton had taken personal charge, urgently summoning Federal Treaty Commissioner Tayler and the Senecas to meet with him at Albany. With Federal Agent Chapin, Jr. abruptly removed, the Senecas were at the mercy of two interpreters with vested interests, the strong-willed Governor Clinton, and a Federal Treaty Commissioner who was much more saliently a longtime New York State official. Interpreter Parrish, who had been at Buffalo Creek in June, attended the August session in Albany, and signed as a witness the Treaty from which he was to benefit so materially.³⁷

The negotiations at Albany between August 18 and 20 involved primarily Red Jacket on the Seneca side and Governor Clinton representing New York State, with Federal Treaty Commissioner Tayler saying little if anything. During the three-day conference, much time (probably more than half) was devoted to an issue seemingly unrelated to the Senecas' federally guaranteed Niagara claim, and seemingly of greatly inferior consequence: bail and punishment of a Seneca named Stiff-Armed George, who in July had killed a white man named John Hewitt in a fight near Buffalo Creek. Pending trial, Stiff-Armed George had been imprisoned at Canandaigua,

³⁷ ASPIA 1:665.

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where he was visited by Red Jacket on his way to Albany. In Canandaigua, Red Jacket also called on ex-Agent Chapin, Jr. They discussed the upcoming Albany treaty, Stiff-Armed George and Chapin, Jr.'s dismissal. This resulted in a "Talk" by Red Jacket forwarded by Chapin, Jr. to Secretary Dearborn. In this "Talk," Red Jacket lamented the firing of Chapin, Jr., and the treatment of Stiff-Armed George. He refrained from commenting directly on the upcoming treaty negotiations, though everything he did say implied generalized dissatisfaction and disappointment:

The President of the United States is called a great man, possessing great power. He may do what he pleases, he may turn men out of office, men who held their offices long before he held his. If he can do these things, can he not even control the laws of this state? Can he not appoint a commissioner to come forward to our country and settle the present difference, as we, on our part, have heretofore often done to him, upon a similar occasion?³⁸

Distressed by the abrupt firing of Chapin, Jr., Red Jacket was even more troubled by the treatment of Stiff-Armed George. Both in Canandaigua and in Albany, Red Jacket argued tellingly that "as we have no representation in your government, and we know of no treaty by which we are amenable to the State, we consider it extraordinary that our man should be punished by your laws." At issue was not simply justice for one man but the broader question of the subjection of all Senecas to New York State law. Governor Clinton appeared to be unmoved by Red Jacket's well-reasoned arguments. Stiff-Armed George was not bailed, and was tried and convicted in State court on February 23, 1803. But then Clinton recommended that the

³⁸ Talk by Red Jacket, July-August, 1802, in William L. Stone, *The Life and Times of Red Jacket*, New York: Wiley & Putnam, 1841, 173-78.

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Legislature commute his sentence, and instead of being hanged Stiff-Armed George was ordered to leave the State, and spent the rest of his life in Pennsylvania.³⁹

Turning finally to the Senecas' federally guaranteed Niagara claim, Red Jacket shifted from addressing his "Brother" Clinton to addressing his "Brothers" Clinton and Tayler.

Apologizing for the Senecas' defiant conduct at Buffalo Creek in June, Red Jacket explained in extenuation that

one reason why we wished to reserve the spot at Black Rock was because it is the best fishing place on the River. Since that time however shortly after your commissioners went away we held several councils among ourselves and as you wished very much to purchase this land we agreed at last notwithstanding all our difficulties to let you have it.

Red Jacket then made this offer:

We propose to sell you the whole tract with the reservation however of all the Islands; the line to run at the edge of the water, but the use of the river to be free to you. We wish to reserve also the privileges of using the beach to encamp on, and woods to make fires, together with the uninterrupted use of the river for the purpose of fishing; and likewise the privileges of passing the bridge and turnpike when made free from toll and of keeping a ferry across the River. For the whole tract we ask \$7500. We think this reasonable, and that in a few years it will refund you much more than this sum.

Brothers: With respect to this price, you may perhaps think it high, and much more than you have heretofore given for any lands, but you must also acknowledge that this land, from its situation and other circumstances, is more valuable than any other land you have purchased.

Brothers: Let us reflect a few years back. When the white people first came to our country, we considered them poor and sold them large tracts of land, by which they became rich, and our land being diminished, it is reasonable that we should now value it higher than formerly. This sum will be but a small thing to you, but we acknowledge it

³⁹ Clinton to Dearborn, August 21, 1802, ASPIA 1:667-68; Turner 465-66.

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will be considerable for us. Our hunting ground being occupied by the white people, it becomes necessary that we would resort to some other means of living.⁴⁰

Red Jacket's price rationale made no sense in terms of the federal government's theory that the Senecas possessed only a hunting ground use right worth no more than the commercial game remaining. But Red Jacket had always taken the position that the Senecas held their land in full right, and ought to be paid market value.

The completed Treaty allowed the Senecas many of the use rights they had requested, but with important qualifications. The Treaty emphasized for example that fishing in the Niagara River and camping on the shore were to be "the common right of both parties" and thus not in any sense a Seneca monopoly. And the Senecas were limited to the collection of "drift wood" and were "not to trespass on, or injure, the proprietor or proprietors of the adjacent lands." The price asked by Red Jacket was reduced to \$6,000, or about fifty cents an acre, which Governor Clinton no doubt thought grossly excessive for the relinquishment of an invalid claim. In his closing speech, Red Jacket was clearly upset but said, "we will not however for that reason refuse to comply with your wishes."

The next day, Clinton wrote Secretary Dearborn that he had attained complete success:

I have the pleasure to inform you that I yesterday effected the purchase of the lands on the Niagara river, including Black Rock, from the Seneca nation of Indians, and now stand ready to make a cession of such part of it to the United States, as may be necessary for the establishment of a military post there.

⁴⁰ Abstracts of speeches....

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Writing Dearborn two days later, Federal Treaty Commissioner Tayler referred to the Treaty as having entirely extinguished “their claim to the lands on Niagara river.”⁴¹

Notably contrasting with this State/federal satisfaction, Seneca displeasure about what happened at Albany in the summer of 1802 was expressed early and often, among others by Handsome Lake. In his reply to Handsome Lake on November 3, 1802, President Jefferson was as adamant as Governor Clinton had been with Red Jacket. Sidestepping Handsome Lake’s insistence that the Senecas would never sell another acre unless coerced, as well as his claim to know better than Jefferson what the Senecas needed, Jefferson insisted that *he* knew best what *all* tribes needed. “A little land well stocked and improved,” Jefferson assured Handsome Lake, “will yield more than a great deal without stock or improvement. I hope, therefore, that on further reflection, you will see this transaction in a more favorable light, both as it concerns the interest of your nation, and the exercise of that superintending care which I am sincerely anxious to employ for their subsistence and happiness.” Jefferson also summarized the land sale procedure mandated by the Indian Trade and Intercourse Act:

You remind me, brother, of what I said to you, when you visited me the last winter, that the lands you then held would remain yours, and shall never go from you but when you should be disposed to sell. This I now repeat, and will ever abide by. We, indeed, are always ready to buy land; but we will never ask but when you wish to sell; and our laws, in order to protect you against imposition, have forbidden individuals to purchase lands from you; and have rendered it necessary, when you desire to sell, even to a State, that an

⁴¹ ASPIA 1:666-68.

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agent from the United States should attend the sale, see that your consent is freely given, a satisfactory price paid, and report to us what has been done, for our approbation. This was done in the late case of which you complain. The deputies of your nation came forward, in all the forms which we have been used to consider as evidence of the will of your nation. They proposed to sell to the State of New York certain parcels of land, of small extent, and detached from the body of your other lands; the State of New York was desirous to buy. I sent an agent, in which we could trust, to see that your consent was free, and the sale fair. All was reported to be free and fair. The lands were your property. The right to sell is one of the rights of property. To forbid you the exercise of that right would be a wrong to your nation.⁴²

Always careful in his choice of words, Jefferson noted that the negotiation was *reported* (by Federal Treaty Commissioner Taylor) “to be free and fair.” Jefferson also noted alertly that the lands sold were “detached from the body of your other lands,” neglecting to mention that the Senecas’ Niagara claim had been only recently “detached”---albeit not by much---by the abusive Treaty of Big Tree, followed by the self-interested surveying of Joseph Ellicott.

Differentiating the Four New York State Treaties of 1802.

On December 27, 1802, Jefferson sent two messages to the Senate. “Gentlemen of the Senate,” began the first,

I lay before you a treaty which has been agreed to by Commissioners duly authorized on the part of the United States, and the Creek nation of Indians, for the extinguishment of the native title to lands in the Talassee country, and others between the forks of Oconee and Oakmulgee rivers, in Georgia, in pursuance of the convention with that State, together with the documents explanatory thereof; and it is submitted to your determination, whether you will advise and consent to the ratification thereof.

The second message sent by Jefferson on December 27, 1802, read:

42 Thomas Jefferson, *Writings*, New York: Library of America, 1984, 555-57.

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Gentlemen of the Senate:

I lay before you a treaty which has been concluded between the State of New York and the Oneida Indians, for the purchase of lands within that State.

One other, between the same State and the Seneca Indians, for the purchase of other lands within the same State.

One other, between certain individuals, styled the Holland Company, with the Senecas, for the exchange of certain lands in the same State.

And one other, between Oliver Phelps, a citizen of the United States, and the Senecas, for the exchange of lands in the same State; with sundry explanatory papers, all of them conducted under the superintendence of a Commissioner on the part of the United States, who reports that they have been adjusted with the fair and free consent and understanding of the parties. It is therefore submitted to your determination, whether you will advise and consent to their respective ratifications.⁴³

The first of these messages concerned “extinguishment of the native title to lands,” which lay at the heart of federal tribal policy, and the land sale section of the Indian Trade and Intercourse Act. The second message concerned four New York treaties having to do with “lands within that State.” While Jefferson was emphatic about what federal law required and what the facts were in Georgia, he seems to have viewed the situation in New York State as distinct from that in Georgia. The various New York Treaties were also distinct from one another.

On December 31, 1802, the Senate unanimously consented to the Oneida Treaty “made...at their village” as well as to the Seneca Albany Treaty.⁴⁴ The private-party Seneca treaties took the Senate longer, but one of these treaties was proclaimed by Jefferson January 12, the second on February 7, 1803. In contrast, neither the Oneida Treaty nor the Albany Seneca

⁴³ *Senate Executive Journal*, December 28, 1802.

⁴⁴ *Senate Executive Journal*, December 31, 1802.

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Treaty seems to have been proclaimed by President Jefferson.⁴⁵ The two private party Seneca Treaties amended the ratified 1797 federal Treaty, and they themselves therefore needed to be ratified. The Oneida Treaty concerned not an extinguishment of “Indian Title” but rather a sale of State-granted land. The Albany Treaty concerned an arguably invalid federal grant of State land to the Senecas, a grant never agreed to by New York State, of land on which New York State believed all aboriginal “Indian Title” had been extinguished prior to 1789, and a grant that contravened the policy fashioned by President Washington and his Cabinet in 1793, a year prior to the grant negotiated by Pickering at Canandaigua.

Francis Prucha was unable to “ascertain” why Jefferson handled the four New York treaties in contrasting ways. But what President Jefferson did without explanation in 1802-03 followed logically from the principles outlined by Secretary of State Jefferson in the Cabinet discussions of tribal land rights presided over by President Washington in 1793.⁴⁶ In these discussions, Jefferson had stressed that the federal government must preside over every extinguishment of “Indian Title” in order to insure an orderly extension of ordinary state and federal jurisdiction over tribally-occupied tracts. Once this had been done however, there was no going back. Once “Indian Title” had been extinguished and ordinary state or federal jurisdiction had been extended over a tribe, use of the full federal treaty process in negotiations with a tribe concerning other kinds of land rights made no sense. The two 1802 treaties that President

⁴⁵ See Francis Paul Prucha, *American Indian Treaties, The History of a Political Anomaly*, Berkeley: University of California Press, 1994, 115.

⁴⁶ See above, pages 172-74.

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Jefferson did not proclaim concerned tribal land rights other than “Indian Title” rights, and thus fell in the category that Secretary of State Jefferson in 1793 had described as unsuitable for regulation by a full federal treaty.

Today the question is asked, why was the full federal treaty process not followed in connection with various land transactions with New York tribes? The question apparently posed in 1802-03 by officials in Albany and Washington was, Why is the federal treaty process being used at all in some of these cases? President Jefferson recognized the federal government’s responsibility to extinguish by federal treaty aboriginal “Indian Title.” Once this had been extinguished, the federal government’s responsibility became vague and discretionary, and in such situations both Jefferson and Clinton were inclined to defer to states.

Pickering’s 1817 Comments on Seneca Land Rights.

Even Timothy Pickering, although he never abandoned his dislike for Jefferson or Clinton, abandoned his campaign to impose federal trusteeship on New York tribes.⁴⁷ On February 8, 1817, Pickering resignedly advised the Philadelphia Society of Friends,

Knowing, as I do, the rapacity of some men among the Whites, I am not surprised at the attempts to seduce the Chiefs *to sell the seats from under themselves, and their people*. It is in the power of the government to defeat these attempts. But artful men may apply to it for the appointment of a commissioner to hold a treaty; and by false but plausible representations, and perhaps, too, aided by certificates of men apparently disinterested, obtain their request; the poor oppressed Indians “having no comforter.” As you invite me to offer my advice on this subject, I here present for your consideration the thoughts

⁴⁷ Pickering’s “hatred for Jefferson,” remarked Henry Adams, “resembled the hatred of Cotton Mather for a witch.” Henry Adams, *History of the United States of America During the Administrations of Thomas Jefferson*, New York: Library of America, 1986, 1231.

which at once occur to me.

1. Let the chiefs and all their people assemble in council, and enter into an agreement never to sell their lands, or any part of them, without the assent of the warriors or grown men, as well as of the chiefs. A writing on parchment, by duplicate, might be prepared by one of your law-friends, to be executed by the Indians; one copy to be kept in their settlement, and the other by your Society.
2. Let each family have a sufficient quantity of land assigned to it, which, under its cultivation, will be adequate to the support of all its members; and let this be an inheritance inalienable by the occupant except to an Indian. As their numbers increase, by the young men coming to an age to manage small farms, let lands be accordingly set off to them; and be alike inalienable.
3. Let an arrangement of this sort be proposed and clearly explained to them, as the basis of an application to the legislatures of New York and Pennsylvania (for I suppose their lands lie in both States) to confirm it.
4. Let a memorial be presented to the President of the United States, praying him to give no head to persons who shall apply to him to appoint agents to superintend the sale of their lands: and laying before him a copy of their family compact (if they shall be persuaded to form one) to render the appropriated lots of land and farms inalienable. By laws enacted from the years 1790 to 1802, no purchases of Indians' lands are valid, unless made at a treaty held under the authority of the U. States. The former laws were temporary. The last, enacted 30th March 1802, is without limitation.

If so much can be expected, and some of your Society continue to live among these Indians, exercising due vigilance to prevent any tampering from the Whites, I should think them pretty well secured.⁴⁸

Pickering now despaired of affirmative federal trusteeship. The most he hoped for from the federal government was that it would not injure the Senecas. Pickering urged the Senecas to seek state protection, but above all rely on their own vigilance.

48 Timothy Pickering to Thomas Stewardson and Thomas Wistar, Haverford College Library, Indian Committee Records, Philadelphia Yearly Meeting, Society of Friends, Box 3. Emphasis in original.

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