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Negotiating Tribal Removal from New York State

Eleazer Williams and the Ogden Company.

The movement favoring Removal to Wisconsin that emerged among New York tribes following the War of 1812 was led by Eleazer Williams (1789-1858), best remembered today as one of several dozen people around the world who claimed to be the son of Queen Marie Antoinette and King Louis XVI, and therefore rightfully King Louis XVII of France.¹ Eleazer Williams belonged to the Mohawk branch of the prominent western Massachusetts family from whom Williamstown and Williams College derive their names. Young Eleazer spent his first eleven years in Canada among Catholic Mohawks, and knew no English when left with western Massachusetts relatives. He remained in their care for a decade, converted to the Episcopal faith, and after serving on the U.S. side in the War of 1812 became an Episcopalian missionary at Oneida.² Before long, this talented and ambitious young man established contact with representatives of the Ogden Company and decided to launch a movement to induce all New York's tribes to emigrate to Wisconsin.

On September 12, 1810, New Yorker David Ogden had acquired from the Holland Land Company fee title to 197,835 acres of land occupied by the Senecas. The price paid was

1 Most historians believe that instead of escaping from France during the Revolution, Louis XVII died in a French prison while still a child.

2 John Demos, *The Unredeemed Captive*, New York: Knopf, 1994, 241-45; Eleazer Williams, *Life of Te-Ho-Ra-Gwa-Ne-Gen, Alias Thomas Williams, A Chief of the Caughnawaga Tribe of Indians in Canada*, Albany: J. Munsell, 1859.

\$98,917.50, fifty cents per acre.³ Had the federal government purchased fee title when the foreign-based Holland Land Company was willing to sell, the subsequent history of western New York State would have been vastly different.

The new Ogden owners of fee title proved relentless in their pursuit of every last Seneca-occupied acre. Encountering stubborn resistance to Removal among the Senecas, but discovering that there was positive interest in Removal among *other* New York tribes, the Ogden investors decided to subsidize the pro-Removal efforts of these other tribes (to whose lands the Ogden investors did not possess preemption rights), in the hope that the Senecas might in time join up. This tactic resulted in renewed contacts among the various tribal groups of New York State, and then renewed federal government interest in the “Six Nations.”

Eleazer Williams promoted emigration to Wisconsin by all New York tribes. Factionalized and lacking strong internal leadership, the Oneidas gave considerable support to the dynamic outsider. Despite the failure of their attempted emigration to Indiana, many residents of neighboring New Stockbridge and Brothertown enlisted in the Wisconsin project. In deference to his Ogden financial backers Williams also tried hard to involve the Senecas, but a majority of Senecas resisted, rallied by Red Jacket. Thus, though the Williams-Ogden Removal effort styled itself a “Six Nations” undertaking, this was at best wishful thinking.

In 1820, Williams traveled to Washington, D.C., and met with Secretary of War Calhoun, who promised him maps and \$300 to support exploration around Green Bay. Williams also received \$280 from New York Governor Dewitt Clinton, already on record in support of

³ Christopher Densmore, *Red Jacket*, Syracuse: Syracuse University Press, 1999, 71. See also George Dewey Harmon, *Sixty Years of Indian Affairs, Political, Economic and Diplomatic, 1789-1850*, Chapel Hill: University of North Carolina Press, 1941, 260.

Removal.⁴ Williams got no farther than Detroit, but a second expedition set out in 1821. This time, Calhoun informed Williams that “it will not be in the power of the Department in consequence of the very limited appropriation made by Congress last year to give you any assistance in money.” Williams did have in hand \$450 from the Ogden Land Company.⁵

On August 18, 1821, an agreement was negotiated by which the Wisconsin Menominees agreed to transfer a portion of their land to the “Six Nations.” President Monroe approved this agreement, which was not submitted to the Senate. Oddly, extinguishment of the Menominees’ “Indian Title” was deemed not to need Senate consent. On November 22, 1821, Calhoun informed the Stockbridge chief Solomon U. Hendricks that

The treaty concluded by the Delegates with the Menominees and Winnebagoes is approved by the President which is all the ratification that is necessary as those Treaties only to which the U. States is a party require the addition of the sanction of the Senate.

A year later, a follow-up agreement was also only “endorsed...by the President.”⁶ This mode of dealing with federally approved intertribal land transfers resulting in the extinguishment of the “Indian Title” of the transferring tribe built on the view expressed in 1817 by the Senate Committee on the Public Lands, that a “transfer of the Indian *right of possession*” from one tribe

4 New York State Assembly, “Report of the Committee on Indian Affairs,” #197, March 23, 1823. See also Charles Z. Lincoln, *Messages from the Governors*, Albany, 1909, 2:915-16.

5 Richard H. Kohn, “The United States and Treaties Between the State of New York and the Oneida and Stockbridge Indians, 1795-1847,” report submitted to the Indian Claims Commission, Docket 301, Exhibit #2000, pp.54, 56; Reginald Horsman, “The Wisconsin Oneidas in the Preallotment Years,” in Jack Campisi and Laurence M. Hauptman, eds., *The Oneida Indian Experience*, Syracuse: Syracuse University Press, 1988, 66-67; Philip Otto Geier, III, *A Peculiar Status: A History of the Oneida Indian Treaties and Claims: Jurisdictional Conflict Within the American Government, 1775-1920*, Doctoral Dissertation, Syracuse University, 1980, Chapter 7.

6 JCP 6:524, 7:517.

to another involved no federal grant of public land and therefore whether Senate consent was needed was at least “questionable.”⁷

Calhoun further explained to Hendricks that, “The country the Six Nations have or may acquire from the Menominees and Winnebagoes, will be held by them in the same manner as the Indians who previously owned it.” New York “Delegates” had negotiated directly with Wisconsin tribes and had acquired only what those tribes possessed, i.e., their “Indian Title.” Nor was Calhoun prepared to enter into the question of how the purported “Six Nations” might divide up their “Indian Title” acquisitions.

In relation to the degree of title which the respective tribes forming the Six Nations may have in the lands which have been or may be ceded to them by the Menominees and Winnebagoes, it is a subject in which the Government cannot interfere. The claim of each tribe it is believed can be more satisfactorily settled among themselves.⁸

Once the 1821 agreement had been “endorsed” by President Monroe, Calhoun instructed Michigan Territory Governor Lewis Cass to welcome “the Indians of the Six Nations who may choose to emigrate to the country acquired by the Treaty” insofar as this could be done by Cass “without incurring any additional expense.”⁹ But since few “Indians of the Six Nations” did “choose to emigrate” to the “Indian Title” lands acquired by the 1821 agreement, Williams worked hard to negotiate a new intertribal agreement, and in 1822 succeeded in securing “Indian Title” to nearly two million acres! The elated Williams and a few associates spent the winter of 1822-23 in the Green Bay area.¹⁰ Lightning then struck, when President Monroe decided two million acres was too much land for the small number of “Six Nations Indians” who appeared

7 ASPIA 2:124. Emphasis in original.

8 JCP 6:696-97.

9 Calhoun to Eleazer Williams, December 11, 1821, JCP 6:564-65. Also ASPIA 2:176.

10 Horsman 67.

likely to emigrate. This resulted in an uproar whose repercussions were felt from Green Bay to New York. On May 15, 1823, Williams wrote Thomas Ogden from Green Bay that

The Reduction of the Tract which was treated for has I find been the cause of much discontent with both Menominees and Six Nations.

The friendly part of the Six Nations obtained this Extension of the Territory treated for in 1821 with a view of pleasing the opposition party as they complained that the Country was too small and lying too far from the Bay and mouth of the River. The consequence is that the Six Nations refuse to fulfill their Engagements with the Menominees as they suppose the payment cannot be justly due unless they receive the whole of the Land treated for.

Another great Evil arising out of it is that the Menominees charge the Six Nations with having deceived them respecting the unlimited permission which they pretended they had to treat with them as the Six Nations exhibited their Instructions to the Menominees before making the Treaty. This say the Menominees was a base deception for their Great Father the President does not now allow them to set down upon the whole though the fact was the Six Nations had *actually unlimited permission*.

I conceive this to be the greatest obstacle yet flung in the way to stop this business--- one which is not easily got over unless the Government see fit to reconsider and confirm the whole. Neither can I see any possible Evil arising from the Government's giving them the whole as no doubt but that after the first rejoicings of the Six Nations that they have a great country be over the U. States may purchase any share of it they should wish and at any time.¹¹

The house of cards constructed by Williams and the Ogden Company was tottering.

Years earlier, the Ogden Company had secured a vague statement from President Madison to the effect that he had no objection to their negotiating at their own expense an intertribal transfer of "Indian Title." Madison's minimal "no objection" had then been interpreted by Williams to be a virtual commission for himself as a federal treaty commissioner, not to mention a virtual blank check authorizing a transfer of unlimited acreage!

Williams pleaded with Thomas Ogden to intervene, and Ogden responded energetically.

On August 14, 1823, he wrote Calhoun that

The deep Concern, which the owners of the preemptive title of the Lands occupied by the New York Indians, have long felt in the Issue of the measures taken to secure to them an

¹¹ JCP 8:229-30. Emphasis in original.

acceptable Seat in the Western Country, will, we hope, serve as an Apology for the liberty we take in addressing you on that subject. Our principal object is to call your attention to the promise made by the Government to the New York Indians, during the Administration of President Madison, that in case they should think proper, and be enabled, to effect an arrangement with their Western Brethren for the acquisition of a permanent Seat, such arrangement would be confirmed by the President. The location was not to be made within the limits of any of the States, but, as we have always understood, it was not restricted in any other respect. As a pledge of the President's future acquiescence in any arrangement which might be concluded under this permission, a written document was delivered to a delegation of the Six Nations.¹²

Ogden was as free with facts as Williams. Ogden claimed to hold preemption rights to lands of “the New York Indians” rather than merely to Seneca land, and that the “delegation” to whom Presidential “permission” was granted represented the “Six Nations” and that Madison had indeed signed a blank check binding on his successors. Inconsistently, Ogden also urged federal sympathy for the Williams-led

Christian party; who, with a strong disposition to accommodate themselves to the views and wishes of the Government, have been hitherto controuled by the numerical superiority of their opponents, acting under the Influence of an unprincipled and contumacious leader openly opposing every Effort to civilize and instruct his Country men.¹³

Even while conceding that the “unprincipled and contumacious” Red Jacket had “numerical superiority” Ogden suggested that the federal government would be well-advised to support the friendly “Christian party.”

From Green Bay on September 3, 1823, Williams also wrote directly to Calhoun:

I am at a loss to conceive what evil would arise to Government, by confirming the treaty in full? The U. States cannot be unaware of the disposition which the Six Nations have always had to sell. The Government no doubt at any time [can] make a treaty with them for any share it might wish. For the Six Nations are firmly attached to the U. States and only wish to know their will, to comply with it, by all means in their power.¹⁴

12 JCP 8:227.

13 JCP 8:229.

14 JCP 8:253.

Abjectly, Williams begged that the intertribal transfer of “Indian Title” he had negotiated be approved in full, and promised in return that the United States could ask and receive any amount of “Indian Title” Wisconsin land it wanted from Williams’s “Six Nations.”

On October 18, 1823, Calhoun replied to Williams that in view of the “great solicitude...expressed on this subject by the [Ogden] proprietors and it appearing to be also the wish of the Indians,” President Monroe had changed his mind and agreed that the entire two million acres “will be confirmed by the Government to the Six Nations.”¹⁵ Williams and the Ogden investors had carried the day, by convincing the President that they spoke for the “Six Nations” even though a majority of Senecas---the largest tribe of the historic “Six Nations” and the only one under pressure to emigrate---was acknowledged to be opposed.

Federalizing the Williams-Ogden Removal Plan.

President Monroe had denied the “Six Nations” millions of “Indian Title” acres but then reversed course, delighting the “Six Nations.” Could not something similar happen with Georgia’s tribes, especially if they were offered western federal land with *good title*? The 1825 Monroe-Calhoun solution for Georgia’s tribal dilemma was a national plan *based on their perception of what was happening in New York State*. During his years as Secretary of War, Calhoun had been monitoring two sets of unrelated developments, one in the south, one in the north. In the south, the State of Georgia had decided to make a potentially nation-breaking issue of the federal government’s failure to deliver on its 1802 promises. Georgia’s tribes were equally determined to force the federal government to honor its treaty commitments. Meanwhile in New York State, a similar problem was seemingly being dealt with amicably. In 1820, Eleazer

Williams had turned up in Calhoun's Washington office offering to arrange a volunteer Removal program for all New York tribes. New York tribes actually wanted to emigrate, Williams assured Calhoun, and desired only federal acquiescence as they negotiated on their own with western tribes. In 1822, Jedidiah Morse offered his endorsement of the proposed New York "colony" in Wisconsin. In 1824, the intransigence of Georgia and the contrasting "creativity" of Williams and his Ogden Company backers induced the federal government to make the New York State model a basis for a national experiment.

Drawing on information contained in Jedidiah Morse's 1822 *Report* as well as more recent sources, Calhoun estimated that "there are in the several States and Territories (not including the portion of Michigan Territory west of Lake Michigan and north of the State of Illinois) about 97,000 Indians, and that they occupy about 77,000,000 acres of land." Calhoun then subtracted "the small remnants of tribes in Maine, Massachusetts, Connecticut, Rhode Island, Virginia and South Carolina, amounting to 3,023" whom Calhoun presumably excluded for the reasons offered by Morse in 1822. All New York tribes were however included in Calhoun's Removal plan, and he noted approvingly that "the Indians of New York have already commenced a settlement at Green Bay, and exhibit some disposition to make it a permanent one." The total population of New York's tribes was listed by Calhoun as 5,143, including 2,325 Senecas, 253 Tuscaroras, 1,096 Oneidas, 446 Onondagas, 90 Cayugas, 273 at Stockbridge, 360 at Brotherton and 300 at St. Regis. Ludicrously, Calhoun estimated the total cost to the federal government of relocating some 94,000 members of eastern tribes would be \$125,000.¹⁶

The federal government not only made the Ogden Company's strategy the basis for a

15 JCP 8:320.

16 ASPIA 2:542-47.

national program but, beginning in 1825, covered costs previously borne by the Ogden Company to promote its investments. Were Calhoun and Monroe unaware that Williams and the Ogden Company had misrepresented facts? Or were Calhoun and Monroe so despairing of the situation in Georgia that any straw seemed worth grasping? Whatever their motives, the decision by Calhoun and Monroe to turn the self-promoting Ogden initiative into a nation-wide, federally-subsidized program, while it enriched the Ogden Company, had disastrous consequences for the nation.

President John Quincy Adams and the Senecas.

John Quincy Adams, President from 1825 to 1829, considered the planned Removal of eastern tribes to western federal territory a decision made by the preceding Monroe administration, in which he had served as Secretary of State. Adams didn't like Removal, but neither was he inclined to exert himself to stop it. Adams called the treatment of eastern tribes a "perpetual harrow upon my feelings."¹⁷ But this "harrow" did not become a spur to action. In 1826, Adams selected Buffalo businessman Oliver Forward to represent the federal government in negotiations designed to remove the Senecas from the outskirts of Buffalo. On principle, President Washington had appointed tribal treaty commissioners from unaffected states as a way of enhancing the probability of impartiality. If any proof were needed of the wisdom of this principle, it was provided by the conduct of Oliver Forward.

When he received his appointment in June of 1826, Forward boldly announced, "The objects of the treaty are of great importance to this section of the state, as the lands it is proposed to purchase would soon be improved and the Indians removed from our neighborhood."¹⁸ By August 31, 1826, Forward had negotiated a Treaty that would have extinguished "Indian Title" to more than 80,000 of the

17 Lynn H. Parsons, "A Perpetual Harrow Upon My Feelings": John Quincy Adams and the American Indian," *New England Quarterly* 46 (1973): 339-379.

approximately 200,000 acres the Senecas retained. Red Jacket's vehement complaints about bribery and coercion deterred President Adams from submitting Forward's Treaty to the Senate, but he finally did so on February 24, 1827.¹⁹ More than a year after that, on February 29, 1828, the Senate got around to voting. The result was a 20-20 tie. Vice President Calhoun did not cast a tie-breaking vote, because for approval of a treaty a two-thirds vote was Constitutionally required. Then, on April 4, 1828, by a voice vote, the Senate passed a startling resolution:

That by the refusal of the Senate to ratify the treaty with the Seneca Indians, it is not intended to express any disapprobation of the terms of the contract entered into by individuals who are parties to that contract, but merely to disclaim the necessity of an interference by the Senate with the subject matter.²⁰

President Adams acted as evasively as had the Senate. After meeting with Red Jacket at the White House on March 24, 1828, Adams called for an investigation, and Secretary of War James Barbour asked Richard Livingston to review Red Jacket's charges of misconduct. Six months later, on December 28, 1828, Livingston concluded that in his opinion the 1826 Treaty had indeed been corruptly negotiated. But his Report was submitted to Adams' new Secretary of War, Peter Porter, a long-time associate of the Ogden Company, who found Livingston's Report unpersuasive. As a result of vacillation by the Senate, the President and the Secretary of War, an improperly negotiated, unratified federal Treaty was allowed to be implemented as if valid.²¹

18 Henry S. Manley, "Red Jacket's Last Campaign," *New York History* 31(April 1950), 152.

19 ASPIA 2:866.

20 *Senate Executive Journal*, February 29, 1828, April 4, 1828.

21 Laurence M. Hauptman, *Conspiracy of Interests, Iroquois Dispossession and the Rise of New York State*, Syracuse: Syracuse University Press, 1999, 154-61.

The 1838 Treaty of Buffalo Creek.

From 1829 to 1837, during the two-term Presidency of Tennessee's Andrew Jackson, the Senecas' fate remained unclear. The nation's attention was focused on the forcible expulsion of tribes from Jackson's home region. Red Jacket's death in 1830 added further uncertainty. But when New Yorker Martin Van Buren became President in 1837, the already-ravaged Senecas found themselves the unwilling object of renewed attention from the Ogden Company. In October of 1837, President Van Buren appointed Ransom H. Gillet Federal Treaty Commissioner to negotiate with the Senecas as well as with other New York tribes. A lawyer from Ogdensburg, New York, and from 1833 to 1837 a Democratic Congressman, Gillet would later, from 1853 to 1858, serve as U.S Assistant Attorney General. Available following his failure to gain reelection to Congress in 1836, Gillet quickly accepted Van Buren's nomination and began work at once, completing the Treaty of Buffalo Creek on January 15, 1838. Unlike the 1826 Treaty negotiated by Oliver Forward, which had been limited to the Senecas, Gillet's 1838 Treaty was with "the New York Indians" and included separate sections dealing with the specific situations of each of the New York tribes expected to depart. But while other New York tribes were left free to choose whether or not they would take advantage of the federal Removal program, the Senecas were targeted, bribed and bullied.²²

The Treaty's Preamble proclaimed that the "six nations of New York Indians" had been resigned for decades to Removal from their ancestral homelands:

Whereas, the six nations of New York Indians not long after the close of the war of the Revolution, became convinced from the rapid increase of the white settlements around, that the time was not far distant when their true interest must lead them to seek a new home among their red brethren in the West...And whereas, with the approbation of the President of the United States, purchases were made by the New York Indians from the Menomonie and Winnebago

22 Substantial evidence documenting corruption was unearthed and published in the early twentieth century by Henry S. Manley, New York Assistant Attorney General. See Henry S. Manley, "Buying Buffalo From the Indians," *New York History* 28(July 1947): 313-29.

Indians of certain lands at Green Bay in the Territory of Wisconsin... And whereas, the President is satisfied that various considerations have prevented those still residing in New York from removing to Green Bay, and among other reasons that many who were in favour of emigration, preferred to remove at once to the [Oklahoma] Indian territory, which they were fully persuaded was the only permanent and peaceful home for all the Indians. And they therefore applied to the President to take their Green Bay lands, and provide them a new home among their brethren in the [Oklahoma] Indian territory. And whereas, the President being anxious to promote the peace, prosperity and happiness of his red children, and being determined to carry out the humane policy of the Government in removing the Indians from the east to the west of the Mississippi, within the [Oklahoma] Indian territory, by bringing them to see and feel, by his justice and liberality, that it is their true policy and for their interest to do so without delay.²³

This Preamble alluded to the “Six Nations” in its historical summary, but the “Six Nations” concept was not currently relevant, in Gillet’s view. As he expressed it confidentially, “the ‘New York Indians’ have no interest in common, in this state, and none elsewhere, except what they derive under the Menominee treaty.”²⁴ This 1831 Treaty had tried to placate Menominee suspicions resulting from Eleazer Williams’s deceptive conduct.²⁵

Encouraged by Williams and Gillet, members of several New York tribes willingly accepted the federal government’s 1838 offer of “one million eight hundred and twenty-four thousand acres of land [in Oklahoma], being three hundred and twenty acres for each soul of said Indians as their numbers are at present computed. To have and to hold the same in fee simple...by patent from the President of the United States, issued in conformity with...[the Removal] Act...approved on the 28th day of May, 1830”

23 Kappler 2:502-516.

24 Kohn 101.

25 A useful summary of events leading up to the 1838 Treaty by Gillet’s predecessor as Federal Treaty Commissioner, J.T. Schermerhorn, is contained in his letter dated December 28, 1836, to Commissioner of Indian Affairs C.A. Harris. (National Archives, Office of Indian Affairs, Letters Received, 1824-1881, M-234, Roll 583. Schermerhorn notes that in Wisconsin the “title...of the New York Indians to these [Wisconsin] lands...was only that of Indian occupancy, such as the Menominees possessed before them, from whom it was derived” whereas in Oklahoma the land was to be “granted by [federal] patent.” In the 1838 Treaty, Williams’s two-decade-long campaign to promote Removal from New York State to Green Bay was rewarded by a personal grant of Wisconsin land “which he is to hold in fee simple, by patent from the President, with full power and authority to sell and dispose of the same.” Kappler 2:319-25.

plus four hundred thousand dollars for expenses. Instead of “Indian Title” lands in Wisconsin, New York emigrants were now being offered sizeable fee simple patents in Oklahoma. Despite this, Gillet was unable to elicit acquiescence from a clear Seneca majority. Most Senecas had never accepted the theory that they were only tenants on Ogden-owned land, and were still disposed to fight to secure fee title to their homelands rather than accept fee title to western federal lands. Although Gillet claimed a technically adequate number of Seneca votes, strong opposition persisted, leading to uncertainties in Washington about whether to ratify Gillet’s Treaty.

On June 11, 1838, the Senate voted 32 to 2 to approve the Treaty of Buffalo Creek *conditionally*. Having amended the Treaty in places, the Senate directed that it must be resubmitted to all the tribes affected and was to go into effect only if they “shall freely assent to said treaty as amended.” Each tribe was to be consulted separately, and the Senate stipulated that the Treaty was to be binding only on those tribes, or sections of tribes, that approved it.

Commissioner Gillet then entered into a series of negotiations with each New York tribe that had been a party to the original Treaty. The Oneidas and the Brothertown and New Stockbridge communities readily agreed, since they had been prepared to emigrate for two decades. Once again, the Senecas’ assent, though most desired, proved most difficult to obtain, and once again Gillet claimed to have secured a narrow Seneca majority, but failed to dispel doubts in Washington. On March 2, 1839, the Senate resolved equivocally by a vote of 26 to 13

That whenever the President of the United States shall be satisfied that the assent of the Seneca tribe of Indians has been given to the amended treaty...with the New York Indians, according to the true intent and meaning of the resolution of the Senate of the 11th of June, 1838, the Senate recommend that the President make proclamation of said treaty and carry the same into effect.²⁶

26 *Senate Executive Journal*, March 2, 1839.

On January 13, 1840, Van Buren sent the Senate a lengthy status report. In it, the President expressed sympathy for the private investors who held fee title to Seneca lands:

Neither does it appear just to those who are entitled to the fee-simple of the land, and who have paid a part of the purchase money, that they should suffer from the waste which is constantly committed upon their reversionary rights and the great deterioration of the land consequent upon such depredations, without any corresponding advantage to the Indian occupants.²⁷

Van Buren argued that the Ogden Company's fee ownership rights had to be respected, and he was concerned that the Senecas were proving to be bad tenants in allowing resources such as timber on the lands they occupied to be laid waste, thereby injuring the future value of these lands to the Ogden Company. At the same time, the President acknowledged opposition to the Treaty by a probable majority of Senecas, and his considered judgment that many of the Seneca chiefs who supported the Treaty had been bribed. But Van Buren also maintained that all bribes had been paid surreptitiously by Ogden operatives, and without the sanction of the federal government's own Treaty Commissioner:

Whatever may have been the means used by those interested in the fee simple of these lands to obtain the assent of Indians, it appears from the disinterested and important testimony of the commissioner appointed by the State of Massachusetts [General Henry Dearborn] that the agent of the [federal] Government [Commissioner Gillet], acted throughout with the utmost fairness.

The Treaty as a whole, Van Buren argued half-heartedly, was not discreditable to the federal government. Regarding the Senecas however, the President was outspoken:

That improper means have been employed to obtain the assent of the Seneca chiefs there is every reason to believe, and I have not been able to satisfy myself that I can, consistently with the resolution of the Senate of the 2nd of March, 1839, cause the treaty to be carried into effect in respect to the Seneca tribe.

This should have ended the matter, so far as the Senecas were concerned. But on March 25, 1840, the Senate passed a resolution

²⁷ *Senate Executive Journal*, January 14, 1840.

That, in the opinion of the Senate, the treaty between the United States and the Six Nations of New York Indians, together with the amendments proposed by the Senate of the 11th of June, 1838, have been satisfactorily acceded to and approved of by said tribes, the Seneca tribe included; and that, in the opinion of the Senate, the President is authorized to proclaim the treaty as in full force and operation.²⁸

This resolution was approved by a vote of nineteen to nineteen, with Vice President Richard Johnson then casting a tie-breaking affirmative vote. The question of whether this resolution---about a Treaty previously approved conditionally---itself required a two-thirds vote was sidestepped. On April 4, 1840, the 1838 Treaty was ratified and promulgated by President Van Buren.

A majority of Senecas continued to resist, with the result that in 1842 a separate Seneca Treaty was negotiated, which reversed the 1838 Treaty in part and enabled the Senecas to continue as tenants on two of their larger New York reservations, with the Ogden Company continuing to hold the fee.²⁹ The only real solution would come with acknowledgment that the Senecas were more than tenants on Ogden land. Red Jacket said it best:

This land is ours from the God of Heaven. It was given us; we cannot make land.... You tell us of a preemptive right; such men you say own one Reservation, such another. But they are all ours, ours from the top to the bottom. If Mr. Ogden should tell us he has come from Heaven, with the flesh on his bones as he now is, and say that the Heavenly Father has given him a title, we might then believe him.³⁰

28 *Senate Executive Journal*, March 25, 1840.

29 Kappler 2:537-42.

30 Hauptman *Conspiracy* 118.

