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**Tribal Land-Holding Concepts in Pre-Revolutionary New York:
The Iroquois, the Dutch, the French and the British,
1600-1775**

The Years 1600-1664.

The Iroquois Confederacy was created well before 1600 as an alliance linking five tribal nations whose homelands were situated south of Lake Ontario. East to west, these nations were the Mohawks, the Oneidas, the Onondagas, the Cayugas and the Senecas. Each of these nations thought of itself as controlling its own land base independent of the others. Shortly after 1600, the Confederacy had to contend with the arrival of two European nations: the Dutch sailing up what became known as the Hudson River and the French sailing up what became known as the Saint Lawrence River. The Dutch and the French brought with them diseases, guns---and new concepts of land-owning.

Arriving for the first time in 1609, the Dutch were comparative late-comers who could not claim ownership of North America as European “discoverers” of even a portion of the continent, as could the English, the French and the Spanish. As Protestants, the Dutch also could not hope for the Pope’s blessings on their endeavors. Seeking to establish a colony in North America anyway, the Dutch came up with the idea of designating tribes as political sovereigns and absolute proprietors of land, competent to sell rights freely to whomever they wished. By acquiring deeds from local chiefs, the Dutch could claim to be rightfully in the region, even though the English monarch already claimed ownership on the basis of “Discovery.” In 1626, the Dutch thus

purported to “purchase” Manhattan for \$24 from its occupants, instead of from the distant King of England.

To the north and west, French explorers were meanwhile pressing deep into the North American interior. What came to be called New France was claimed as the property of the French monarch on the theory that it had been not only *discovered* but also *conquered* by Frenchmen. This assertion of rightful French ownership was aimed at other European Christian nations; tribes were legally irrelevant, so far as the French were concerned. As Robert J. Surtees put it, “The French did not recognize any aboriginal proprietary right in land, as the British would do in 1763.”¹ Elaborating on this point in a separate essay, Surtees explained that

The French, while in power in Canada, had been very circumspect in their dealing with the Indians as their principal enterprises in North America---the fur trade, missions and an active imperialism---had depended on the good will of the native tribes. At no time, however, had the French recognized aboriginal title to land. The French claimed New France by right of discovery and conquest. Whatever lands were held by the Indians, such as the villages at Lorette, Oka or Caughnawaga, were grants to them by the Crown, through one of the missionary societies.²

French theories about their discovery and conquest of New France were absurd from the Iroquois point of view, but by flattery and gifts as well as tolerance of tribal preferences, the French maintained fairly good tribal relations. Since the French used only small tracts, French-allied tribes could continue to think of themselves as the rulers of territories surrounding French settlements. Indeed, after French authority gave way to

1 Robert J. Surtees, *Canadian Indian Policy, A Critical Bibliography*, Bloomington: Indiana University Press, 1982, 4.

2 “Indian Land Surrenders in Ontario, 1763-1867,” Ottawa: Government of Canada Claims and Historical Research Centre, Indian and Northern Affairs, February, 1984.

British in 1763, many tribes looked back with longing to the French period, even though the British formally paid greater deference to the concept of aboriginal land rights.³

The Years 1664-1763.

The Dutch approach to tribal land rights can be summarized succinctly: tribes had them and could freely sell them to whomever they wished. The French approach can also be summarized succinctly: tribes didn't have any, and all parts of North America rightfully belonged to whatever Christian European nation got there first and established effective control, whether local tribes approved or not. The British approach, intermediate between Dutch and French extremes, cannot be summarized succinctly. Overall, British tribal land rights policy can be characterized as attempting to combine an assertion of royal ownership based on alleged discovery and conquest with some attention to compensating tribes. Sometimes tribes were compensated simply as a politic measure; in 1759 for example Benjamin Franklin characterized the English approach as based on a belief that "the Indians...having been found willing for small Considerations to cede amicably large Tracts...it has always been thought good Policy to make Purchases thereof."⁴ At other times, tribal claims to political sovereignty and land proprietorship were taken more seriously, as was done for example by seventeenth century English colonists in Rhode Island and Connecticut, and for quite different reasons with respect to the Iroquois in New York. What became the colonies of Rhode Island and Connecticut were founded by breakaway emigrants from the Massachusetts Bay colony, who justified

³ For a detailed account of the bases of French-tribal co-existence, see Richard White, *The Middle Ground, Indians, Empires, and Republics in the Great Lakes Region, 1650-1815*, New York: Cambridge University Press, 1991.

⁴ NYSD 2:770.

their claims to separate legal existence by asserting that land rights in Rhode Island and Connecticut had been acquired, Dutch-style, from sovereign tribes holding the status of absolute proprietors.

From the moment the English ousted the Dutch in 1664, the newly named royal colony of New York was heavily dependent on the friendship of the Iroquois Confederacy. New York could not hope to press north and west beyond the Hudson River Valley without Iroquois help. So the English courted the Iroquois as allies, entering into what the Iroquois called the Covenant Chain. The obvious question was whether both English and Iroquois could benefit. But during a four-decade alliance with the Dutch, the Iroquois had seen their own power and land-holdings increase---and then the Dutch disappear. So the Iroquois saw no reason to flee from alliance with the English. The English for their part were optimistic too because they enjoyed strategic advantages denied the Dutch.

By supplying the Iroquois with guns, the Dutch in the middle years of the seventeenth century had enabled the Confederacy to subdue tribes from Virginia to north of the Great Lakes. The English realized that this could be turned to advantage in their rivalry with France. As a way of expanding into French-claimed regions, the English in New York adapted the inherited Dutch strategy of designating tribes as land owners capable of selling to whomever they chose. English theorists developed the proposition that, from the standpoint of international law, the Iroquois Confederacy was a sovereign state with proprietary rights. Arguments could be made about which European nation had first discovered North America by sailing along some part of the coast, but there could be no denying the fact that the French had been the first Europeans to penetrate into the

interior by exploring the Saint Lawrence River, the Great Lakes and the Mississippi River. Disinclined in the context of their rivalry with France to accept the French legal claim to “own” the North American interior, New York officials developed the countervailing theory that in this particular region “Discovery” did not apply because the Iroquois Confederacy, though not Christian, was a political sovereign with absolute proprietary rights to the soil.

Pre-Christian Rome was instanced as a precedent. Cadwallader Colden, New York Lieutenant Governor from 1760 to 1774, for example rhapsodized in 1727 that the Iroquois were

a poor Barbarous People, under the darkest Ignorance, and yet a bright and noble Genius shines thro’ these black Clouds. None of the greatest Roman Heroes have discovered a greater Love to their Country, or a greater Contempt of Death than these Barbarians have done, when Life and Liberty came in Competition: Indeed, I think our Indians have out-done the Romans in this particular.⁵

Building on the Roman precedent, New York authorities argued that while most North American tribes might not be governments in the Roman sense, the Iroquois Confederacy was such a government. Indeed, like Rome, the Iroquois Confederacy was presented as having extended its legal land ownership rights far and wide by conquest. And if the “Roman” Iroquois Confederacy chose to cede the lands of conquered tribes to New York, how could the French possibly object?

In 1684, New York Governor Thomas Dongan persuaded chiefs of the Confederacy “to affix the arms of the Duke of York to their stockades and villages.”⁶ In 1701, the Confederacy agreed to “give & render up all that Land [north of Lake Erie]

⁵ Cadwallader Colden, *The History of the Five Indian Nations Depending on the Province of New-York in America* (Part I, 1727, Part II, 1747), Ithaca: Cornell University Press, 1973.

⁶ Whipple 7.

where the Bever hunting is which we won with the Sword 80 years ago & pray that He [the English King] may be our Protector and Defender there.”⁷ In 1755, London officials coolly informed the French monarch that “What the court of Great Britain asserts and insists upon is this, that the five Iroquois nations, acknowledged by France to be the subjects of Great Britain, are, either originally or by conquest, the lawful proprietors of the territory of Ohio.”⁸

Because the Iroquois had deeded their lands to New York “for Protection and not Settlement,” they retained their autonomy and functional independence.⁹ But New York authorities anticipated steadily subordinating the Confederacy and progressively freeing up Iroquois land for “Settlement.” Looking ahead, New York authorities realized that a more centralized tribal structure would be easier to control, and therefore encouraged the Confederacy to think of itself as a unitary polity. The five Iroquois tribes had originally been wholly independent and, in coming together to form a Confederacy, assumed that Confederacy-wide decisions would be consensual and unanimous, and that each tribe would retain autonomy in many respects, especially in any decision affecting its home territory. New York officials preferred a top-down structure, headed by a central Confederacy command reporting to them.

The British might nonetheless have never gained significant control over the self-governing, martial Iroquois had it not been for the emergence of the aptly dubbed “Mohawk Baronet” Sir William Johnson, who achieved extraordinary success in

7 Peter Wraxall, *An Abridgment of the Indians Affairs... Transacted in the Colony of New York, From the Year 1678 to the Year 1751*, ed Charles H. McIlwain, Cambridge: Harvard University Press, 1915, 40.

8 Whipple 7.

9 NYSD 2:780.

refashioning the Confederacy into a serviceable tool of British imperial expansion. Born in Ireland in 1715, Johnson emigrated to America in 1737 and soon rose to prominence as a trader and land speculator in the Mohawk River Valley. Commissioned a major general by the Governors of New York and Massachusetts after leading an irregular mixed British-Iroquois force against the French in 1755, he was then made a baronet by the Crown and appointed Superintendent of Northern Indian Affairs with the rank of Colonel in the British Army. He remained the King's Superintendent until his death in 1774.¹⁰

Sir William ingeniously combined the roles of land speculator, adopted Iroquois chief, British imperial statesman and wilderness *bon-vivant*. An Iroquois partisan, Sir William characterized the land rights of Ohio region tribes as held “only under the Six Nations who sell them at pleasure.”¹¹ On November 13, 1763, he laid out Iroquois pretensions with impressive specificity:

As original proprietors, the Confederacy claim the country of their residence, south of Lake Ontario to the great Ridge of the Blue Mountains, with all the Western Part of the Province of New York towards Hudson River, west of the Catskill, thence to Lake Champlain, and from Regioghne, a Rock at the East side of said Lake, to Oswegatche or La Gallette, on the River St. Lawrence, (Having long since ceded their claim north of said line in favor of the Canada Indians, as Hunting-ground,) thence up the River St. Lawrence, and along the South side of Lake Ontario to Niagara.

In right of conquest, they claim all the country (comprehending the Ohio) along the great Ridge of the Blue Mountains at the back of Virginia, thence to the head of Kentucky River, and down the same to the Ohio above the Rifts, thence Northerly to the South end of Lake Michigan, then along the Eastern shore of said lake to Michillimackinac, thence Easterly across the North end of lake Huron to the great Ottawa River, (including the Chippewa or Missassagey Country), and down the said River to the island of Montreal. However, these more distant claims being possessed by many powerful nations, the Inhabitants have long begun to render themselves independent, by the assistance of the French, and the great

10 See Milton W. Hamilton, *Sir William Johnson, Colonial American, 1715-1763*, Port Washington: Kennikat Press, 1976; and James Thomas Flexner, *Mohawk Baronet, Sir William Johnson of New York*, New York: Harper, 1959.

11 WJP 11:201.

decrease of the Six nations; but their claim to the Ohio and thence to the lakes, is not in the least disputed by the Shawanese, Delawares, etc., who never transacted any sales of land or other matters without their consent, and who sent Deputies to the grand Council at Onondaga on all important occasions.¹²

Although some of his superiors suspected him of being more Iroquois than British, Sir William was in fact a loyal servant of British imperialism who used his unique position of trust among the Iroquois to induce them to accept a reduction in the independence they had once enjoyed, as well as piecemeal British expropriation of territory occupied by French-influenced tribes and even by the Iroquois themselves. Sir William's strategy of aggrandizing the importance of the Iroquois Confederacy while simultaneously emphasizing its centralized nature seemed attractive to many Iroquois so long as the focus remained on the Confederacy's ascendancy over non-Confederacy tribes. Sir William found it more difficult (though not impossible) to coerce a simple majority of the Confederacy as a whole into ceding the land of a Confederacy tribe over the objections of that tribe, as when Sir William in 1761 coerced a cession of *Seneca* land at Niagara to punish the *Cayugas*.¹³

The Years 1763-1775.

The defeat of the French by the British and the Iroquois in theory upheld the Iroquois Confederacy's claim to own and control vast regions of the North American interior. The fact that the British and the Iroquois Confederacy fought as formal allies against the French to defend Iroquois rights reflected the highly unusual relationship that had developed over the preceding decades between the royal colony of New York and the

12 NYCD 7:573. This was written after issuance of the October 7, 1763, Royal Proclamation, but before Sir William received it.

13 WJP 13: 115, 120, 222.

Iroquois Confederacy. But after exploiting the convenient theory of Iroquois political sovereignty and land proprietorship to contest French claims, the British conveniently discarded it once the French were defeated.

By the February 10, 1763 Treaty of Paris, the French monarch ceded to the King of Great Britain

In full right, Canada, with all its dependencies, as well as the island of Cape Breton, and all the other islands and coasts in the gulph and river of St. Lawrence, and in general, every thing that depends on the said countries, lands, islands, and coasts, with the sovereignty, property, possession, and all rights acquired by treaty, or otherwise, which the Most Christian King and the Crown of France have had till now over the said countries, lands, islands, places, coasts, and their inhabitants.¹⁴

As France's successor, the British monarch could now make any claim France had made regarding ownership of the North American interior.

In an attempt to formulate a tribal land rights policy for the vast territory acquired from France and to coordinate this policy with policies formerly pursued in British-ruled territories, King George III issued his Royal Proclamation of October 7, 1763, which articulated a general principle of overarching British sovereignty combined with protection for subordinate but legally enforceable tribal land rights. Some tribes gained rights as a result of this effort to fashion a uniform rule for all of British North America, but the long-favored Iroquois Confederacy were down-graded from the status of a sovereign, tributary state to that of tribal tenants on royal land. The key passage of King George III's 1763 Proclamation declared it

just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or tribes of Indians with whom We are connected, and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of our Dominions and Territories as, not having been

14 Clive Parry, ed., *Consolidated Treaty Series*, Dobbs Ferry: Oceana, 1969, 42:324.

ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds.

Royal purchase and tribal cession were specified as the presumptive ways in which aboriginal tribal land rights had been and were in the future to be legitimately terminated. But these rights were also described as no more than a right to use “Hunting Grounds” owned by the Crown. For the Iroquois, this represented a jarring rebuff. Once on a par with ancient Rome, the Iroquois were now informed that they were merely tenants allowed use of the King’s own hunting preserve “for the present, and until our further Pleasure be known.”¹⁵

As the person responsible for implementing the Proclamation north of the Ohio River, Sir William sought to make it palatable to the Iroquois by use of an evolutionary approach leading to a gradual reduction of their status and authority. Sir William knew the Iroquois would revolt if simply ordered around. Moreover, he personally favored retention of a prominent role for the Iroquois, to preserve the consequence of his position as the one man who could manipulate them. He therefore sought to convince his British superiors that the Iroquois were still important, even as he sought to persuade the Iroquois to allow the British to occupy rather than tear down French forts, as promised. Prior to the expulsion of the French, Sir William had encouraged the Iroquois to expect that if the Iroquois helped the British oust the French, the Iroquois would themselves regain the absolute sovereignty they had enjoyed before the French arrived. Instead, Sir William had to break the news that his royal master planned to claim sovereignty himself and betray the Iroquois, now that their assistance was no longer essential.

15 Adam Shortt and Arthur G. Doughty, eds., *Documents Relating to the Constitutional History of Canada, 1759-1791*, Ottawa, 1907, 119-123.

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The Proclamation described a vague north-south line separating areas of European settlement east of the Appalachians from areas reserved for tribes to the west, but this line made no sense if taken literally, since in many places the Appalachian divide had long since ceased to be the actual limit of white settlement. Many land grants had for example already been made in the vicinity of Lake Champlain, which lay west of the Green Mountains. Moreover, officials in London were unaware at this time that thousands of Frenchmen lived in the area nominally set aside for tribes. Clearly, the Proclamation was just a starting point and could not be applied arbitrarily without taking into account local factors, such as the pretensions of the Iroquois. In keeping with this reality, Sir William attempted to translate the broad principles articulated in 1763 into a regionally viable boundary by the 1768 Treaty of Fort Stanwix, which established the so-called Line of Property as the eastern limit of Oneida territory.

Although agreeing to the 1768 Line of Property, the Iroquois were reluctant to accept the new royal theory that on the lands they retained they possessed only a hunting ground use right enjoyed at the monarch's "pleasure." Euro-American colonists (including Virginia's George Washington) were equally upset by King George III's proscription of land speculation west of the 1763 Proclamation Line. The bold British imperium proclaimed in 1763 was only twelve years old when the Revolutionary War broke out, and numerous people aggrieved by Britain's aggressive post-1763 policies retained vivid memories of better times prior to 1763. Colonists east of the Appalachians as well as members of tribes west of the Appalachians entered into the Revolution with high (albeit incompatible) hopes for the restoration of rights and privileges abrogated by King George III. Some of these hopes would be realized, most were not. For the Iroquois,

hopes of a return to their pre-1763 status as sovereign polities with absolute proprietary rights would prove illusory.