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**The 1795 New York-Iroquois Crisis**

**Pickering Joins Washington’s Cabinet as Secretary of War.**

On January 2, 1795, when Timothy Pickering succeeded Henry Knox as Secretary of War, no one other than Pickering himself had any inkling of the extent and complexity of his plans for the future of the Iroquois tribes still resident in New York State. The New York-Iroquois crisis to come may therefore have been anticipated by Pickering but could not have been imagined by Knox or Washington when Pickering, to everyone’s surprise including his own, moved from the Post Office to the War Office. The top job in the War Department would certainly have gone to a respected senior regular army general with field command experience, had one been available. Colonel Pickering’s war service had consisted mostly of deskwork requisitioning supplies, which hampered his credibility in an office held by Major General Benjamin Lincoln, and then by Major General Henry Knox.

In September of 1790, President Washington had laid out in precise detail what the inexperienced Colonel Pickering was to do in meeting with a section of the Seneca tribe. In January of 1795, Secretary of War Pickering was a veteran of four years of increasingly momentous tribal diplomacy and held administrative responsibility for all federal tribal relations. In less than five years, he had risen to heights of power and influence beyond anything he (or anyone else) could have imagined. President Washington in contrast, approaching the second half of his second term, was no longer the dominant figure he had been in 1790, and had increasing difficulty recruiting persons of distinction to his Cabinet. The comparatively obscure

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Pickering was not the President's first or second or third choice for this important Cabinet post. Pickering's selection to succeed Knox after *three* prominent national figures declined the President's offer was a fluke dwarfed only by Pickering's selection on December 10, 1795, to be Secretary of State after *six* prominent national figures declined the President's offer to succeed Edmund Randolph, whom Pickering hounded from office.<sup>1</sup> The spectacular ascent of Pickering to the two highest posts in Washington's Cabinet (Pickering actually functioned for seven weeks as *both* Secretary of War and Secretary of State) was a testament not to Pickering's stature but to the growing vulnerability of Washington's administration following the 1793 loss of Jefferson and the triumph of Hamilton.

Washington had really enjoyed interacting with his first Secretary of State, a younger member of the Virginia planter aristocracy that was Washington's home base. Throughout most of his first term, Washington and Jefferson maintained an openness and informality that Washington clearly valued. But Jefferson couldn't get along with Treasury Secretary Hamilton, whom Washington also admired. Since Washington wouldn't choose between them, Jefferson finally chose to remove himself from the Cabinet, and distance gradually grew into near-tragic estrangement. Washington had no desire to preside over a partisan administration, dominated by persons with closer ties to Hamilton than to Washington himself. But he couldn't order anyone to serve as a member of his Cabinet, and the more persons of doubtful abilities he had to appoint, the more he felt he could not do without the assistance of the undeniably brilliant Hamilton.

Jefferson justified his resignation by the contention that Washington was no longer able

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<sup>1</sup> Elkins and McKittrick 623-25.

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to control or perhaps even to see through Hamilton's wiles. "The firm tone of his [Washington's] mind, for which he had been remarkable, was beginning to relax," Jefferson claimed; "a listlessness of labor, a desire for tranquillity had crept on him, and a willingness to let others act, or even think, for him."<sup>2</sup> Well aware that his in-fighting skills were no match for Hamilton's, Jefferson felt he had no choice but to return home to Monticello, and prepare for eventual battle over the Revolution's future course.

Jefferson exaggerated Washington's declining analytical powers. Washington saw what was happening around him, but chose to ride out the whirlwind rather than start over. Never formally challenged by Hamilton, Washington was obeyed when he issued an explicit order. Difficulties arose when Washington refrained from taking a stand, and these occasions became more frequent as he experienced health problems. Washington never allowed himself to become "the painted wooden head of the ship and Hamilton the pilot and steersman."<sup>3</sup> But insofar as Washington did lose vigor, it was Hamilton who benefited.

At the outset of his Presidency, Washington had organized his prestigious and talented Cabinet on a general staff concept, with Secretary of State Jefferson and Treasury Secretary Hamilton, and to a lesser extent Secretary of War Knox, serving as all-purpose staffers. The Jefferson-Hamilton-Knox trio formally designated by Washington in 1791 to make decisions in his absence from the capital perfectly exemplified Washington's initial approach to top-level

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<sup>2</sup> Joseph Ellis, *Founding Brothers*, New York: Knopf, 2001, 125.

<sup>3</sup> John Adams' characterization of a perspective he did not share. Arnold Rogow, *A Fatal Friendship*, New York: Hill and Wang, 1998, 177.

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governmental organization. Encouraged to make recommendations on all national questions, Hamilton and Jefferson were more than happy to oblige, while Knox by choice focused modestly on his own Department. Washington considered the Attorney General and Postmaster General persons who gave advice on technical questions when asked. Washington made almost no administrative use of his Vice President, and seems to have assumed (logically enough, in light of what the Constitution says) that the Vice President's responsibilities lay in Congress, as the Senate counterpart of the Speaker of the House.

In the second half of Washington's second term, senior Cabinet officers could not provide him with anything like the working relationship of the first years of his first administration. By January of 1795, when Pickering was promoted to the top echelon of Washington's Cabinet, the Jefferson-Hamilton-Knox trio were all gone. The first Attorney General had taken over as Secretary of State and the second Postmaster General as Secretary of War, but Washington never established with them the collegiality that had characterized his wide-ranging policy discussions with the omniscient Jefferson and Hamilton, or the easy-going Knox. While still able to gain acceptance for his decisions, Washington was a much more remote figure than in his lively first administration. The perceived "aging" of Washington was nothing more than a lessening of spontaneity in his counsels, resulting from factors that anyone at any age would have had difficulty reversing. It thus makes better sense to speak of an aging of Washington's Presidency than of a decline in Washington's personal mental powers. Washington didn't like what was happening, but was unable to revive broad-based non-partisanship in a nation increasingly polarized over issues as well as personalities.

**The French Revolution Polarizes America.**

The tensions in the nation epitomized by Hamilton and Jefferson spanned multiple dimensions, reflecting their regions and class backgrounds as well as policy preferences. Of these many dimensions, Hamilton's Anglophilia and Jefferson's Francophilia did not seem at first to matter greatly. In fashioning his first Cabinet, Washington was well aware that Jefferson was enamored of the French Enlightenment, and that Hamilton admired almost everything about Britain, especially Britain's commercial wealth and military prowess. Washington didn't mind; he thought these contrary currents would give a dynamic openness to debates about the U.S. future.

The division between pro-British and pro-French elements of the American elite traced back to the outset of the Revolution. While some wished to use French-style abstraction to define a new American society altogether distinct from Old England, others wanted the U.S. to sever formal political ties to Britain, but then fashion an independent American polity and society on British models, only slightly revised to suit American conditions. This longstanding French-vs.-British split in U.S. elite attitudes remained manageable through the first phases of the French Revolution. When the Bastille fell on July 14, 1789, no American Revolutionary could very well berate France for one violent incident. But after France declared itself a republic on September 22, 1792, after King Louis XVI was publicly guillotined on January 21, 1793, and France declared war on Great Britain on February 1, 1793, U.S. leaders such as Jefferson who still

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supported the increasingly radical French Revolution had to be prepared for heated arguments with Anglophiles such as Hamilton, who reviled anything French as tending toward anarchy.

The French Scare of the mid-1790s in the United States can be compared in some respects to the Red Scare of the 1950s, when even mildly unorthodox opinions were viewed as indications of a sinister intent to destroy U.S. institutions. Similarly, to wary 1790s defenders of privilege, any U.S. politician who excused the beheading of King Louis XVI seemed dangerously irresponsible. By the mid-1790s, the French Scare had become so intense that virtually all U.S. leaders other than Washington were acting like aggressive partisans. Washington preferred not to take sides between Great Britain and France. But not even Washington could keep pro- and anti-French paranoia out of his Cabinet.

On April 8, 1793, Edmond Charles Genet, the new envoy from the French Republic, arrived in the United States, aboard the thirty-six-gun French naval frigate *l'Amuscade*. Disembarking in Charleston, South Carolina, hundreds of miles from the capital, Genet did not present his credentials to President Washington in Philadelphia until May 18, following a triumphal six-week tour northward. Pro-French sentiment was strong in the Jeffersonian south, as was support for Great Britain in pro-Hamilton New England, and the French Republic's envoy decided to present his credentials to Washington along with evidence of U.S. enthusiasm. A rousing series of receptions greeted young Genet, who conducted himself as if he were running for U.S. public office. "Citizen Genet" (as he liked being addressed) delighted in emphasizing that France and the United States were two lone republics in a world of monarchies, and thus destined to cooperate in opposing Britain's King George III. Genet next started spending French

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money to outfit U.S. merchant vessels and French-captured British vessels in U.S. ports to harass the British navy. Even the pro-French Jefferson was startled by this, and the Anglophile Hamilton was furious. In July, President Washington formally requested the French Republic to recall Genet. On January 20, 1794, word reached the United States that a new French envoy was finally on his way. Citizen Genet was instructed by his government to return to France, but aware that the Girondists who had sent him to the United States had been replaced by more radical Jacobins, Genet feared that he would be guillotined if he returned to France. So he chose to remain in the United States, became U.S. Citizen Genet and married Cornelia Clinton, the twenty-year-old daughter of New York Governor Clinton.<sup>4</sup>

Historian John P. Kaminski describes how this republican romance came to fruition:

On August 8, 1793, Edmund Charles Genet, the French minister to the United States, arrived in New York City. Republicans supported the controversial envoy; Federalists led by Rufus King and Chief Justice Jay opposed him, spreading a report that Genet had threatened to appeal directly to the American people for a change in Washington's policy. Republicans led by Chancellor Livingston denied this report, but Jay and King publicly admitted that they were the source of the report, which, they declared, was true. Republican support for Genet cooled throughout the country as Federalists posed a contest between Genet and Washington. New York Republicans, however, stuck with Genet...Governor Clinton warmly welcomed Genet and often appeared with him at public ceremonies at which toasts were offered to the president, the governor, and the revolutionaries of France. At a gala celebration of the tenth anniversary of the British evacuation of New York City on November 25, 1793, Genet publicly saluted the governor as "a true friend to the cause on which the fate of our two countries depend"... The governor had "rendered to the [French] Republic, and

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<sup>4</sup> Harold Cecil Vaughan, *The Citizen Genet Affair, 1793*, New York: Franklin Watts, 1970.

to all the French in these states in general, all the good offices” in his power.... The governor thanked Genet for his “very friendly sentiments,” praised “the peaceable and orderly behaviour” of French soldiers and sailors in New York, and expressed the continuing gratitude of America for France’s “generous aid in our arduous struggles for Liberty and Independence.”... At one reception hosted by Clinton, Genet met the governor’s twenty-year-old daughter Cornelia.... Cornelia, a romantic republican, was attracted to the thirty-year-old Genet even before she met him.... The meeting confirmed her passionate feelings for the flamboyant Frenchman. Genet too became enamored with the governor’s free-spirited daughter, and in September rechristened the French privateer *La Petite Democrat* as *Cornelia*. Rumors circulated about the romance, and by fall the couple secretly became engaged. Some Federalists hoped that the marriage would take place because they expected that Genet’s obnoxiousness would “in a Year or two, have a favorable influence on the Politics of this State.” The marriage, however, was delayed when Hamiltonians spread rumors that Genet already had a wife and two children in France.... Told about the engagement, the governor refused to give his permission for the wedding until Genet’s marital status was clarified. At about this time, a change in government occurred in France and Genet was recalled, in all likelihood to face execution. In November 1794, after Washington granted Genet asylum and the rumors of a previous wife were refuted, Genet and Cornelia were married at the governor’s house with Clinton’s blessing.<sup>5</sup>

### **George Clinton, Jeffersonian.**

Though now largely forgotten, George Clinton, seven-term Governor of New York, twice elected U.S. Vice President, was a towering figure in the early U.S. republic, idolized by pro-French Republicans and feared by pro-British Federalists despite his always close relationship to President Washington. A simple statistical gauge of Clinton’s national stature is the fact that in

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<sup>5</sup> John P. Kaminski, *George Clinton, Yeoman Politician of the New Republic*, Madison: Madison House, 1993, 239-40.

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the first election for U.S. President, in which each elector cast two votes, George Washington received one vote from each of the sixty-nine electors. Their second vote was split widely, with John Adams receiving a total of thirty-four votes and George Clinton three Virginia votes. In the second Presidential election, Washington again received one vote from each of the 132 electors. Their second votes were distributed as follows: 77 to John Adams, 50 to George Clinton, 4 to Thomas Jefferson, 1 to Aaron Burr. Thomas Jefferson had not yet emerged as a serious candidate for national office, and New York's Governor Clinton was the leading national spokesperson for what would soon become the Jeffersonian Republican party. Clinton's election as U.S. Vice President on the Republican ticket with Jefferson in 1804-05 only confirmed the fact that for more than a decade Clinton had shared with Jefferson leadership of the pro-French, Republican states' rights party. Thus, even before the beheading of Louis XVI, even before Citizen Genet married Cornelia Clinton, George Clinton was perceived by Anglophilic Hamiltonians as a dangerous radical who unless curbed might well succeed Washington as President and then hurl the United States into war on the side of France.

Overall national support was very evenly divided between King George III's royal realm and the regicidal French Republic. Just how close this balance was became evident in the spring of 1794 during Congressional struggles to pass a pro-French Nonintercourse Bill that would have placed an embargo on all U.S. commercial dealings with Great Britain "until compensation should have been made for the illegal captures, the posts evacuated and American owners reimbursed for the negroes carried away in 1782."<sup>6</sup> On April 25, 1794, the Nonintercourse Bill passed the House

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<sup>6</sup> Samuel Flagg Bemis, *Jay's Treaty*, New York: Macmillan, 1924, 196.

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by a 53-44 vote, but then lost in the Senate 14-13 on Vice President Adams's tie-breaking vote.

Because New England was predominantly pro-British and the south predominantly pro-French, New York State held a pivotal geographic position. Within New York, sentiment was also closely divided. Any opportunity to curtail Clinton's influence was consequently of great interest to pro-British elements. As New York's leading Clinton detractor, Alexander Hamilton master-minded many an effort to oppose him, in both New York State and the nation's capital.

Hamilton resigned as Treasury Secretary in January of 1795, just as Pickering entered the Cabinet as Secretary of War. But Hamilton actively guided the work of protégés such as Pickering who still held office in Washington's administration. Temperamentally, Pickering and Hamilton had almost nothing in common. But both men agreed on the superior merit of a unitary, quasi-monarchical executive with large discretionary powers, and disliked and distrusted Revolutionary France---and its principal U.S. admirers, Thomas Jefferson and George Clinton.

### **Pickering and Clinton Spar Over Iroquois Land Rights.**

Pickering and Clinton were wary of each other even before Pickering was ordered by President Washington in 1791 to undergo the intense personal humiliation of calling on Clinton to apologize for having interfered in domestic New York State tribal matters. Subsequent events had only reinforced their mutual antagonism. Any exchange between Pickering and Clinton on any matter, however perfunctory, was fraught with overtones of dislike and distrust.

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On January 30, 1795, Secretary of War Pickering sent a brief letter to Governor Clinton.

“Sir,” it read,

By direction of the President of the United States, I have the honor to transmit to your Excellency two speeches addressed to me at the late treaty at Kon-ondaigua, one from the principal Chiefs of the Onondagas and Cayugas, the other from Henry Young Brant a Mohawk, both relative to lands claimed by those Nations within the boundaries of the State of New York, and am, Sir, with great respect, Your most obedient Servant, Timothy Pickering, Secretary of War.<sup>7</sup>

Though apparently never answered, Pickering’s letter was received by Clinton, who passed it along to Philip Schuyler, among whose *Papers* it now resides. Less clear is whether the letter had any effect on New York State actions during the spring of 1795. The wish of the Onondagas and Cayugas to turn their reservation lands to a profit had been on the State’s agenda since 1791, when the Cayugas had pressured Pickering to “ratify” a lease of their State reservation. After his appointment as Federal Agent in 1792, General Israel Chapin had written repeatedly to Governor Clinton urging him to respond to Onondaga and Cayuga desires to lease or sell their State reservations. Pickering’s January 30, 1795, letter was thus far from the first such request received by State officials. As Schuyler later put it in remarks to the Cayugas, while the Legislature

was deliberating on the most effectual mode of carrying into effect their humane and benevolent intentions towards you, they received from the President of the United States, a copy of your speech made to Colonel Pickering on the 16th day of November last, relative to the subject in question. And our Great Council was exceedingly happy to find that your intentions and theirs perfectly coincided on

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<sup>7</sup> New York City Public Library, *Philip Schuyler Papers*.

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the subject. For you requested, that your reserved lands might be so disposed of as to produce an annual rent to be paid to you and your posterity forever.

The Oneidas, Onondagas and Cayugas had been listed together in Article Two of the federal Treaty of Canandaigua. But this was not the reason for the New York Legislature's decision to negotiate with all three of these tribes. In a development unrelated to the efforts of the Onondagas and Cayugas to dispose of their reservations, the Oneidas had petitioned the Legislature on February 27, 1795, stating

We have ever been your friends in peace and your constant companions in war. Whenever you have applied to us for lands for your people to settle upon, we have never sent you away with a refusal until at length we gave all our country into your hands for a small compensation, reserving only the use and improvement of the land around our principal settlement. Your people are now settled on every side of us and the game of all kinds is retiring from our country. Our former resources of almost every kind will probably soon fail us. And we must derive our subsistence from some other quarter than what we formerly did. The business of hunting on which we intirely depended for meat and clothing for our families is very nearly done forever. Our sole dependence must then be on the incomes of our lands, and these lands, brothers, by our [1788 State Treaty] agreement with you are not at our disposal but from the former assurances of our Brother Governor we hope and believe that you will reasonably concur with us in making such disposal of some part of our land as may be for our advantage. We have more lands than we can cultivate ourselves, and as there is no game upon them, we do not receive the least advantage from them at present. We can however lease them for a valuable consideration and now ask your concurrence in the business which we hope you will not refuse but as we do not know how to transact land matters to advantage we wish you to appoint commissioners to superintend the business. From our long acquaintance with General Philip Schuyler and with James Dean we believe them to be friends to us, we wish you to appoint them for the purpose, as the one has been a commissioner of Indian affairs and the other an agent in the same department and is well acquainted with our language. Brothers, we hope you will pay particular and immediate attention to our request. Our present necessities...induce us to be earnest.<sup>8</sup>

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<sup>8</sup> New York State Archives, New York Legislature Assembly Papers 40:221-24. See also *Philip Schuyler Papers*, letter dated February 15, 1795, from Schuyler to “Brothers, Sachems and

The Legislature responded by appointing Schuyler to negotiate a land sale agreement with the Oneidas, as well as with the Onondagas and Cayugas. The Legislature instructed Schuyler and his fellow State Commissioners to offer the three tribes annuities amounting to six per cent of a sum that assumed the value of the land rights to be acquired from the tribes would be four shillings an acre. The Legislature further specified that after being acquired from the three tribes this land was to be sold at no less than sixteen shillings per acre. The Legislature in other words expected that these three State-protected tribes would be paid only one quarter of the current value of any land they might choose to relinquish. New York’s Council of Revision consisting of Governor Clinton, Chief Justice Robert Yates and Justice Egbert Benson found this plan inconsistent with assurances given on February 13, 1794, that any modifications in these tribes’ State reservations would be for their “sole” benefit. The Legislature’s instructions contemplated, in the Governor’s Council of Revision’s words, a “*disposition* three fourths of which at least will be for the benefit of the *State*, and consequently not a *disposition* for the sole benefit of the Indians.” These instructions were therefore pronounced “inconsistent with the *assurances*...made to the Indians by his Excellency the Governor” in 1794.<sup>9</sup>

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Warriors of the Oneida Nation.”

<sup>9</sup> *Journal of the Assembly of the State of New-York, Eighteenth Session* (New York, 1795) 180-81. Emphasis in original. For the Legislature’s February 13, 1794, Resolution, see *Journal of the Assembly of the State of New-York, Seventeenth Session* (Albany, 1794), 77. See also Barbara

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Graymont, “New York State Indian Policy after the Revolution,” *New York History* 58(October 1976):464-5.

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The Governor's Council of Revision was clearly right in rejecting the Legislature's 1795 instructions. To cover handling costs, a small differential might have been specified between the price paid the tribes and the price for which their State reservation lands would be later sold, but not the four hundred per cent mandated by the Legislature. Regrettably, the Council of Revision's well-reasoned veto was quickly overridden by a two-thirds vote in both houses of the New York Legislature which then on April 9, 1795, passed in final form "An Act for the better support of the Oneida, Onondaga and Cayuga Indians," authorizing State commissioners to negotiate below-value land sales with these three tribes. The Act made no mention of Pickering's January 30<sup>th</sup> letter, which Governor Clinton may have never communicated to the Legislature.

New York State's commissioners were soon making arrangements to negotiate with the Oneidas, Onondagas and Cayugas. Pickering however remained unaware of these preparations until he received a letter (now lost) written on May 22, 1795, by Captain Israel Chapin, Jr., the son of General Israel Chapin. A sensible, hard-working man, General Chapin had in less than three years as Federal Agent developed good working relations with New York State, federal, Iroquois and British officials. Unfortunately, his health began to fail during the summer and fall of 1794, and his increasing frailty was noticed during the Canandaigua Treaty negotiations. On March 7, 1795, General Chapin died in Canandaigua. The one man who might have been able to mediate between State and federal governments was removed by death at the worst possible moment.

On April 6, 1795, Pickering appointed Captain Chapin to succeed his father at a reduced salary. This seemed appropriate to Pickering because the frontier was quieter now, following

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General Wayne's military victory on August 20, 1794 and his own successful completion of the Canandaigua Treaty. As Pickering put it in breaking the news to the younger Chapin,

The perplexities and increased burthen of managing the affairs of the Six Nations, induced an increase of your father's salary from five hundred to seven hundred dollars a year. Those perplexities being at an end, and the burthen materially lessened, from the causes before recited, the salary of the superintendent of the Six Nations is now to be five hundred dollars a year.<sup>10</sup>

Captain Chapin had served as his father's assistant, acquiring a day-to-day familiarity with the job, and therefore seemed a defensible choice to succeed his father. But the younger Chapin soon proved alarmingly inadequate. Instead of clearing up misapprehensions as his plain-spoken father could have done, Captain Chapin compounded the prevailing confusion.

Captain Chapin's May 22<sup>nd</sup> letter to Pickering gave what was no doubt intended to be a routine account of actions taken to help arrange the New York State negotiating sessions to be held at Cayuga Lake with the Cayugas and Onondagas. Chapin, Jr. knew that the desire of the Cayugas and Onondagas to sell or lease portions of their reservations to New York State had been discussed with Pickering at Canandaigua the previous fall, and assumed that Pickering approved of what was now proposed. Mail between Canandaigua and Philadelphia took about three weeks and Chapin, Jr.'s May 22<sup>nd</sup> letter reached Pickering on or shortly before June 13. A second letter dispatched by Chapin, Jr. on June 13 (which arrived July 3) reported after a stream of unrelated news that his assistant Jasper Parrish "is now at Buffalo Creek to bring forward the

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<sup>10</sup> New York Historical Society, *Henry O'Reilly Papers*, 11.

Cayugas and Onondagas to the treaty respecting their lands.”<sup>11</sup>

Neither of Chapin, Jr.’s letters conveyed a full or clear picture; from them Pickering ascertained only that something was going on pertaining to the Onondaga and Cayuga reservations. So Pickering attempted to supplement Chapin, Jr.’s incoherent reports by making inquiries. But instead of trying to locate a copy of the New York Legislature’s April 9<sup>th</sup> Act, Pickering relied on a description of its provisions offered by Robert Morris’s son Thomas, currently a Canandaigua resident and a member of the Legislature. The younger Morris left Pickering with the impression that the April 9<sup>th</sup> Act provided for a formal petition to the federal government to convene a federal treaty session on behalf of New York State, but that Clinton had refused to follow the Legislature’s directive.

**Pickering Requests Attorney General Bradford’s Opinion.**

Deeply agitated, Pickering on June 13 requested an opinion from U.S. Attorney General William Bradford as to whether New York’s State reservations were or were not subject to the land sale provisions of the 1793 federal Indian Trade and Intercourse Act. The previous fall at Canandaigua, Pickering had publicly informed the Oneidas that he believed their State reservation *might* be subject to these provisions, and Pickering may have confided something of this background to Bradford, as well as the urgency of the matter.

Three days later, on June 16, Bradford supplied the desired opinion

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<sup>11</sup> *Henry O’Reilly Papers*, 11:26.

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Whether the State of New York has a right to purchase from the Six Nations or any of them the lands claimed by those nations and situate within the acknowledged boundaries of that State, without the intervention of the general government.

By the Constitution of the United States, Congress has power to regulate commerce with the Indian Tribes, and by the act of 1 March 1793, it is expressly enacted, That no purchase or grant of lands, or of any title or claim thereto, from any Indians or nation or tribe of Indians, within the bounds of the United States, shall be of any validity in law or equity, unless the same be made by a treaty or convention entered into pursuant to the Constitution....The language of this act is too express to admit of any doubt upon the question unless there be something in the circumstances of the case under consideration to take it out of the general prohibition of the law.

Nothing of this kind appears in the documents submitted to the Attorney General. It is true, that by treaties made by the State of New York with the Oneidas, Onondagas and Cayugas, previous to the present Constitution of the United States, those nations ceded all their lands to the people of New York, but reserved to themselves and their posterity forever for their own use and cultivation, but not to be sold, leased or in any other manner disposed of to others, certain tracts of their said lands, with the free right of hunting and fishing etc. So far therefore as respects the lands thus reserved the treaties do not operate further than to secure to the State of New York the right of preemption: but subject to this right they are still the lands of those nations, and their claims to them, it is conceived cannot be extinguished but by a treaty holden under the authority of the United States, and in the manner prescribed by the laws of Congress.

Bradford concluded that the Oneidas, Onondagas and Cayugas had *not* “ceded all their lands to the people of New York” by their pre-Constitutional treaties with the State, because they had “reserved to themselves” a portion of their aboriginal territory to which New York State could claim only a “right of preemption” similar to that held by Robert Morris to the Senecas’ aboriginal hunting grounds. The lands within the bounds of these State reservations were therefore held by “Indian Title” which could only be extinguished through a federal treaty.

Bradford’s theory that the “Six Nations” had *retained* their reservations as aboriginal “Indian Title” territory diverged sharply from what Governor Clinton had thought he was doing on

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the State's behalf in 1788-89. Prior to the inception date of the Constitution, the sovereign State of New York had tried to preclude the precise possibility for which Bradford was now arguing, by dealing separately with each of three Iroquois tribes and requiring each tribe to cede to the State *all* its "Indian Title" land claims. In the view of Governor Clinton, the State reservations subsequently assigned to the Oneidas, Onondagas and Cayugas were wholly subject to the State's ordinary jurisdiction.

In reinterpreting New York State's pre-Constitutional extinguishments of the entire "Indian Title" claims of these three tribes, Bradford's opinion invited a radical extension of the federal government's regulatory capacity. Bradford's theory that affirmative State land *grants* to tribes were unavailing in their attempts to extinguish pre-existing aboriginal "Indian Title" land *claims* by tribes had explosive ramifications, potentially extending to State land grants in Pickering's native Massachusetts, Bradford's native Pennsylvania and President Washington's native Virginia. The magic of the "Six Nations" name may have blinded Bradford to these wider implications.

Pickering was in a hurry, and Bradford responded rapidly because Pickering felt he needed to act fast. Sensibly, Bradford covered himself by stating that his opinion was based solely on documents supplied him by Pickering. While it is not clear which documents these were, they could not have included the New York Legislature's April 9<sup>th</sup> Act because Pickering himself did not see the text of this Act until July at the earliest. Despite Pickering's unfamiliarity with the April 9<sup>th</sup> Act, he could have supplied Bradford with substantial information about New York State's legal position, had he desired to do so. A document in Pickering's handwriting which probably dates from the time of his 1791 meeting with Governor Clinton reflects Pickering's effort to acquaint himself with the history of New York State's dealings with the Oneida, Onondagas and Cayugas. In this

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memorandum, Pickering listed all New York State land transactions with these three tribes, complete with dates and monetary terms. A 1788 agreement with the Onondagas calling for payment in “French Crowns” was even translated by Pickering into a dollar equivalent. At the document’s end, Pickering totaled all amounts paid or promised to all three tribes in all the various State agreements: 1,600 dollars in annuities, 22,363.50 in one-time cash payments. His notations regarding the Oneidas read:

1785 June 28. Treaty at Fort Herkimer. Lands between the Unadilla and Chenango, purchased of the Oneidas, for 11,500 dollars....1788. September 22. Treaty at Fort Stanwix. All the lands of the Oneidas - with a reservation of a tract for their use. A reservation for the New England Indians at Brothertown was also made, and one of six miles square for the Stockbridge Indians. In money 2000, cloathing 2000, provisions 1000, for mills 5000.....5,500 and (payable June 1<sup>st</sup>) an annuity of 600.<sup>12</sup>

Possessed of such details, and having personally heard them placed in context by Governor Clinton, Pickering in 1795 could have briefed Bradford about New York State’s claim to have paid for and extinguished the entire “Indian Title” claims of the Oneidas, Onondagas and Cayugas. Clinton knew that so long as “Indian Title” survived, a basis for federal interference would persist, which was why he worked hard preceding the inception of the Constitution to preclude this possibility. Clinton claimed to have personally explained the State’s position to President Washington, and is known to have explained it to Secretary of War Knox and Federal Treaty Commissioner Pickering in 1791.<sup>13</sup> But while Pickering made a private attempt to reason through Clinton’s position, he disagreed with it, and seems never to have tried to explain it to Washington, Knox or Bradford. What Pickering wanted from Bradford was not an assessment of State/federal jurisdictional claims but a weapon that could be

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<sup>12</sup> TPP 61:158. This undated document is filed among 1790 papers, presumably because the last date it contains is 1790.

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used in a legal showdown with an apparently power-maddened “Jacobin” Governor.

Armed with Bradford’s June 16<sup>th</sup> opinion, Pickering placed the matter in some fashion before President Washington, who on June 23 authorized him to proceed. The next day Pickering fired off a letter to Governor Clinton, enclosing Bradford’s opinion. Then on June 29, Pickering sent Agent Chapin a scorching letter accusing Governor Clinton of conduct that was criminal under federal law, and making the further charge that Governor Clinton was openly defying the Legislature of his own State. Imagine what such an individual might do if elected President!

Pickering told Chapin that he was to give

no countenance to this unlawful design...as it is repugnant to the law of the United States made to regulate trade and intercourse with the Indian tribes....[Y]ou are to tell these tribes of Indians that any bargains they make at such a treaty as that proposed to be held...will be void; and as the guardian of their rights you will advise them not to listen to the invitation of any Commissioners unless they have authority from the United States

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13 See above, page 111.

to call a treaty.<sup>14</sup>

**Jay Succeeds Clinton as New York Governor.**

Governor Clinton completed his sixth consecutive term on June 30 without replying to Pickering's letter of June 24 enclosing Bradford's opinion. So on July 3 Pickering wrote another letter to Clinton's successor reiterating his contention that the State could not negotiate with the Cayugas, Onondagas and Oneidas until federal treaty commissioners were appointed.<sup>15</sup> As it happened, Clinton's successor was none other than John Jay, one of the three authors of the *Federalist Papers*, who had served from 1789 to 1795 as the first Chief Justice of the U.S. Supreme Court, and had also recently served with distinction (while on leave from his duties as Chief Justice) as a federal treaty commissioner; he negotiated the important "Jay Treaty" with Great Britain signed November 19, 1794. Earlier in his career, Jay had been a principal drafter of the 1777 New York State Constitution.

On July 13, 1795, Governor Jay replied to Pickering in words calculated to remind Pickering that he was accustomed to reaching his own conclusions on matters of law, federal as well as State, and that the opinion of a U.S. Attorney General was far from the last word. "Whether the Constitution of the United States warrants the act of Congress of the 1 March 1793," Jay wrote Pickering, "and whether the act of this State respecting the business now negotiating with the Onondaga and other tribes of Indians, is consistent with both or either of them, are questions which on *this* occasion I think I should forbear officially to consider and decide." Observing dryly that

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<sup>14</sup> *Henry O'Reilly Papers* 11:29.

<sup>15</sup> 36 Indian Claims Commission 75, 88.

Pickering “doubtless” had a copy of the State’s April 9<sup>th</sup> Act, Jay added,

As to any intervention or concurrence of the United States the act is silent and I do not observe any thing in it which by implication directs or authorizes the Governor to apply for such intervention or which implies that the Legislature conceived it to be either necessary or expedient.<sup>16</sup>

These were strong words of reproof from the just-retired U.S. Chief Justice. Instead of immediately accepting Pickering’s assertion that the State was acting in open violation of federal law, Jay posed an array of questions. If the federal 1793 Indian Trade and Intercourse Act said what Pickering thought it said, was that Act then Constitutional? Moreover, might it not be desirable to consider alongside the federal law and Constitution the New York law and Constitution before concluding what was legal in this situation of competing state/federal competence?

Receipt of Jay’s letter was Pickering’s first intimation that he had been mistaken in assuming that the New York Legislature had directed the Governor to request appointment of a federal treaty commissioner. On July 16, Pickering replied apologetically, conceding he had erred.<sup>17</sup>

Jay made no attempt to halt the negotiations authorized prior to his assumption of the governorship. But five days later he requested that a federal commissioner be appointed to preside at a treaty conference to extinguish aboriginal “Indian Title” claims made by members of

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<sup>16</sup> 36 Indian Claims Commission 75, 88-89.

<sup>17</sup> 36 Indian Claims Commission 75, 89.

the Saint Regis community.<sup>18</sup> On July 21, 1795, reporting to President Washington receipt of Governor Jay's two letters, Pickering noted that

By the Act of the Legislature of which an extract is enclosed, and the Governor's letter referring to the subject of it, a distinction seems to have been taken between the lands...claimed by the Saint Regis Indians and those of the Oneidas, Onondagas and Cayugas. With respect to the latter the intervention of the general government has not been thought requisite; but in regard to the former Governor Jay has resorted to it; as the Act of the Legislature of New York authorized him to do.

Pickering implicitly questioned the Legislature's "distinction" but offered no hint that he understood why New York State might be making such a distinction. Pickering also applauded Governor Jay's Saint Regis request, urging the President to give "facility to every measure of a state government, which conforms to the regulations prescribed by the laws of the Union."<sup>19</sup> Pickering then suggested that either Colonel Jeremiah Wadsworth or Elias Boudinot would be an appropriate person to supervise the Saint Regis negotiation. Colonel Wadsworth's availability was uncertain but Pickering suggested, without specifying a reason, that "Mr. Boudinot, late member of Congress from New Jersey" was "probably disposed to undertake such a mission." The father-in-law of Attorney General Bradford, Boudinot had served as President of Congress in 1782 and as Congress's Secretary of Foreign Affairs in 1783, as well as a Member of Congress from New Jersey between 1789 and 1795. Author of *The Age of Revelation*, a

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<sup>18</sup> 36 Indian Claims Commission 75, 90.

<sup>19</sup> TPP 35:209-10.

defense of Christianity intended to counter Tom Paine's *The Age of Reason*, Boudinot would later become the first President of the American Bible Society and a promoter of Christian missions among tribes.<sup>20</sup> Like Pickering, Boudinot was highly regarded both for his public services and his righteousness, and Pickering's July 21<sup>st</sup> recommendation of Boudinot was not necessarily thought of by Pickering as returning a favor to Bradford.

**President Washington's Cautious Response.**

Washington replied from Mount Vernon on July 27. Regarding Pickering's desire to halt the three State reservation transactions, Washington noncommittally cautioned that they might have already been completed, in which case "any further sentiment *now* on the unconstitutionality of the measure would be received too late." If on the other hand it turned out that these land sales had not been completed, Washington carefully affirmed, "It is my desire that you would obtain the best advice you can on the case and do what prudence, with a due regard to the Constitution and laws, shall dictate." Washington authorized Pickering to move forward, but only on the understanding that he seek further advice and exercise restraint. Where the Constitution or federal law was clear, Washington enforced it unsparingly. As to whether the Indian Trade and Intercourse Act applied to the three New York State reservations, Washington

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<sup>20</sup> A second Elias Boudinot (1803-1839) is today better known than the original (1740-1821). A Cherokee educated in Cornwall, Connecticut at a school that benefited from Boudinot's benefactions, he adopted the name Elias Boudinot as a mark of respect. He later became editor of the *Cherokee Phoenix* and an associate of the missionary Samuel A. Worcester, who gave his name to the 1832 Supreme Court case *Worcester vs. Georgia*. The Cherokee Elias Boudinot was murdered because of his advocacy of Cherokee removal to Oklahoma.

saw no such clarity, and consequently instructed Pickering to consult further about an hypothesis that Pickering himself acknowledged had been questioned by John Jay. Washington did wholeheartedly endorse Jay's request for appointment of a federal treaty commissioner to supervise the Saint Regis negotiation.

With respect to the meeting which is proposed to be held with the Saint Regis Indians the proposition of Governor Jay is regular; and I can think of no better character than Colonel Wadsworth or Mr. Boudinot to attend it on the part of the United States. If both should decline the service any other respectable and well known disinterested character would meet my approbation equally.<sup>21</sup>

Writing on July 27, Washington was justifiably concerned that the tribal land sales Pickering wished to halt might have already been completed. The first State conference had begun on July 19, with agreement concluded July 27, the very day on which Washington expressed this doubt.

#### **New York State Negotiations with the Cayugas and Onondagas.**

New York State's principal Commissioner Philip Schuyler had launched negotiations at Cayuga Lake by requesting that the Cayugas indicate how much of their State reservation they wished to relinquish. He also warned them that no transaction would be possible unless all factions could agree. The tribe's British-allied majority then confessed that they had been "endeavoring to unite in sentiment with our brethren who live on the reservation" behind a proposal that the entire reservation be leased, with the fifty Cayugas still at Cayuga Lake moving west to join with them. But

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<sup>21</sup> Fitzpatrick 34:250-1. Boudinot did not serve as a federal treaty commissioner on this occasion, but later the same year was appointed Director of the U.S. Mint, a key position in these years when establishing the credibility of U.S. currency was vital to national survival. Boudinot served as Director of the Mint from 1795 to 1805.

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having failed to win over the reservation-dwellers, the emigrant Cayuga majority proposed

to reserve one mile square for the use of such of our nation as now live on the reservation...[and] another mile square on which we think there is a silver mine. This we wish to reserve forever; and when we open it we shall share with those who may work it for us.

Additionally, by the pre-Constitutional State treaty with the Cayugas completed in early 1789, the Cayuga leader Fish Carrier had been guaranteed a personal square mile, whose proposed location was now specified for the first time. This tract was to be leased to provide Fish Carrier with personal income, wherever he might choose to live. As for the bulk of the reservation, “You know the value of lands when divided into farms; we will lease you the lands for twenty-two years and then we will confer on the subject.”

In reply the following day, Schuyler accepted these proposals as a basis for discussion. But he recommended quadrupling the area reserved for the Cayugas who would be staying at Cayuga Lake, in the hope that “neither those who reside at Buffalo Creek nor those who remain on this ground shall have cause to complain of our candor and justice....[A]nd as there are thirteen families who now live here we think one mile square of land is not sufficient for them.” Schuyler also agreed to the proposed silver mine reservation. This indicated his understanding that the State had granted the Cayugas land rights far more valuable than “Indian Title.” That ownership of a silver mine was incompatible with federally protected “Indian Title” would have been obvious to Schuyler, who was himself the source of the definition of “Indian Title” as a mere hunting ground use right, a definition Schuyler had proposed in 1783, and Congress had

accepted following its endorsement by General Washington.<sup>22</sup>

“Brothers,” Schuyler told Fish Carrier’s majority faction,

you also wish to reserve a mile square on which you think there is a mine. We have already informed you that we were willing to purchase only such part of your reservation as you were willing to sell, we therefore have no objection that you should reserve that mile square to you and your posterity forever to use it as you like, either to cultivate or to work any mine which may be thereon. But...you must not sell or lease it to any white inhabitant or other person without the permission of our Great Council.

To a twenty-two year lease arrangement, Schuyler was however firmly opposed “because at the end of a lease for a short time a controversy would arise between you and those who might be willing to settle for so short a time.”

Having resolved how much land the Cayugas wished to dispose of, Schuyler offered them \$1800 annually forever. He also assured them that “if you do not choose to part with your lands (for a longer term than twenty-two years) on the terms we have mentioned we can do no more and the negotiations must terminate. But whether we ultimately agree or not we shall part with you as friends who wish you well.”

On July 25, the British-allied Cayuga majority reiterated their desire to have no more than one square mile reserved for the reservation-dwellers at Cayuga Lake. “Our people cannot live happily in the neighborhood of your people,” Fish Carrier’s deputy Hanging Face informed Schuyler.

We wish for this reason that a small reservation only may be kept. We have lands

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<sup>22</sup> Francis G. Hutchins, *Tribes and the American Constitution*, Brookline: Amarta, 2000, 30-36.

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at Buffalo Creek and we love our brothers and wish them to come and live with us. You know...that spiritous liquors are injurious to us and that taverns are plenty among you. We wish that care might be taken to prevent our people from being imposed upon.

Hanging Face did accept the idea of a permanent arrangement. He told Schuyler, “You proposed to take a lease forever, we agree to this and will give you a lease to last as long as the world endures....By these means our children and children’s children will always receive....This is very pleasing to us.” Schuyler welcomed this offer but again insisted that four square miles rather than one be reserved for the Cayuga Lake Cayugas. Two days later, a tentative agreement was concluded, on the understanding that the Legislature’s confirmation would be necessary because the Cayugas had insisted on terms that went beyond the Commissioners’ instructions.<sup>23</sup>

The next day, the Onondagas also agreed to terms. The pro-British majority of this tribe had come to Cayuga Lake eager to renegotiate an agreement reached by New York State two years earlier with the tribe’s minority still resident at Onondaga, an agreement by which the bulk of the Onondagas’ reservation was relinquished in exchange for an annuity of \$410 payable at Onondaga. Subject to Legislative assent, Schuyler and his colleagues agreed to increase this annuity to \$800, and that this amount would be distributed by the Federal Agent, an arrangement the tribe’s majority (currently based at Buffalo Creek) felt was more likely to insure they received a large share. New York’s Commissioners agreed to sending payment through Federal Agent Chapin, but warned that the federal government might soon abolish the office Chapin held.

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<sup>23</sup> Whipple 224-28.

**Pickering's Dilemma.**

Pickering's June 29th letter instructing Captain Chapin to halt all State negotiations arrived at his Canandaigua home after he had left for Cayuga Lake, and it was not until he returned to Canandaigua that he realized for the first time that his rambling reports had stirred up a hornets' nest in the nation's capital, Philadelphia. Two of the three planned agreements were now completed. The Cayugas had moreover requested that Chapin himself be given a square mile of the land they were relinquishing, and the State Commissioners had agreed to pass along this request to the New York Legislature. Writing on July 31, Captain Chapin tried hard to convince Pickering that he had not been remiss:

General Schuyler, General Cantine, Colonel Brooks and John Richardson, Esquire, have come forward as Commissioners for the State of New York and have purchased the Cayuga reservation for \$1800 to be paid to them annually excepting reserving to the Cayuga Nation six square miles to them and their children forever....I was knowing to the law of the United States respecting holding treaties with the Indian nations, and not having any directions from you, I have endeavored to not interfere in the business as I supposed the Commissioners were fully authorized by the Government of the United States as well as that of their own with full power to transact the business. I have petitioned them to send me the law of the State whereby they were authorized to hold the treaty, but they have been backward to do it, or even to show it to me when at the treaty and which I have not as yet seen. The Indians all requested me to go with them to the treaty which I according did but have not used my influence with them as I very soon see they were determined to manage the business as a separate interest from the United States. I inquired of General Schuyler how he construed the law of Congress in regard to holding treaties with the Indian tribes? He made very little reply by saying it was very well where it would correspond with that of an individual state. Had I received your letter I could have managed the business more to your mind but as I had supposed the Government of the State of New York had applied to the General Government and had obtained sufficient power to call the Indians to the treaty, and in that it would have been an imprudent act

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for me to persuade the Indians not to adhere to their invitation, as the business first originated at this place and delivered to your charge in order that Commissioners properly authorized might come forward to make the purchase before recited. And as they have presumed to make the purchase who were well acquainted with the law whereby they were authorized will plead an excuse for me who have not had opportunity to hear a word of information respecting the business. And had Mr. T[homas] Morris to whom you refer in your letter had been as attentive to his constituents as to give information in Philadelphia the business would have been managed more to your satisfaction. I shall set out for the Oneida tomorrow and will engage the treaty will not take place there under the present Commissioners. I shall be there in season as General Schuyler is going first to Oswego Falls to view them for the purpose of pleasing looks. I have been cautious to not furnish the Indians who have been to the treaty out of the United States property or in any way to have it appear on the part of the United States as I had no special directions and therefore attended as a private individual without speaking or having any thing to do in their Council more than another individual.<sup>24</sup>

Clearly, Captain Chapin was no master of the 1793 Trade and Intercourse Act. And he floundered into incomprehensibility when he moved from the fact that he did not dispense federal supplies to the pose that he had acted “as a private individual.” By his own admission, prior to and during these negotiations he perceived his function as an official one, “as the business first originated at this place,” in other words stemmed from consultations between his father and Pickering at Canandaigua the previous fall. Nor could Chapin bring himself to tell his superior that he anticipated receiving a square mile of the land relinquished by the Cayugas.

From Chapin’s July 31<sup>st</sup> letter, Pickering learned that two of the three planned State negotiations were now finished. Having been instructed by President Washington not to try to undo these transactions if they had been completed, Pickering felt obliged to pass this word

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<sup>24</sup> *Henry O’Reilly Papers* 11:33.

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along. But since the Oneida conference might still be halted, Pickering on August 26 composed what must have been a painful letter to write, acknowledging his receipt of Chapin's report that

Commissioners of New York purchased the land of the Onondagas and Cayugas; and that you proposed to go to Oneida where you supposed that tribe might be influenced to avoid a sale. Seeing the Commissioners were acting in defiance of the law of the United States, it was entirely proper not to give them any countenance; and as that law declares such purchases of the Indians as those Commissioners were attempting to make, invalid, it was also right to inform the Indians of the law and of the illegality of such purchase. But having done this much, the business might there be left. The negotiation is probably finished ere now: if not, you may content yourself with giving the Oneidas the information above proposed, and there to leave the matter.<sup>25</sup>

The normally self-assured Pickering here sounded resigned. Why bother to “inform” the Oneidas that they might be making an “invalid...illegal” sale if Pickering was willing to accept such sales?

For the better part of a year, Pickering had followed a course he hoped might bring about federal regulation of New York's State reservations. He had begun circumspectly in his consultations at Canandaigua with Iroquois chiefs, not wishing to raise unrealistic expectations. Then he became exercised when he believed New York's Legislature was cooperating with the federal government and Governor Clinton was defying his own Legislature, and triumphant when Attorney General Bradford delivered his June 16<sup>th</sup> opinion. But after Governor Jay and President Washington expressed skepticism and then Attorney General Bradford died

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<sup>25</sup> *Henry O'Reilly Papers* 11:37

unexpectedly, Pickering abandoned his attempt to try to restrain New York State.

After 1795, Bradford's opinion disappeared from the federal government's collective consciousness, and was not even included in the multivolume set of *Official Opinions of the Attorneys General of the United States Advising the President and Heads of Departments, in Relation to their Official Duties and Expounding the Constitution, Subsisting Treaties with Foreign Governments and with Indian Tribes, and the Public Laws of the Country*. Volume One of this series, published in 1852, reproduced numerous Bradford opinions, but not that of June 16, 1795. The series was designed to be "a faithful compilation of all the opinions which, in the view of the public interests, have been deemed proper for publication, of all the eminent lawyers who have, since the adoption of the Constitution, acted as legal advisers to the Executive."<sup>26</sup> Bradford's June 16, 1795, opinion could therefore in theory have been reviewed in 1852 by volume editor Benjamin F. Hall, and excluded as not "proper for publication." But in 1940, when Felix S. Cohen compiled his official "Table of Attorney General's Opinions" pertaining to tribes, he intended to include every one, and Bradford's June 16, 1795 opinion is also missing from Cohen's Table.<sup>27</sup> From 1795 until after 1940, Bradford's June 16, 1795 opinion seems to have dropped entirely from view. Its rediscovery may have occurred during the researches prompted by the Indian Claims Commissions created in 1946.

William Bradford died on August 23, 1795, three weeks before his fortieth birthday. A factor generally thought to have contributed to Bradford's death was the national uproar

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<sup>26</sup> Washington: Robert Farnham, 1852, 1:iii.

<sup>27</sup> Felix S. Cohen, *Handbook of Federal Indian Law*, (completed 1940, published 1942,

precipitated by Pickering's July 31<sup>st</sup> decision to denounce Secretary of State Randolph as a traitor. From suspecting that the Governor of New York was a French pawn to calling the Secretary of State a secret agent in the pay of France was only a small step for Pickering. But the ensuing furor may have turned Bradford's fever in a lethal direction.<sup>28</sup> Bradford's death deprived Pickering of his only real ally in his attempt to extend the protection of the land sale section of the Indian Trade and Intercourse Act to the New York State reservations of the Oneidas, Onondagas and Cayugas.

**New York State Negotiations with the Oneidas.**

On August 26, Pickering had not yet heard what happened when Chapin, as instructed by Pickering on June 29, arrived at Oneida Lake to attempt to prevent Schuyler from negotiating with the Oneidas. Though no doubt uncomfortable, Captain Chapin had dutifully informed General Schuyler, who had co-authored the 1790 Indian Trade and Intercourse Act, that he was violating the 1793 Indian Trade and Intercourse Act. General Schuyler answered Captain Chapin while addressing the Oneidas. "Brothers, Sachems and Warriors of the Oneida Nation," he began,

We rejoice that the great Spirit has again afforded us an opportunity to meet you our

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reprinted by Albuquerque: University of New Mexico Press), 636.

<sup>28</sup> Regarding Pickering's denunciation of Randolph, see Elkins and McKittrick 424-26.

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Brethren in health, and that peace prevails in the country. It affords us particular pleasure that our Great Council has deputed us for the benevolent purpose of trying to render the situation of our Oneida Brethren more comfortable and we doubt not but that the good will of the State will meet with corresponding sentiments on your part. Brothers, attend: Let your ears be erect that you may distinctly hear, and settle your minds in peace....Brothers, we must remind you of your repeated complaints that the income from the large tract of land reserved to your use was small, and not adequate to your support, and you intreated our Great Council to take measures to render it larger and more productive. Brothers, whilst our Great Council was deliberating on this business, and devising the means to accomplish your desire, and to provide you a greater annual rent for your lands,

Colonel Pickering by order of the President of the United States sent us a speech delivered by the Onondaga and Cayuga Nations at the treaty held last year at Canandaigua, in which those nations, as you had done to our Great Council, requested that their lands might be made more productive of an annual income. In consequence therefore of your request, and of that of the Onondagas and Cayugas transmitted by order of the President, our Great Council determined to afford the relief which was requested and passed an Act authorizing us to stipulate the payment of an annual rent for so much of the lands reserved to your use and to the use of the Onondagas and Cayugas as you or they should determine to have so appropriated and thus our Great Council substantially acquiesced in what appeared to be the intention of the President of the United States, in sending us the papers already mentioned. But they did not order us to apply for the attendance of an Agent, on the part of the United States, as they...conceived it unnecessary, having always heretofore negotiated treaties with you and with the Onondaga and Cayuga nations without the interference of Congress, as with a people residing within the known and acknowledged limits of the State of New York. But if it had been necessary, the President's message appeared to have superseded it. Then, Brothers, you see that Colonel Pickering has been misinformed or has misapprehended the business in supposing that Governor Clinton expected to apply for an Agent. That Governor was not authorized to make such an application, nor is the present Governor authorized to do so by the Act of the State of New York under which our power to treat with you is derived, and therefore the communications made to you by Captain Chapin ought not to impede the business of this treaty, and the accomplishment of so good an object to you as we are sent upon, and especially as we act perfectly agreeable to law.<sup>29</sup>

General Schuyler's assurances sufficed to avert immediate collapse of the negotiations. But a

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<sup>29</sup> New York Public Library, *Philip Schuyler Papers*, box 15.

combination of Captain Chapin’s warning that they should not agree to anything and dissatisfaction with the rate of remuneration offered resulted in an impasse, and Schuyler declared the talks ended and returned to Albany. After Schuyler and Chapin had both left, the Oneidas reversed direction. In a letter to Schuyler and his fellow State Commissioners dated August 16, 1795, Oneida chiefs sent word that they were now prepared to agree “to your last proposals, with some small variations which will appear by consulting the sketch of our reservation which we have directed to be made and transmitted with this speech.”<sup>30</sup> In September, a specially deputed group of Oneida chiefs traveled to Albany to contract a land sale agreement with Schuyler based on these modified terms.<sup>31</sup>

Deeply involved in the mounting national furor about whether Edmund Randolph was a pro-French traitor, and whether the President should have ratified the Jay Treaty with Great Britain, Pickering had little energy to devote to reviving his effort to extend the protection of the land sale section of the Indian Trade and Intercourse Act to New York’s State reservations. But an obvious opportunity to reject the “illegal” Cayuga transaction was presented by a letter from Captain Chapin dated September 7, 1795. It reported that

A party of the Cayugas from the reservation came to me with a complaint that the western Cayugas at the late treaty sold their land from under them and crowded them into the lake, as they term it. Their complaint in the first place was that Governor Clinton had confirmed the Cayuga reservation to them that resided upon it, treaty after treaty, and that Commissioners had come forward from the

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<sup>30</sup> *Philip Schuyler Papers*, box 15.

<sup>31</sup> Agreement in Whipple 244-49. Dated September 15, 1795, it was called an “Indenture.” The land earlier leased to Peter Smith for twenty-one years was included in the sale to New York State, which took over the lease.

same Government and purchased the whole of their reservation excepting a small piece, which is much too small to make them comfortable. Secondly, they said that...[New York State] treated with the Indians from under the British Government who were not subjects of the [United] States, that those people had taken the sole prerogative of their lands and confined them to a small tract....This they conceived to be a grievance and insisted I would make it known to you and if it could be in your power to help them in the business their minds would be more at ease.<sup>32</sup>

In relaying this complaint to Pickering, Chapin offered no endorsement of it. Even so, Pickering could easily have replied that in his opinion the entire transaction had been illegal and that all the land therefore still belonged to the Cayugas. But Pickering seems to have done nothing.

Each of the 1795 New York State tribal negotiations presented unique problems, raised by tough tribal bargainers, and all three agreements contained provisions insisted on by tribal chiefs but which went beyond the Legislature's instructions. Follow-up action was therefore required, and on April 1, 1796, the New York Legislature formally approved Schuyler's handiwork. Governor Jay acquiesced, and throughout the remainder of his six-year governorship continued to supervise implementation of Schuyler's 1795 tribal transactions, which required annual appropriations.<sup>33</sup>

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<sup>32</sup> *Henry O'Reilly Papers* 11.

<sup>33</sup> *Laws of New York*, 19<sup>th</sup> Sess., Ch. 39. For approval by the Governor's Council of Revision, see *Journal of the Senate of the State of New York, Nineteenth Session* (New York, 1796) 97-8. On March 26, 1796, Captain Chapin witnessed the Cayuga treaty when it was officially recorded

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Meanwhile, Washington's administration bided time. The federal government's most considered response to the 1795 crisis was to come a year later, with passage of the 1796 Indian Trade and Intercourse Act.

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and in June of that and subsequent years he implemented it by distributing the annuity payments it provided for. As a private individual" Chapin also received from the New York State Legislature a square mile of the land relinquished by the Cayugas. Record of witnessing the treaty in *Philip Schuyler Papers*. Instructions to Chapin for distributing the annuity to the Cayugas in *Henry O'Reilly Papers* 11. Chapin's square mile was authorized by the Legislature's Act of April 1, 1796.