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Cornplanter's Philadelphia Mission, 1790-91

Cornplanter's Conference with Pennsylvania Authorities, October, 1790.

Colonel Pickering's November, 1790 Tioga conference with northern Seneca chiefs from Geneseo and Buffalo Creek was followed almost immediately by the southern Seneca chief Cornplanter's meeting with President Washington in Philadelphia. Federalization of the Tioga conference had been ordered by President Washington in early September as he passed through Philadelphia on his way from the nation's capital, then New York City, to Mount Vernon. Cornplanter's meeting with Washington occurred after the President returned in late November from Mount Vernon to Philadelphia, which at this time replaced New York City as the nation's capital for the next decade. Like the Tioga conference, Cornplanter's visit to Philadelphia began as a Seneca attempt to communicate with the state government of Pennsylvania, and ended as a conference with the federal government. But Washington did not learn of Cornplanter's Philadelphia meeting with Pennsylvania officials until after it occurred, with the result that Cornplanter and his fellow southern Seneca chiefs participated in two Philadelphia conferences, first with the Pennsylvania government and then with the federal government.

As the most prominent leader of Senecas resident in northwestern Pennsylvania and southwestern New York State, Cornplanter was structurally as well as personally on a collision course with Red Jacket, based at Buffalo Creek near British-occupied Fort Niagara. Red Jacket was attempting to rally Senecas living in New York State and British Canada to join with other components of the pre-Revolutionary War "Six Nations" Confederacy in opposition to New

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York State's plan to bury the "Six Nations" idea and convert its members into peaceful yeoman farmers. Committed to "Six Nations" political autonomy, Red Jacket was prepared to consider a future for the "Six Nations" as a fully independent nation or as a subordinate ally of Great Britain or of the U.S. federal government. Cornplanter's southern Senecas lived primarily in Pennsylvania-claimed territory, and in 1790 Cornplanter was far more disposed than Red Jacket to submit unequivocally to U.S. jurisdiction, state or federal or both. Thus, at the very moment that Red Jacket was trying to drive a wedge between the federal government and New York State, Cornplanter's trek to Philadelphia offered an opportunity for state and federal authorities to drive a wedge between major Seneca factions.

Cornplanter and his five Seneca companions were received in Philadelphia by President Thomas Mifflin and other members of Pennsylvania's Executive Council on October 29, 1790, three weeks *before* the Tioga conference began. Cornplanter recounted to Pennsylvania authorities a long list of assaults and robberies perpetrated against his community by Pennsylvanians, and requested \$830 "as a satisfaction for all losses and injuries I and my people have sustained." He also requested that Pennsylvania appoint "my present interpreter Joseph Nicholson" as a paid Pennsylvania agent to reside at Fort Pitt (modern Pittsburgh) to look after the affairs of the Senecas resident within Pennsylvania; and to appoint Esquire Wilkie to run a state-managed trading post at Fort Pitt "for the accommodation of my people and the other nations when they go out to hunt; and where they may purchase goods at a reasonable price." As of October 29, 1790, Cornplanter had no reason to suspect such matters might be federal responsibilities.

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Cornplanter also inquired about “a tract of land...that you have been pleased to present to me.” He noted that “as yet I have seen no writings for the same” and added cryptically, “Well, Fathers, if it is true that you have given me this tract of land, I can only thank you for the same, but I hope you will also give me tools and materials for working the same.” Finally he requested that he, his fellow chief Half-Town and the interpreter Joseph Nicholson be permitted to stay in Philadelphia until President Washington arrived, in the hope of calling upon him. The other Seneca chiefs in his party would return home and not wait for Washington’s arrival. Having come to Philadelphia “at your request,” as he reminded President Mifflin, Cornplanter had not anticipated a stay of several months, or a personal meeting with President Washington.

The following day, October 30, 1790, President Mifflin replied that all of Cornplanter’s requests except for the last two would have to be referred to the new Pennsylvania government (headed by a Governor rather than a President) that would take office under the new state constitution in December. As for “the grant to the Cornplanter of one thousand five hundred acres of land by the [Pennsylvania] General Assembly, on the twenty-fourth day of March, 1789,” President Mifflin assured Cornplanter that

We would long ago have ordered the survey of the land for the Cornplanter, but being willing to gratify him in his choice of a tract, we instructed General [Richard] Butler to consult with him on that subject, and have waited to this time for his determination. If he will inform us in what part of the unlocated lands of the State he wishes his survey to be made, we will order the Surveyor General to have the tract laid out without further delay.

By “unlocated,” Mifflin meant *ungranted* state-owned land. Mifflin also agreed to provide accommodation for Cornplanter, Half Town and Nicholson in Philadelphia “in a private

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family...until the President shall arrive here.”¹ Mifflin didn’t indicate that President Washington might have something to say about Cornplanter’s proposal that Pennsylvania appoint a state agent and also establish a state-run trading post for the Senecas. But Mifflin would certainly have remembered Washington’s September decision to take over as a federal project Pennsylvania’s planned Tioga conference, and it may even have been Mifflin who suggested that Cornplanter stay a few weeks in order to meet the U.S. President.

Cornplanter’s Exchanges with President Washington, December, 1790-January, 1791.

When he arrived back in Philadelphia on November 27, 1790, Washington was as unprepared to meet Cornplanter as Cornplanter had been to meet him. The President did however receive Cornplanter on December 1, 1790, and accepted a long address from him.² The next day, Secretary of War Henry Knox wrote urgently on the President’s behalf to New York Governor George Clinton, in an attempt to gather information that would enable Washington to respond appropriately to Cornplanter’s summary of Seneca grievances. Knox enclosed a copy of Cornplanter’s speech, and drew Clinton’s attention to its references to

certain Purchases of Lands from the Senecas. The President is uninformed upon these Points and I am also entirely unacquainted with the Particulars of the Transactions alluded to. If your Excellency is in possession of any written Documents, or could give any Information on the Subject, which will enable the President to answer the Cornplanter with precision and effect, I should be

¹ Pennsylvania Provincial Council Minutes (Supreme Executive Council) 16:501-07.

² ASPIA 1:140-42.

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exceedingly obliged by a speedy communication thereof, as the Cornplanter and others have been here at considerable Expense, and will remain until they receive some Satisfaction upon the Subject of their Complaint.³

In his December 1st address to the President, Cornplanter had characterized himself as “the voice of the Seneca nation.” Unlike his October 29, 1790, speech to Pennsylvania’s Executive Council, which had been crammed with specifics about misfortunes that had recently befallen his own southern Seneca community, Cornplanter’s speech to President Washington offered an expansive overview of Seneca history stretching from the earliest days of French and British exploration down through the present. But Cornplanter displayed little understanding of jurisdictional matters. He alluded for example to the 1779 invasion of Iroquois lands by U.S. troops commanded by General Washington, a decision for which Washington was certainly responsible, but in a quite different capacity under quite different constraints than those under which he now functioned as President. Cornplanter also complained to Washington about the October 22, 1784 Treaty of Fort Stanwix negotiated by Commissioners representing the Continental Congress, long after General Washington had (on December 23, 1783) resigned as Continental Commander-in-Chief and returned to private life. Cornplanter in other words was obviously (if understandably) unclear about the relative powers of the states of Pennsylvania, Massachusetts and New York, and of Congress both before and after the 1789 implementation of the Constitution, and throughout his speech addressed Washington simply as a powerful person, apparently without any comprehension of the legal bases of his authority at different historical

3 Hough 465-66

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moments. Because he took Cornplanter's discourse seriously, the President concluded that he should not reply until he was in a position to dispel some of the confusion evident in Cornplanter's remarks.

Four weeks later, when Washington composed his December 29th response to Cornplanter, he had in hand New York Governor Clinton's December 6th reply to Henry Knox's urgent inquiry and Colonel Pickering's report on the Tioga conference, which reached the President with Knox's cover letter on December 27, 1790. The President diplomatically affirmed that he was speaking to the Seneca nation as a whole, but also carefully explained that he did so not because he accepted Cornplanter's claim to be the "voice" of his nation but rather because he was responding both to Cornplanter's December 1st speech and to complaints "delivered by your own chiefs at Tioga Point in the last month to Colonel Pickering."⁴

Washington did not address every complaint made by Cornplanter, and limited himself to a few concrete points with immediate practical consequences. Instead of pointing out where Cornplanter had been wrong, the President strongly affirmed in clear language---indeed, language that can be called a model of the "plain and fair" manner of speaking he had instructed Colonel Pickering to use at Tioga---that he personally was of no consequence. What was important was the government legitimately exercising authority at any given time. The President sought to impress on Cornplanter that there now existed a new U.S. governmental structure, and that many of the "difficulties" of which Cornplanter spoke "arose before the present Government of the United States was established....[T]he case is now entirely altered; the General

⁴ ASPIA 1:142.

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Government, only, has the power to treat with the Indian nations.”⁵ The word *treat* here referred to the *treaty* process, which the Constitution had made a federal monopoly.

One of the pre-1789 “difficulties” complained of by Cornplanter concerned a private 999-year lease. Another concerned a Treaty negotiated under the auspices of Massachusetts. From Governor Clinton, Washington had learned that the then-sovereign New York State Legislature had quickly invalidated the 999-year private lease. By contrast, the 1788 Treaty of Buffalo Creek had been supervised by Massachusetts under authorization from New York State, granted by the bilateral Massachusetts-New York State Hartford Compact of 1786, and was therefore legal. Prior to 1789, Washington explained to Cornplanter, New York State had possessed the legal authority to decree what was and was not a valid tribal land sale within New York State.

The 1788 Treaty of Buffalo Creek had, in the eyes of New York State and therefore of President Washington as well, legally extinguished aboriginal “Indian Title” to the eastern portion of Seneca territory, a tract stretching from Lake Ontario to the Pennsylvania border and bounded on the east by Cayuga territory and on the west by the Genesee River. But Cornplanter also claimed that the Senecas had not received all monies promised when this Treaty was agreed to. Similar allegations had been made at Tioga. Regarding this separate matter, Washington advised Cornplanter that complaints addressed to himself as President (or to his representatives) were misdirected. As President, he explained, he quite literally couldn’t do anything about this matter, even if he had wanted to. Assuming however that there had indeed been a breach of

⁵ ASPIA 1:142-43.

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contract, a legal suit could be brought. If, Washington told Cornplanter, “you have any just cause of complaint against him [Oliver Phelps, who had negotiated the 1788 Treaty], and can make satisfactory proof thereof, the federal courts will be open to you for redress, as to all other persons.” In the future, federal treaties would be required to extinguish aboriginal “Indian Title.” But the 1788 New York-authorized, Massachusetts-supervised Treaty had already extinguished aboriginal “Indian Title” under what were then legal auspices, and court proceedings were the appropriate way to enforce a valid contract. Washington felt a federal court would be the proper venue for this particular suit, to be brought by an “Indian nation” alleging violation of a pre-Constitutional state treaty.

Cornplanter’s reply, dated January 10, 1791, focused more narrowly on an issue that he thought the President as current head of the government of the United States might actually be able to do something about: the 1784 Continental Congress Treaty of Fort Stanwix between the then-government of the United States and the “Six Nations.” This Treaty had extinguished the aboriginal “Indian Title” to all land claimed by the “Six Nations” west of a north-south line four miles east of the Niagara River. As Cornplanter accurately pointed out, this post-Revolutionary War Treaty imposing peace terms on tribal belligerents had been harsh and confiscatory. Land rights had been extinguished without compensation, as punishment for alleged war crimes. But the even more serious (because on-going) problem created by the 1784 Treaty was the fact that several hundred Senecas with no security of tenure guaranteed by any jurisdiction, state or federal, still lived west of the Fort Stanwix Treaty line. Cornplanter conceded that the 1784 Treaty had legal force, but suggested that the U.S. government might compassionately allocate a

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portion of the land taken in 1784 to the Senecas who still lived there as technically illegal squatters.

To this second speech, with its specific request for action that Washington as head of the government of the United States might have been expected to be in a position to effectuate, Washington responded in much tougher terms. An injustice committed by the United States government itself had been alleged, and a concrete remedy apparently within the power of the government of the United States had been suggested. In reply, on January 19, 1791, the President denied the injustice, and declared the remedy proposed out of the question. Pointedly, Washington observed that Cornplanter had failed to mention the fact that the alleged injustice created by the 1784 Continental Congress Fort Stanwix Treaty had already been addressed by the follow-up 1789 Continental Congress Treaty of Fort Harmar, which had paid compensation for the land taken in 1784. Since the Senecas had consented to the 1789 Treaty and accepted the compensation it provided, the President waved aside any suggestion of lingering injustice. The land where aboriginal “Indian Title” had been extinguished by the United States in 1784, with payment made in 1789, Washington stated categorically, had been legally and fairly acquired. Although,” he assured Cornplanter,

it is my sincere desire, in looking forward, to endeavor to promote your happiness, by all just and humane arrangements, yet I cannot disannul treaties formed by the United States, before my administration, especially, as the boundaries mentioned therein have been twice confirmed by yourselves. The lines fixed at fort Stanwix and fort Harmar, must, therefore, remain established. In contending that he could not “disannul treaties formed by the United States, before my administration,” Washington meant that he could not personally as President disannul such a treaty, which under the Constitution’s Supremacy Clause had the status of federal law. But

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Washington also made clear that he would not even recommend that Congress consider modifying the “lines fixed at fort Stanwix and fort Harmar.”

What then could be done to advance the President’s “sincere desire, in looking forward, to endeavor to promote your happiness, by all just and humane arrangements”? Washington pointed out that

Half-Town, and the others, who reside on the land you desire may be relinquished, have not been disturbed in their possession, and I should hope, while he and they continue to demean themselves peaceably, and to manifest their friendly dispositions to the people of the United States, that they will be suffered to remain where they are.⁶

Cautiously, the President expressed a *hope* that those Senecas still occupying land to which their aboriginal “Indian Title” had been legally extinguished by U.S. treaty “will be suffered to remain where they are.” The President declined to elaborate, but evidently anticipated that a reservation might be granted the Senecas by whatever state (Pennsylvania or New York) ended up with jurisdiction over the area. Since the boundaries between Pennsylvania and New York in this sector were only then being established, with the Erie Triangle promised to Pennsylvania but not yet surveyed or formally conveyed, the President could not say which state might need to be petitioned. The Senecas’ aboriginal “Indian Title” had been extinguished by the U.S. government. But this had been done for the benefit of one or another state government. Hence the President’s expression of *hope* that whichever state turned out to hold fee title to the lands on which Senecas still resided might be persuaded to grant them a reservation. The President’s reply

⁶ ASPIA 1:144.

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to Cornplanter thus endorsed *future* Seneca subordination to ordinary state jurisdiction, even as he affirmed *current* federal responsibility for managing diplomatic relations with the Senecas. Washington saw the federal government's role in tribal affairs as intended to facilitate the transfer to ordinary state jurisdiction of aboriginally-claimed lands, and tribal peoples who were disposed to abandon hunting and settle down as peaceable agriculturalists on lands granted to them by states.

In negotiating the August 7, 1790 Treaty of New York, President Washington had entered into a political formal alliance with the powerful Creek tribe. In the Tioga and Philadelphia conferences of November, 1790-January, 1791, with separate elements of the Seneca tribe, the federal executive had addressed a range of tribal problems in non-treaty exchanges. The Tioga conference had principally concerned reparations for crimes committed by Pennsylvanians against New York State-based Geneseo Senecas. Cornplanter's Philadelphia conferences had two discontinuous parts, one state, one federal, and covered a broader range of state/federal/tribal issues. But the greatest distinction between the Tioga and Philadelphia conferences had been the fact that the Tioga conference was presided over by an inexperienced amateur, Colonel Pickering, whereas President Washington himself presided at the second, federal Philadelphia conference. Not only was Washington the President, he had more than forty years of experience in dealing with tribes.⁷ The President's December 29, 1790 speech was

⁷ See "A Journal of my Journey over the Mountains began Fryday the 11th of March 1747/8, in George Washington, *Writings*, New York: Library of America, 1997, 11-16. Washington, born February 22, 1731/32, was then sixteen. In 1790, Washington was fifty-nine, Pickering forty-five.

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moreover based on information secured from New York Governor George Clinton, himself a veteran of tribal diplomacy, and was formally attested by another person with years of experience with tribes, the erstwhile Governor of Virginia and current Secretary of State Thomas Jefferson, who may well have reviewed or even helped draft the President's replies to Cornplanter.⁸ In any event, these replies present Washington's views on tribal policy at a time when Jefferson had his ear, and before the full implications of Colonel Pickering's effort to revive a quasi-monarchical stance in federal tribal dealings had become apparent.

One stark illustration of the importance of Washington's long experience is the fact that when Cornplanter raised questions concerning matters about which the President had no information, he paused until he had received relevant factual information from Governor Clinton, and then gave an authoritative answer. The neophyte Pickering in contrast was anxious to appear omniscient, and ended up being led astray by the subtle Seneca diplomat Red Jacket. Colonel Pickering had a tendency toward self-aggrandizement, and succumbed to flattery; President Washington, though enveloped by continual adulation, kept a resolute hold on reality, and remained determined to communicate a sense of reality to others.

Often described as a Magna Carta of federal protection for tribes and tribal lands, Washington's two speeches to Cornplanter are actually a blueprint for tribal transition from risk-prone political independence, in which tribes were necessarily dealt with by federal emissaries

⁸ ASPIA 1:143. A first draft of the President's December 29th address was prepared by Secretary of War Knox; see his letter to Washington dated December 27, 1790, in Twohig 7:121-27. Judging from Knox's letter, numerous changes seem to have been made in his draft.

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and armies, to a far more secure and prosperous mode of life as agriculturalists under ordinary state jurisdiction. In independent tribal territory, Washington noted on December 29, “the United States cannot distinguish the tribes to which bad Indians belong, and every tribe must take care of their own people.” In contrast, under ordinary state jurisdiction members of tribes could look forward to legal protection of their personal and property rights, elaborately recorded, carefully delineated and enforceable in law.

Washington presumed that following extinguishment of aboriginal “Indian Title” to tribal hunting grounds, most “Indian nations” would wish to move west, to some region where “Indian Title” had not yet been extinguished. But if any tribes or individual members of tribes did choose to accept ordinary state jurisdiction, this triggered an entirely distinct set of regulatory and legal factors. Recognizing that Cornplanter’s Senecas might be just such an exceptional tribal community, one that preferred to remain on their ancestral lands and adopt yeoman agriculture, Washington welcomed this possibility, and suggested that the Senecas should think of the extinguishment of their “Indian Title” as the beginning rather than the end of Seneca well-being because after extinguishment of their “Indian Title” they could acquire state-granted lands and numerous other rights, even before they became U.S. citizens, with all the rights and privileges of other citizens.

On state-granted reservations, tribes would have no choice but to learn to till the soil. But this change of occupation from hunting to agriculture was also not something to be viewed with alarm. Rather, Washington assured Cornplanter, agriculture should be embraced as the only way tribes could increase their numbers and prosperity. Even while possessing only aboriginal

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“Indian Title,” tribes could sensibly turn more of their attention to agriculture. “Speak, therefore, your wishes on the subject of tilling the ground,” Washington told Cornplanter on December 29. “The United States will be happy in affording you every assistance, in the only business which will add to your numbers and happiness.”

The Tenth Amendment, then proceeding toward formal ratification on December 15, 1791, had among its objectives to preclude the post-1789 emergence of the quasi-monarchical Presidency disliked by Washington personally but favored by many of his supporters, including Alexander Hamilton and Timothy Pickering. The Tenth Amendment affirmed that “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” This made clear that power in the United States did not flow from the top downward. Rather, the nation possessed three distinct foci of power: the federal government (called here “the United States”), the state governments and the people, i.e. U.S. citizens. In the United States, the “people” were not governed as passive subjects, but themselves possessed “powers” of government. True generally, this was also true of relations with independent “Indian nations” within the limits of the United States. States were for example partners with the federal government in punishing crimes committed by U.S. citizens in tribal territory. U.S. citizens too exercised powers with respect to independent “Indian nations” by for example sitting on juries, engaging in trade if federally licensed and exercising their right to buy and sell free of federal interference fee title to lands whose “Indian Title” remained in tribal hands. With respect to tribal groups that had accepted ordinary state jurisdiction, the powers of states and citizens were even more extensive.

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The Tenth Amendment's tribal implications were well articulated in the complex jurisdictional picture that President Washington presented to Cornplanter. In their dealings with independent tribes within the bounds of the United States, Washington explained, federal officials were obliged stay within the Constitution, which meant observing federal law and respecting the rights of states and private citizens. Washington set forth the options Cornplanter and his tribe faced as residents of the United States, and pledged to help Cornplanter find his way through the new Constitutional maze.

Tribes were not mentioned in the Tenth Amendment. Tribes were subject to the new Constitutional order, but had no guaranteed role or powers. What tribes were guaranteed was a *place*, a right to continue residing within the United States. Beyond that, negotiations involving U.S. citizens, states and the federal government were to determine where precisely tribes would fit in.