

THE IROQUOIS AND NEW YORK STATE

THE IROQUOIS AND NEW YORK STATE: TWO CENTURIES OF BROKEN TREATIES AND MAP LIES

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ABSTRACT:¹ The issues involved in the 1990 decision to renegotiate and settle terms with the Seneca Nation for land leases in the town of Salamanca, New York, encompass a long history of "misrepresentation" in both legal and cartographic terms. The Seneca are one of the Native American tribes which were part of the Confederacy of the Six Nations of the Iroquois, identified on pre-revolutionary maps as occupying large tracts of land in northern and western New York State. The Iroquois Nation was acknowledged in the 1790 Indian Trade and Intercourse Acts and their 1793 revision as a sovereign nation, with whom only the U.S. Congress could make agreements. However, New York State ignored this federal law, and dealt directly with the Iroquois, making illegal treaties and agreements without federal sanction. Such actions are a primary reason for twentieth century lawsuits involving Native American lands.

Officially sanctioned New York State maps from this period reveal the systematic elimination of the Iroquois from the cartographic landscape. Since survey and land division impose order, and by extension "civilization" on uncharted territory, cartography itself plays a major, subtle part in conquest and political control. Blank cartographic spaces eliminate "truths" and construct perceived social space.

INTRODUCTION

In 1990, after a protracted legal battle, the Seneca Settlement Act² was signed into law, providing compensation of thirty five million dollars to the Seneca Nation for the federal government's failure to safeguard Indian rights in leasing arrangements made in the latter half of the nineteenth century³. This suit was initiated because 85 percent of the (mostly non-Indian) City of Salamanca in western New York is built on the Allegany Reservation of the Seneca Nation, one of the Six Nations of the Iroquois. The issues involved in this decision to renegotiate and settle terms with the Seneca for leases in Salamanca, involve a long history of "misrepresentation" in both legal and cartographic terms for the Iroquois Nation.

The Seneca are one of the Native American tribes which were part of the Confederacy of the Six Nations of the Iroquois, together with the Oneida, Onondaga, Tuscarora, Cayuga and Mohawk. The Iroquois Nation was identified on pre-revolutionary maps as occupying large tracts of land in northern and western New York State. In several acts and proclamations in the 1780s and 1790s, the Iroquois Nation was acknowledged as a sovereign nation, with whom only the U.S. Congress could make agreements. Nevertheless, New York State ignored these federal laws, dealt directly with the Iroquois, and made illegal treaties and agreements without federal sanction. A primary reason for

twentieth century lawsuits involving Native American lands has been the violation of such agreements, and the subsequent tangle of legal issues surrounding Native American status.

This study will examine briefly current controversy and legal action in New York State over Native American land and treaty rights, noting legal decisions made in the twentieth century. It will then explore the roots of these conflicts in the early post revolutionary era, as revealed in New York State's actions and the elimination of the Iroquois from officially sanctioned state maps.

Forness Case

The legal precursor for the 1990 decision was a landmark decision made in 1942 by the federal United States Second Circuit Court of Appeals in the Forness case⁴. The finding ended a five year dispute between the Seneca Nation and delinquent leaseholders in Salamanca. The Fornesses ran a large garage, and had not paid their four dollars annual rent to the Seneca for eleven years. More than 800 other renters were also in arrears. The Court decided the Seneca could cancel these outstanding leases, because the original confirmation of the leases had violated the trust responsibility Congress had for the Senecas, as part of the Iroquois Nation. The leases had been originally sanctioned by Congress in 1875, and extended for another 99 years in September 1890. Congress' approval was necessary because of the relationship the Senecas had with the federal government, which was bound to protect the Indians from exploitation, and was the only body legally allowed to conclude agreements and treaties. The status of the Six Nations as an independent sovereign nation goes back to the treaties made in the 1780's and 1790's. That status limited the legal right of New York State to make agreements with or buy land from the Iroquois.

The Seneca Nation : A Sovereign Nation

Sovereign nation status was conferred on the Iroquois by the 1781 Articles of Confederation, which stated, " The United States shall also have the sole and exclusive right and power ... of regulating the trade and managing all the affairs with the Indians, not members of any states".⁵ In 1783 Congress made a proclamation forbidding persons from making settlements on lands claimed or inhabited by Indians, or from purchasing such lands without the direct authority of the United States Congress. Any purchase would be null and void, and no right or title acquired. In October 1784, the Congress signed a treaty at Fort Stanwix assuring the Six Nations of the Iroquois "shall be secured in the possession of the lands in which they are settled.," and "that a treaty with an individual state would be of no validity."⁶ In 1789, the United States Constitution categorically stated only the federal government had power to make agreements with the Indians. Thus the power to regulate Indian trade (or buy land) was vested in the federal government. In 1790, the first Indian Trade and Intercourse Acts was passed, again establishing federal jurisdiction over Indian land sales⁷. This right was restated in a second 1793 Act.

POST-REVOLUTIONARY NEW YORK STATE POLICY

At the end of the Revolutionary War, New York State needed to raise funds, and to pay off veterans who had served the length of the war. Selling land was the answer to both needs. There were several obstacles to be overcome prior to surveying and selling this land. Massachusetts claimed this land west of Seneca Lake. The Iroquois occupied lands in most of central and all of western

THE IROQUOIS AND NEW YORK STATE

present-day New York, except for forts Niagara and Oswego, secured by an agreement with the British in 1768. The sovereign nation status of the Iroquois further threatened New York's claim to Indian lands.

In 1784 New York State's Governor George Clinton moved quickly to include the Iroquois as "Members of the State", to strengthen his claim that New York State was sovereign over Indian affairs within its borders and circumvent the 1781 Articles of Confederation. Clinton ignored the Continental Congress' warning that land transactions with the Iroquois were void, convinced tribal leaders that New York's commissioners were valid negotiators and aggressively coerced the tribes into selling their lands. In 1786, Massachusetts and New York signed an agreement over the disputed western part of the State, with New York retaining governmental jurisdiction and Massachusetts having preemption rights.

New York State post-revolutionary war policy was aptly described by Barbara Graymont as having three ends:

1. Extinguish any claims of the United States Congress to sovereignty over Indian affairs in the State of New York,
2. Extinguish the title of the Indians to the soil,
3. Extinguish the sovereignty of the Six Nations.⁸

This policy included Acts in 1784 and 1785 to "Facilitate the Settlement of Waste and Unappropriated Lands". More lands were "appropriated" during 1788 and 1789, when the Onondagas, Oneidas and Cayugas ceded all but small reservations of their lands to New York State. Ignoring the 1790 and 1793 Intercourse acts, the legislature passed an act in 1793 to further control leases and transfers of Indian land, and later the same year extracted more land from the Onondaga⁹. Repeated acts were passed requiring that reservation land be subdivided with individual parcels allotted for each family. In 1795, more treaties extracted more land from the Oneida, Onondaga and Cayuga. During the years 1796-1798 the Seven Nations of Canada relinquished all except the St. Regis reservation, the Mohawks were paid their final settlement and the Oneidas sold more of their reservation. The Seneca lands were west of Seneca Lake in land that was bought finally by the Holland Land Company from Robert Morris after a series of failed transactions. In 1792, with an agreement to clear title from Indian claims, Morris sold the 2.5 million acres west of the Genesee to the Holland Land Company, raising their land assets to 3.3 million acres. In 1797, at Big Tree, Morris paid the Iroquois \$100,000 and promised reservations of 200,000 acres. Morris' financial empire disintegrated between 1797 and 1800, and his lands were sold off to pay creditors¹⁰. Joseph Ellicott, appointed chief surveyor to the Holland Land Company in 1795, was the Company's agent at Big Tree. Between 1797 and 1800 he directed the surveying of this huge tract and laid off the Indian reservations. From 1800 to 1821, Ellicott managed and marketed the 3.3 million acres of Company land in western New York. By 1800, the vast lands of the Iroquois had been reduced to small reservations, but the Senecas (being the most numerous and most distant from white settlement) had retained control over more land than the rest of the Iroquois Nation.

NEW YORK STATE CARTOGRAPHY: 1790-1850

Joseph Ellicott and Simeon DeWitt, Surveyor General of New York State, were both involved in both surveying and the disposal of Native American lands. Furthermore, DeWitt was responsible for official New York State mapping projects, including the survey of the military tract (1792), a state map (1802/4) and later the supervision of the State atlas (1829/39), compiled by David Burr. The

elimination of the Iroquois Nation from the official maps of New York State (maps produced or sponsored by the Surveyor General) was swift, and provides an interesting study in a cartographic policy which supported the State's agenda.

New York State maps published between 1790-1850 were grouped by place of publication. Map information is often borrowed from previous sources, so this approach recognized the potential influence of available maps. The maps can be charted as three related streams: officially sponsored New York State maps, maps published in the State, and maps published elsewhere. The Iroquois lands prior to the Revolutionary War were drawn on a 1771 map by Guy Johnson and dedicated to Governor Tryon called the Country of the Six Nations "Proper"¹¹, with a dotted line representing the "boundary settled with the Indians in 1768. Simeon DeWitt's 1792 map of the military tract emphasized the Oneida, Cayuga and Onondaga reservations, which were not divided up into townships, unlike the surrounding area. In the larger scale 1802 Dewitt map of the same area, division (platting) had taken place, the reservations have dissolved, and the remnants are not even named. Joseph Ellicott's 1797 manuscript map made for the Holland Land Company showed the location of reservations in the western part of the State. In a smaller scale contraction of western New York, DeWitt's 1802 map located and named the Holland Land Company's reservations. By 1804, DeWitt's map of this area had removed most of reservations, and the names of the remaining Allegany, Cattaraugus and Buffalo Creek reservations had been replaced with a discrete R, and only "Gardo" survived with a name.

The next official NY State map was David Burr's state sponsored large scale atlas published in 1829. Burr's atlas was produced using information and maps from each township, with corrections made by local authorities, and its publication was supported by State funds under Dewitt's supervision. The first (1829) Burr edition showed the Allegany, Big Tree, Squawky Hill, Cayuga, Cattaraugus, Onondaga Oneida, Tonawanda and Tuscarora reservation in their respective counties. However, in Burr's large scale 1830 map of the whole state, only the Tonawanda and Tuscarora remained, with the "Six Nations" prominent in Upper Canada. There was indeed a large settlement of Iroquois there, but the map gave the subtle message the Indians had left for Canada. The changes between the 1829 and the second 1839 Atlas editions are also revealing. Squawky Hill and Big Tree were platted over, the ghost of the reservations faintly visible. The Canadea reservation had disappeared. The Tonnewanta (sic), Buffalo Creek and Cattaraugus reservations were much reduced by platting. In the Allegany reservation the symbolic tents had been moved far upriver. The Tuscarora reservation survived.

By contrast, in the early 1800's, the reservations were prominent on maps made by independent New York mapmakers. John Eddy's 1811 and 1818 maps included six reservations, while Amos Lay's large scale 1812 map, reprinted in 1817, showed eleven named and two unnamed reservations. Vance (1823) and Dey (1824) both included all named reservations on their maps. It could be that these maps were based on the 1802 DeWitt map, rather than the 1804 contraction. After 1825, William Williams' series of smaller scale traveler's maps and Phelps' pocket atlas indicated only the Tuscarora and Tonawanta reservations.

Maps of New York produced in Philadelphia were mostly smaller scale atlas pages and pocket atlases. But smaller scale did not necessarily mean Indian omission. Lucas' 1811 and 1816 atlases (at a scale of 43 miles to the inch) contained the dotted unnamed outlines of the Allegany, Buffalo and Cattaraugus reservations. By 1823, however, Lucas' atlas had only "Canadea Indians" in Allegany County and "Inds" south of Buffalo. Carey's maps designated a tent at Oneida in 1813, and Gardo, Oil Spring and "Canadea or Seneca" in 1814 and 1816. From 1824 to 1826 Findley's pocket atlases showed only an "Indian Vill." at Tonawanta. Burr's 1830 state map and subsequent republication by

THE IROQUOIS AND NEW YORK STATE

Colton had wide distribution, and appeared to have influenced Augustus Mitchell's series of pocket atlases from 1832-1846 for the same features appeared- Six Nations" in Canada, "Indian Vill." at Tonawanta and "Tuscarora" as well as the Seneca Allegany Reservation.

Two themes emerge from the comparison of these different map groups. First, the official State cartography responded quickly to update maps and remove reservations. Smaller scale maps like DeWitt's 1804 and Burr's 1830 renditions left only unnamed reservations or partial information. Independent New York State cartographers such as Lay, even with apparent access to official information, made the Indian presence a more prominent part of the cartographic landscape, one which persisted to mid century in Philadelphia publications. This difference might be seen as "responsible" updates by DeWitt's office, or as a reflection of state policy. The second theme is more obvious, and intriguing. Why did the Tonawanta and Tuscarora survive widespread cartographic revision, even in small scale maps? An answer might be that they became "scenic" attributes--local tourist color. In a State produced engineers' map of the "Grand" Erie Canal, the Tonawanta "Indians" are included at the feeder from Tonawanta Creek to the Canal. Burr's tourist map includes the Tuscarora at a local "attraction" in a Niagara Falls inset map.

CONCLUSION

Maps are slippery witnesses. Mapmakers seldom give evidence about their sources or motivations, so inferences must be drawn from the maps themselves. Maps provide insight into the contemporary perception of the historic landscape. The elements omitted from a map are also evidence of official policy. After the Revolution, the Iroquois were deprived of their ancestral lands, forcibly settled and finally moved to reservations. Officially sanctioned New York State maps from the period reveal the systematic elimination of the Iroquois from the cartographic landscape. While the Seneca were able to hold on to more of their ancestral homeland than other Iroquois tribes, the on-going battle to divest them of that land remains an issue after two centuries.

ENDNOTES

1. Acknowledgment: This paper and much of my other research would not have been possible without the wisdom, knowledge, and support of Larry Hauptman. I would particularly like to acknowledge him for his testimony related to Native American rights.
2. Laurence M, Hauptman, "Compensatory Justice: The Seneca Nation Settlement Act", National Forum: 71:2 (Spring 1991) p.31.
3. The reparation was part of the agreement made between the Seneca and the City of Salamanca to renew for forty years the long-term leases between the Nation and non-Indians, with options for a second forty years.
4. *US vs Forness et al.* 125 *Fed. Rep., 2d Ser.*, 928 , Jan 20, 1942.
5. Articles of Confederation IX, Section 4.

6. Barbara Graymont, "New York State Indian Policy After The Revolution," New York History, October 1976, p.450.

7. The 1790 Act to regulate Trade and Intercourse with the Indian Tribes stated "That no sale of lands made by any Indians, or any nation or tribes of Indians within the United States, shall be valid to any person or to any state, whether having the right of preemption to that land or not, unless the same shall be made and duly executed at some public treaty held under the authority of the United States.

8. Barbara Graymont, p.440.

9. One of the agents involved in this negotiation was Simeon De Witt, the surveyor general of New York.

10. West of the new Preemption line, Massachusetts sold off purchase rights to six million acres to speculators Phelps and Gorham. In 1788 at Buffalo Creek the Iroquois agreed to sell them 2.5 million acres west of the Genesee. In financial difficulties by 1790, Phelps and Gorham gave back to Massachusetts the western two-thirds of their purchase. Robert Morris bought 1 million acres of their remaining land and the western 4 million acres. In 1792, with an agreement to clear title from Indian claims, Morris sold the 2.5 million acres west of the Genesee to the Holland Land Company, raising their land assets to 3.3 million acres. In 1797, at Big Tree, Morris paid the Iroquois \$100,000 and promised reservations of 200,000 acres. Morris' financial empire disintegrated between 1797 and 1800, and his lands were sold off to pay creditors. See Barbara A. Chernow, "Robert Morris: Genesee Land Speculator," New York History 58 pp.194-220 (1977).

11. A map footnote explains "By the Country of the Six Nations Proper is meant that part where they principally reside the rest of which is of vast extent being chiefly occupied by their dependents. The Mohawks are not mentioned as they reside within the limits of New York at Fort Hunter and Canajohare part of the Oneida Country lies also within that province the Tuscaroras who form the sixth nation are omitted being a southern People that live on lands allotted them between Oneida and Onondaga."