Iroquois Use of Customary Haudenosaunee and United States Law in Opposing Removal

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One of the most devastating policies the United States government adopted in its treatment of Native Americans was that of removal in the nineteenth century. The passage of the Indian Removal Act in 1830, which appropriated money to remove Indians from east of the Mississippi River to its western side, posed a threat to most Native American tribes. For the Haudenosaunee-Iroquois, the crisis caused by removal lasted well into the 1850s.[1] Yet the responses of Native Americans to this policy, including that of the Iroquois, showed that they were not helpless pawns to be moved around at will. Earlier, in the colonial period, their military position and diplomatic strength had afforded them some bargaining power, and they had insisted that government representatives respect treaties and friendship agreements. But as their power waned, they turned to United States law, lacking more feasible options. In opposing removal, members of the Six Nations Iroquois Confederacy wrote a series of letters to the United States federal government that provide insights into some of the strategies they adopted to counter the policy.[2]

The letters the Iroquois sent to various federal government officials and entities, such as the president, Congress, the Senate and particular individuals, are held in the files of the Bureau of Indian Affairs, the agency in charge of dealing with Native Americans for much of the nineteenth century. Until publication of historian Laurence Hauptman's recent book *The Tonawanda*

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Senecas' Heroic Battle Against Removal, these Haudenosaunee-authored letters had been largely ignored by scholars. While available to researchers for a long time, they have often taken second place to white contemporaries' statements that many scholars, consciously or unconsciously, seem to have regarded as more reliable.[3] This article gives these letters priority in order to discover what stories they tell about the fight against removal.

Scholarly neglect extends beyond the letters the Iroquois wrote, affecting much nineteenth-century Haudenosaunee history. Even though the Iroquois are among the most studied of North American Indian peoples, the focus of scholarly interest has been largely confined to the colonial period.[4] Hauptman's thorough and insightful study focuses on only one group of the Haudenosaunee, the Tonawanda-based Senecas, some of whom he describes as brilliant and independent-minded tacticians. The Tonawanda Senecas were certainly the most vocal opponents of land loss and removal, and while their arguments are the primary focus of this article, other tribes of the Iroquois Confederacy employed similar ones, and they will be considered here as well.

I will argue that the Iroquois drew on two systems of law, United States and indigenous, and that this can be explained in several ways. They deliberately did so in order to make their protests and claims for autonomy, but also the processes by which they composed the letters, especially conflicts among the Iroquois, resulted in relying on the two different kinds of law. Still, even when the Haudenosaunee disagreed about the basis of their government appeals, these protests expressed and asserted continuing Iroquois power. They insisted on making their own decisions and emphasized that they knew best how to govern themselves, drawing on whatever perception of law they deemed best suited to the problems they were facing at the time. Furthermore, they attempted to make the United States respect their laws, whether old or new, and thus to take control of their own destinies.

The Iroquois and United States Law

In writing the letters to government that responded to the threat of removal from the 1830s to the late 1850s, the Iroquois frequently appealed to United States law, directly and indirectly. They did this in a number of ways: by talking about treaties and outlining legal breaches in the making of treaties; by asking for the protection of the United States government, which they cast as a lawful one; by insisting, usually in a rather vague manner, on their rights, most often with reference to land; and by referring to their legal status as "domestic dependent nations" and thus to the United States' responsibility to them as their guardian.[5]

Presumably it was logical for the Haudenosaunee Confederacy to appeal to the law of the United States since government Indian agents, missionaries, and agents of land companies would have repeatedly presented to them the importance of lawful actions. The Indian agents would most likely have repeated government arguments emphasizing lawfulness, and missionaries might have expounded lawful behavior as a guarantee for governmental non-intervention in tribal affairs. They would have been especially keen for their Indian charges to obey laws that reflected their religious beliefs, such as prohibitions against murder or robbery, which they may have portrayed as directives from God and breaches of the sixth and eighth commandments.[6] Land company agents would have been especially insistent that land sales contracts be fulfilled according to their legal interpretation. Finally, US law would have often been presented to Indians as something that constrained white behavior towards them.

This way of talking to the Indians on the ground mirrored the focus on law in government discourse.[7] Congressional discussions on the proposed removal bill centered significantly on the legislation's legitimacy and whether it violated the Constitution.[8] In December 1829, President Andrew Jackson pressed for the passage of the bill in his first annual message to the Senate and the House of Representatives, holding that the removal legislation was in keeping with the US Constitution. As a consequence, he asserted, some Indians had already been advised "to emigrate beyond the Mississippi or submit to the laws of those States."[9] Theoretically, at least, tribes were thus given a choice between removal, and remaining where they were and accepting the laws of the United States. The president portrayed this extension of United States law over Indians east of the Mississippi as a boon for them and promised that if the Indians submitted to the laws of the States they would receive, "like other citizens, protection in their persons and property, [so that] they will ere long become merged in the mass of our population."[10] The federal government thus cast itself in the role of a benevolent and legitimate protector of the Indians and promised them protection in return for submission to the country's laws.

However, it can be argued that the Iroquois had good reasons to doubt this portrayal. There was significant and increasing evidence available to the Haudenosaunee that the United States would break its own laws in order to obtain Indian lands in spite of Iroquois opposition. In the early part of the century Haudenosaunee lands had been steadily eroded in this fashion. This was especially the case in a treaty made in 1826. Through it the Senecas ceded a vast acreage of their lands, and the Ogden Land Company, which continuously agitated for Indian removal, gained access to the Iroquois lands for which they had purchased the preemption rights. On the request of the famous Iroquois orator Red Jacket, a subsequent investigation of the treaty revealed incontrovertible evidence of fraud, the duplicity of interpreters, and the use of

terror of removal to bully Indians into signing. In spite of these findings, the treaty, which was not ratified by Congress, was never rescinded.[11]

The Treaty of 1826 was not the last time that the United States permitted a fraudulent compact to deprive the Haudenosaunee of lands they had not wished to surrender. Under the terms of the Buffalo Creek Treaty of 1838, the Iroquois lost the four major reservations they had in New York—the Allegany, Cattaraugus, Buffalo Creek, and Tonawanda Reservations—and kept only one small reservation in the Northeast in return for new lands in the west, in Indian Territory. Similar to the 1826 treaty negotiations, fraud, the forgery of signatures, bribery, and the use of alcohol as an inducement to sign all took place during the negotiations of this treaty, whose beneficiary once again was the Ogden Land Company.[12]

Despite a variety of negative experiences of United States law, such as the Buffalo Creek Treaty of 1838, the Haudenosaunee turned to US law to call attention to illegal acts committed in the making of treaties. Other tribes had done the same. By the time of the Iroquois removal crisis, the Cherokees had begun to resort to making appeals to the country's courts. They were often represented by white lawyers and they drew on US legal concepts. It is possible that some of the Haudenosaunee were aware of these well-known cases, which emphasized indigenous treaty rights.[13] Such knowledge might have been an additional incentive for the Iroquois in their letters to the federal government to focus on law, especially on treaty rights and treaty making.

In their correspondence with the federal government, letter writers from a variety of Haudenosaunee backgrounds most often challenged the legality of the Treaty of Buffalo Creek of 1838. In drawing attention to unlawful acts at treaty councils, the Iroquois frequently used proper legal terminology to describe what took place, with "fraud" and "bribery" high on the list of complaints. The Iroquois wrote the first of their letters in opposition to removal in February 1838, the month after the fateful negotiations, as they moved swiftly to try to limit the damage. The US Senate had yet to approve the treaty, and they addressed their appeal to Samuel Prentiss, a Whig member. Among others, this initial letter was signed by Big Kettle, the leader of the Buffalo Creek Pagan Party from the 1820s to 1840s, and by Black Smith, an influential Seneca leader who was to be elevated to League chief a little over a year later. In it, the authors outlined all the legal irregularities that they claimed had taken place in the years preceding the treaty of 1838 and directly led to it.[14] While they did not concentrate exclusively on United States law, in most of the letter they dwelt on acts that were unlawful under those laws. And they emphasized to the US government that it needed to take action if it wanted to live up to its own claim of treating Iroquois properly.

The Iroquois began their account with the questionable actions of treaty commissioner John F. Schermerhorn, who had also been the driving force behind the infamous 1835 Cherokee Treaty of New Echota, which condemned the entire Cherokee tribe to land loss and removal but was still allowed to stand although it had been signed by a small minority.[15] Schermerhorn had family connections to the Ogden Land Company and had invested in land himself. Insinuating that bribery had taken place in the making of the treaty, these Buffalo Creek chiefs accused treaty commissioner Schermerhorn of having unilaterally chosen the members of a delegation to inspect lands in the west for future settlement and of having paid an interpreter a large sum of money. These actions, they suggested, would have influenced the outcome of the treaty-making. They also stated that Schermerhorn had admitted to them that he had had dealings with the land preemption company and that they believed he had gone over the heads of each of the Six Nations of the Iroquois Confederacy and paid bribes to tribal members.

While the writers did not claim that all signatures on the treaty document had been obtained unlawfully, they did suggest that many had been secured through intimidation and bribery. They stated that the treaty's signatories had been told that they would be punished if they did not sign, and alleged that many had been induced to affix their signature while under the influence of alcohol that had been provided. The latter must have been especially galling to the authors of the letter, since Big Kettle, who after the death of Red Jacket had taken over as leader of those opposed to removal, had apparently warned that the negotiations should be held at the council house instead of a tavern.[16] The chiefs went on to assert that only sixty-three men had actually signed the treaty document at the council, and they listed some of the ploys that had been used to obtain those signatures. They also wondered how many signatures had been obtained "in private" and specifically criticized such clandestine dealings. In closing, they asked for an investigation to ascertain who among their people really wanted to remove. They undoubtedly assumed that those willing to leave were a small minority, and judging by the small number of Senecas who eventually did remove they were right to think so.[17]

These were not the only Haudenosaunee writers to raise concerns about illegalities of this kind. Bribery was a dominant theme in a letter penned a month later, which elaborated on the threats that had compelled some of the chiefs to sign the treaty. The signatories, who once again included Black Smith, wrote, "We were told that if we did not sign it our father the President would punish us . . . that the privileges we enjoy should be taken from us, that we should lose our annuities."[18] In a manner similar to that of the earlier letter, the authors recounted the sequence of events and then went on to say that the council had been moved to the tavern in an attempt to obtain the signatures

needed. This letter, as well as others, asked the United States to withhold ratification of the treaty for all of these breaches.[19]

At times, Iroquois letter writers paired such protests over legal breaches with pleas for protection, which they suggested was due them under US law. In a February 1838 petition, residents of Onondaga Castle informed the Senate and House of Representatives that they wished "the general government to protect us in our rights and to inform congress, efforts are making [*sic*] by agents of the General government to induce our people to dispose of our land against our will and consent."[20] They specified that they had "grounds for suspecting unfair means [had] been resorted to in getting signatures to the treaty at Buffalo," and sought to discredit several of the signatories.[21] It would appear that at least some of the authors of these letters were aware of the promises of lawfulness and protection that the United States government had made in connection with the removal legislation, although the act itself only promised protection to those who removed and did not mention those who opted to remain on their old lands.[22]

Despite all the irregularities of the 1838 Buffalo Creek treaty that were outlined in successive Iroquois letters, in 1840 President Martin Van Buren submitted to the United States Senate an amended version of this treaty that was still questionable, claiming in large part that it would benefit the Indians. Members of the Confederacy continued to state their grievances and objections even after the treaty was promulgated in April of 1840, and at times they explicitly called for it to be annulled or, failing that, to have it more thoroughly investigated for legal breaches.[23] In successive letters written over a period of more than twenty years, Haudenosaunee representatives described what they believed had taken place in the making of the treaty, mostly making the same points that first had been raised by Black Kettle and Blacksmith.[24] In a letter to Van Buren in May 1840, its Seneca authors, including the highly influential Governor Blacksnake and Seneca White, a member of the Confederacy council, objected to the accord, alleging that should "rights guaranteed as by solemn treaty . . . be taken from" them, it would breach old treaty agreements and thus the law of the land.[25] Similarly, in November 1840, Tuscarora leader William Mountpleasant claimed that the treaty infringed United States law, stating that "our assent to the treaty was obtained through fraud and misrepresentation" and that all that his people were asking for was that to which they were "legally entitled."[26] In the same month a letter written by the "sachems, chiefs, and warriors of the Tuscarora Nation of Indians" to Joel R. Poinsett, secretary of war, once more alleged that fraud had been committed, and drew attention to their petitions for the nullification of the treaty.[27] The following year, Allegany-based Iroquois, including Blacksnake, told the president that

"those who refused to sell the Land and remained true to their constituents were grossly and fraudulently sold out."[28]

In 1842, in response to more Native American and white protests about the 1838 accord, a so-called compromise treaty was concluded at Buffalo Creek to address the Haudenosaunee's continuing criticism of the government's treatment of their people. It restored to them two of the four New York reservations that had been lost through the 1838 treaty, Allegany and Cattaraugus, but failed to return the other two. Instead of forcing all Iroquois to remove, this document provided that the population of the two lost reservations, Buffalo Creek and Tonawanda, be distributed to Allegany and Cattaraugus.[29] This compromise treaty did not improve matters, instead threatening to worsen the situation for some of the Haudenosaunee, particularly those who stood to lose their reservations. Given this, it is not surprising that the residents of Tonawanda and Buffalo Creek wrote to President John Tyler in 1843 to express their dissatisfaction with it.[30] Nonetheless, the Iroquois might have interpreted the making of this 1842 compromise treaty as evidence that some of the protest strategies they used in their correspondence with the federal government were yielding results.

Generally the 1842 treaty sparked protests similar to those caused by the treaty of 1838, and letter writers, especially those from Tonawanda and Buffalo Creek, again used tactics that ranged from asserting that US law had been infringed (by bribery or intimidation for example), to pleading for protection under US law. Once again they alleged intimidation and pressure, stating that the president had made it clear to them that if they refused to sign this compromise treaty, the 1838 one would be left to stand, "thereby deceiving our Chiefs & people and influenc[ing] them to sign," and concluding that they considered neither the first nor the second treaty to be legal. [31] Given the promises about lawfulness and protection made at the time of the removal bill's passage, the Iroquois had reason to believe that the federal government would heed their arguments about violations of United States laws such as they had described in their letters.

The Tonawanda chiefs in particular mounted a multitude of protests against the 1842 treaty and voiced many different kinds of criticism. They insisted that under the treaty's conditions they were entitled to remain on their improved land for two years, but the Ogden Land Company, the recipient of the lands in question, seemed unwilling to accept this claim. The Tonawandas asserted that this refusal to let them remain, even for the two years specified in the Treaty of 1842, constituted a breach of United States law that had to be addressed.[32] The correspondence of the Tonawanda reservation chiefs also referred to "sundry other corrupt matters."[33] As they previously had done in regard to the 1838 treaty, Buffalo Creek chiefs asked to have the 1842

treaty frauds investigated by a "proper legal tribunal."[34] Judging by government discourse, they had every reason to assume that the law of the land would respect their continuing concern about treaty rights. The issue was still discussed in 1849 in a letter that chiefs and head men of the Tonawanda band of the Senecas sent to Commissioner of Indian Affairs Orlando Brown. The Tonawanda leaders alleged that the Buffalo Creek residents who had acceded to the 1842 treaty were those who earlier had accepted bribes, and the Tonawanda thereby challenged the validity of the proceedings.[35]

From the beginning of the removal crisis, almost all Haudenosaunee letter writers paired such pleas for protection with appeals to the United States' perception of itself as a lawful and just nation, and of removal as a policy strictly governed by US laws. The "Chiefs and Sachems of the Six Nations of Indians residing in the State of New York" made clear to Van Buren in February 1838 that they believed that "no force nor any unlawful means should be used in accomplishing" removal. Their logic paralleled, and thus connected, their argument to the way in which the United States government presented removal policy as beneficial and lawful.[36] Such appeals to the lawful implementation of the removal policy and to rights under US law often were rather vague. They did not specify the rights that had been violated, quite possibly because under United States law the rights of Native Americans were still ill-defined, or the rights invoked had repeatedly been shown little consideration in the past, or because the promises made by the government were equally vague, such as in Jackson's speeches.

For example, in March 1841 two prominent Seneca wrote to President William Henry Harrison: Maris B. Pierce, a chief who was also a recent Dartmouth graduate and who for a time worked in Buffalo law offices, and Henry Two Guns, who after the loss of Buffalo Creek had moved to Cattaraugus. These men related Seneca grievances and asserted that "their rights have been outraged and trampled upon for years," but did not spell out the nature of the rights they believed had been violated.[37] Similarly vague on the particular rights they were insisting on, yet nonetheless invoking them to ask for protection, Seneca chiefs writing to the president in 1849 expressed the "hope that our Great Father will be as jealous of our rights, as he [is] of those of his own."[38] Tonawanda Senecas spoke in a similar fashion on another occasion when they wrote to President Tyler that "our rights are dear to us."[39] The authors of this letter included important chiefs and followers of the Handsome Lake religion: Jemmy Johnson and John Blacksmith (who was also a sachem of the Iroquois League), and Ely S. Parker, a white-educated man who later became an aide to General Ulysses S. Grant. This letter also asked that they be allowed "to enjoy them [their lands] the few remaining days we have to spend in this world and not to be driven from place to place."[40] While

such letters' appeals often did not specify the rights the Iroquois sought to have respected, nonetheless the grievances they uttered made it clear that the Haudenosaunee ardently wished to regain or retain their lands.

At other times, Iroquois authors referred more specifically to their rights to their lands, but they articulated these claims most clearly in January 1841. John Blacksmith, who had come to be a "leading voice in council opposing removal to the west," as well as Jemmy Johnson and others of the Tonawanda Reservation, informed Secretary of War Poinsett that they had "a just and legal right to our land, and all that pertains to it," making it clear that they would accept no governmental meddling or attempts to influence them to give up their lands.[41] A few years later, the Buffalo Creek chiefs insisted on their entitlement "to litigate our right to the land our Fathers held for time immemorial," signaling that they thought they were entitled to make use of the courts to pursue their claims just as ordinary United States citizens did. This assumption that the Iroquois themselves could make use of the courts was not unreasonable in light of Jackson's promise in his first annual address that "like other citizens" they would receive protection.[42] At the same time, by saying that they had held the lands in question "since time immemorial" they asserted a claim prior to any others that might be brought under United States law.[43] In 1853, Ely S. Parker, who had been elevated to League chief to replace the deceased Blacksmith in 1851 and later became the first Native American commissioner of Indian Affairs, wrote to Commissioner of Indian Affairs George W. Manypenny on behalf of a Tonawanda council of chiefs. He identified himself as chief and special delegate for the Tonawanda Senecas and insisted on their legal rights to land, listing grievances such as illegal timber cutting, but also emphasized how the Tonawanda Senecas had remained "firm and sincere in the belief that they had the first and best right to there [*sic*] lands" and that they had refused to give them up or to accept any money for them.[44]

Well into the 1850s the Tonawanda Senecas continued to protest against efforts to take their lands under the 1842 treaty or to accept compensation for them, and at times they continued to justify this refusal by mobilizing the language of rights and insinuating that the law was on their side. At other times they emphasized their long and persistent refusal to accept compensation. Tonawanda delegates Ely S. Parker and Nicholson H. Parker, whose family had split over the question of removal, wrote to President Franklin Pierce in 1856 that "if the money is forced upon us or by some deception some Indian or Indians are cheated into receiving [it] then the years of labor and money it has cost us to maintain our rights thus far . . . will be all wasted and lost."[45] The Tonawanda Senecas' stance on their rights to their reservation lands remained unchanged until they entered into another treaty in 1857,

the year after the Parkers' letter was written. Subsequently the residents of Tonawanda were permitted to buy back some of their lands.

Although at times representatives of the Confederacy were somewhat vague on the precise nature of the rights they demanded, in some letters members of the Confederacy showed a sound knowledge of the implications of the new legal status they had been assigned in 1831 as a consequence of Supreme Court Chief Justice John Marshall's "domestic dependent nations" ruling.[46] Even though Marshall's decision arose from a suit brought only by the Cherokees, the ruling had officially assigned Native Americans a status akin to wards of the federal government, minors in need of paternalistic guidance. Seemingly aware of the court decision, Governor Blacksnake and others directed a petition to the president in May 1840 in which they criticized the Supreme Court's judgment. They also subtly hinted that the chief justice's logic conflicted with the entire concept of treaties, since a treaty implied the contracting parties had a certain degree of equality, whereas wardship status would suggest inability to enter into a treaty contract. In other words, they suggested that this legal status cast doubts over the validity of previously made agreements of this nature, and this was not something they were willing to accept: "we were extremely pained to hear that some of the senators advised that our rights guaranteed as by solemn treaty should be taken from us + we [are to] be treated as minors."[47] Since in theory their treaty rights should have been protected by the United States Constitution, and especially since that concept had been a hotly debated topic at the time of the passage of the bill, Iroquois demands that their criticisms about wardship and treaty rights be heeded was not only logical, but also wise strategically, since they thereby tied their concerns to the larger issue of the constitutionality of the Cherokee case.

At other times Iroquois writers tried to utilize their wardship status in their fight against land loss and removal. Since invoking wardship seemed to reiterate promises of protection with regard to removal that had first been made by Jackson, the Iroquois may have felt some confidence in these assurances. In an 1840 petition the Haudenosaunee authors, including removal advocate Little Johnson (who by this time had already had been replaced as League chief due to his support for the 1838 treaty), specifically referred to the president as their guardian, thereby implicitly asking him to perform this role.[48] In 1844, Buffalo Creek chiefs and warriors, after telling the president that the "law declares us to be in the condition of children," went on to inform him that they "expected the indulgence and kindness due to that character," and asked him to act in a truly paternal fashion and to protect them.[49] The Tonawanda Senecas, persistent opponents of removal, later did the same, subtly suggesting to the president what kind of protection they needed in accordance with this status as his wards.[50] In its appeal to paternalism this letter arguably referred

to two systems of law, United States law and customary Iroquois law, since Iroquois culture associated certain values with the figure of the father, values that were also proclaimed to be at the heart of federal Indian policy.

An appeal to United States law as well as Haudenosaunee customary law was not unusual in the correspondence written during this period, and indeed, most Iroquois appealed to both, although not always in the same letter. In many instances Iroquois letter writers from various reservations, backgrounds, and levels of white education went beyond the United States' conception of law and lawfulness, insisting that their guardian conform to norms that were in line with United States law but also with some Iroquois customary law.

The Proper Way of Iroquois Customary Law

Because so many authors did refer to Iroquois law in their letters, this can be interpreted as an active attempt to assert its validity, whether customary or a new kind derived from that of the United States. These repeated writings constituted an endeavor to make the federal government respect the laws the Haudenosaunee had adopted. It was not unrealistic for the Iroquois to expect at least some respect for their laws and legal system in US government circles, especially at the beginning of the removal crisis. Prior to removal, as legal historian Lisa Ford has shown, parallel indigenous and settler legal systems had coexisted. This legal pluralism had only recently come under pressure as governments extended their jurisdiction over Native Americans.[51]

The change in attitudes toward indigenous law had become evident to the Haudenosaunee as recently as 1822, when Seneca chief Tommy Jemmy was charged with murder for having executed a Seneca woman convicted as a witch. At the chief's trial both Red Jacket and Captain Pollard, who were often opponents, each testified about Seneca usages of law. In court the Senecas' attorney, John C. Spencer, argued that the Senecas were an independent nation, that the crime had been committed on Seneca land, and that therefore Tommy Jemmy was not answerable to New York State.[52] In response New York State passed a law that claimed jurisdiction over all crimes within its borders, denying the Senecas' assertion of sovereignty. Yet at the same time, the legislature avoided further confrontation with the Iroquois over the issue by pardoning Tommy Jemmy, who technically had not been convicted of any crime.[53] Given this legal outcome, the Haudenosaunee had some reason to believe that the federal government might at least listen when they asserted the validity of their own systems of law.

In many of their letters opposing removal the Haudenosaunee appealed to some of their own legal conventions, so in removal-era correspondence

penned by members of the Confederacy we can discern elements of the rules and protocols of the "forest diplomacy" of previous centuries (a term used by anthropologist William Fenton, among others).[54] Forest diplomacy followed the principles of the Great Law of Peace of the Iroquois that had been continued for generations. Although flexible, it laid down the rights and duties of chiefs, clans, and nations, with stress on the proper way of doing things, as rituals and procedures regulated Iroquois life and society.[55] This had been of the utmost importance in diplomatic encounters of the colonial era, in which outsiders often had been obliged to adopt aspects of Haudenosaunee customary law. For example, in order to be able to enter into negotiations with members of the Confederacy they had to follow Iroquois rituals such as the condolence ceremony.[56] In fact, as historian Daniel Richter has stated, "by the early eighteenth century, treaty conferences throughout eastern North America conformed to very similar ceremonial patterns."[57]

Certain key aspects of the Haudenosaunee Great Law did not change even after the 1799 religious visions of Handsome Lake had led to the creation of the Gaiwiio, a religion based on Handsome Lake's teachings but which also drew significantly on Quaker instructions about progress towards civilization.[58] This persistent resolve to do things the proper way amounted to an ongoing insistence on Iroquois customary law, demonstrating that many Haudenosaunee considered that some of these ways continued to be important in structuring their lives. More particularly, there is evidence of the Iroquois articulating a series of closely connected themes: conducting dealings in open council; exercising proper authority through appointed chiefs; obtaining the consent of all those whom the matter concerned; having face-to-face interactions whenever possible; and only dealing with properly appointed delegates.

This is not to suggest that these customary ways had not changed over time. The Haudenosaunee letters written during the removal crisis reveal that some customs that had been in use until fairly recently were no longer being called upon. To mention only a few of the more important central metaphors that had formerly been in use, none of the letters written to the United States government mentioned the tree of peace, the burying of the axe, fire as a symbol of civil government, the path as a symbol of communication, or the theme of "one heart."[59]

Time and again, however, the Iroquois did emphasize in their letters to the federal government the need to do things the proper way. Iroquois protocol required that all matters pertaining to a collective decision be discussed in open council so that everyone could have input. Unless the proper way was followed, such agreements might not be considered binding. The Iroquois had pointed this out to the government even prior to the infamous Buffalo Creek treaty of 1838. In 1837 two Oneida chiefs from Onondaga Castle informed

the president that if he desired to make a treaty with the Oneidas they would have to have "a council where all the concerns of the nation are considered and determined."[60] In this way they made clear to the president the nature of procedures they expected to see followed, and also implied that they did not need or want anyone to act for them.

Similarly, even prior to the treaty of January 15, 1838 the Buffalo Creek Seneca chiefs notified the president that all national transactions (as they referred to them) needed to be conducted in open council, and they pointed to an earlier treaty with the United States as an example of this procedure.[61] In 1838 the Haudenosaunee presented a number of written protests against the Buffalo Creek treaty of that year in which they objected to it on the grounds that the Iroquois' proper way of having a discussion in open council had not been followed. In February 1838, Seneca chiefs Black Kettle, Black Smith, and others stated for their part that they would "acknowledge nothing that was not done in public," suggesting that the proceedings had not been in accordance with their own laws and customs.[62] A month later, in another such protest, some of the same men asserted that the treaty of 1838 had been signed in a most irregular fashion: "because said alleged treaty was not agreed upon in council, but after the decided expressions of a majority of our chiefs that they were determined not to sell our lands, it was brought into the council and signed by only about twenty three chiefs, when at the same time our remonstrance against said treaty was signed by more than sixty of our chiefs."[63] The Iroquois continued to insist for some time on doing things the proper way, requiring that all negotiations be conducted in open council. In 1845 they demanded that business be conducted in this manner and accepted nothing else as legitimate, stating that "no sale or disposition of the whole or any part of our land . . . to be made shall be valid or of any effect unless the same be made in full and open council of the Chiefs and Warriors."[64]

In addition to having negotiations in open council, the Haudenosaunee, in keeping with their concept of the proper way of doing things, demanded that the ones to sign any resulting treaty be representatives who had been properly selected by the individual tribes and recognized as chiefs. This expectation had not been met in the case of many of the signatories of the controversial treaty of 1838, and consequently the document was criticized and its validity challenged. As chief Black Smith and others wrote in March 1838: "because several of those persons who are stated to have signed [the] said alleged treaty are not chiefs, never having been duly appointed by the nation and inducted into office, and therefore are not competent to act for the nation, neither is it bound by their decision."[65] Even though some chiefs had signed the 1838 document, in many of their letters the Iroquois often stated that these signatories did not represent the various Haudenosaunee tribes adequately.[66] Since

the 1838 treaty was not conducted in the proper way, was not discussed in open council, and was not signed by recognized chiefs, it was not held to be binding by many of the Iroquois. The Tonawanda Senecas maintained this position until late into the 1850s, in their long but ultimately successful fight to retain their lands.[67]

Consent was an issue at the heart of Haudenosaunee culture that had implications beyond holding an open council or properly appointing chiefs, so that it affected other areas of Iroquois customary law. The Tonawanda Senecas, as well as others, unfailingly insisted that what they had not agreed to could not be considered binding for them, and that they could not be forced to adhere to treaties to which they had never consented. Such consent was obtained through debate and persuasion, usually in council. Councils were forums in which opinions were voiced, considered, and discussed. Such discussions were continued until the minority withdrew and allowed the opinion of the majority to stand, at least for the moment.[68] Chiefs never had the power to compel other members of the tribe, as treaty commissioners often presumed they did. Instead, tribal leaders had to use occasions such as councils to persuade others, and they were not authorized to agree to conditions that their followers would not have approved. The open council was thus an instrument to achieve consensus or unanimity and to make sure that chiefs acted in accordance with the people's wishes.

The 1838 Buffalo Creek Treaty deviated from what had long been considered to be the proper way.[69] This was the case even when signatures had been obtained. When, in February 1838, Black Kettle and others admitted that some of the chiefs had signed the treaty, they claimed that this had only been the case due to many instances of bribery, intoxication, and intimidation. The signatories of the letter argued that, in spite of some signatures having been obtained on the document in question, the treaty had been completed without the consent of the members of the tribe and, therefore, that they would not allow it.[70] Other Iroquois at around the same time, referring to themselves as "Chiefs and Sachems of the Six Nations of Indians residing in the State of New York," explained to Van Buren that they had "no disposition to compel any of our people to think as we think or do as we do." The senders of this letter implied that, regardless of whatever signatures had been obtained, consent of the people, obtained through a discussion in open council, was still needed and that the affected Iroquois were not bound by a decision they had not agreed to or authorized.[71]

A lack of consent to treaty agreements was also the issue when it came to protests against the compromise treaty of 1842, which restored some lands to the Haudenosaunee. This was especially the case among the Tonawanda Senecas who still stood to lose by the agreement. Their chiefs maintained in

1843 that "the Seneca Nation have never assented to rules and regulations which secure to the majority a right to control the minority and as we did not give our consent to the Treaty of 1842 it is not binding upon us."[72] They also reiterated that they had no law to force anyone to accept anything as binding unless the consent of every individual amongst them had been obtained. They stated this need for proper consent again and again over the years.[73] The Tonawanda leaders consistently maintained that the treaty was not binding on their people since they had refused to become party to it and had never assented to it.[74] Under their customary law, the fact that one Seneca or even several may have signed a document did not make it binding on those non-consenting ones affected by it.

For example, in one protest letter Ely S. Parker, identifying himself as head chief and representative of the Six Nations and now out of the shadow of the deceased Blacksmith, asked the commissioner of Indians Affairs for assurances that the treaties they had entered into in the early years of the United States still held. He even went as far as to state that "since 1794 the Six nations as a confederacy have had no communication with the Government."[75] Conceivably, Parker made this statement in order to indicate that no one besides the Tonawanda Senecas themselves had any right to sign agreements for them and thus to decide their fate, not even the Great League of the Longhouse, the organization which had formerly made the Mohawk, Oneida, Onondaga, Cayuga, Seneca and Tuscarora so strong and helped to give them such diplomatic bargaining power. Speaking for the Tonawandas, Parker made it clear that the consent of those affected was required to make a decision binding. Parker even secured confirmation from ethnologist Henry Rowe Schoolcraft that consensus decisions constituted the traditional Iroquois way and that the principle of majority decisions had been unknown to them previously.[76]

The need to discuss important matters face-to-face was another element of what constituted the proper way under Haudenosaunee customary law. This had formerly been fundamental to dealings in open council and to gaining the proper consent, but during the removal crisis it had often been ignored. While Iroquois letter-writing was at least partly an acknowledgment that an insistence on face-to-face dealings was no longer feasible, in a significant number of the letters written over the course of the removal crisis the Iroquois still asked for such meetings or referred to delegations they had sent, which was presumably the most satisfactory alternative to a proper council with face-to-face interactions among all interested parties.[77]

In a letter addressed to the president in late 1837, before the infamous Buffalo Creek Treaty of January 1838, the authors repeatedly asked that all action on the treaty be suspended until the delegations had arrived in Washington, probably in the hope that a meeting between authorized

Haudenosaunee delegates and the president would help them convey their demands more clearly than they could in writing.[78] Tonawanda chiefs writing to Tyler in 1844 expressed a similar expectation that a delegation would be able to resolve matters, as once again the authors asked that nothing be done until their delegation arrived.[79] The Iroquois, as authors of often persuasively eloquent letters who were famous for their colonial-era diplomacy, probably knew they had skillful negotiators and diplomats among them, but they rightly feared that much of what they said in negotiations with go-between agents of the federal government never reached those in charge of making the actual decisions, and that in comparison with themselves even their friends were often rather poor advocates.[80] Yet Haudenosaunee were frequently unsuccessful when they asked for permission to send delegates, and when those delegates did go to Washington they were often unable to win the ear of the right people. Under these circumstances, composing letters was the best action that members of the Confederacy could take. As early as 1840 some of the Haudenosaunee recognized that "the customs of the white people [meant] that it [would] avail to nothing for us to appeal to an oral communication."[81]

Nevertheless, proper authorization or consent remained important to the Iroquois when it came to naming and sending delegates for face-to-face meetings with government officials. During the course of the removal crisis, even prior to the 1838 treaty, the Haudenosaunee sent a number of communications that challenged the authority or credibility of some delegations sent by opposing factions.[82] In April 1839 chiefs and warriors of the Cayuga Nation at Buffalo Creek, expressed their surprise that four Seneca delegates to Washington had signed the amended treaty as chiefs, including Joseph Isaac, who spoke up against emigration in the same year.[83] Likewise, in 1844, the Tonawanda chiefs wrote to Tyler protesting against a delegation they believed the "emigration party" was sending to Washington, warning him that it would make what they called false statements.[84] They clearly feared that its members would do damage to Tonawanda's cause and hence asked the president "not to pay any attention to them until you see our delegation." At other times the authors of Iroquois letters to the government warned their correspondents that delegates had no authority to represent them, as in 1855 when Seneca warrior Joshua Turkey and others of Cattaraugus wrote to the commissioner of Indian Affairs informing him that they thought those who had gone to Washington intended to make a treaty, but that these delegates lacked the authority to do so.[85]

Examples of doing things the "proper way" that appear in the Iroquois correspondence of the removal crisis are not merely instances of adherence to tradition for the sake of upholding customary Iroquois laws: they also reflect Haudenosaunee insistence that their own laws be followed. These references

pointed out to the US government that the Haudenosaunee had their own laws and that the Haudenosaunee were not unlike the United States. This suggested that not only US laws, but Iroquois laws had also been broken, thus making the transactions in question doubly unlawful.

Letters, Law, Strategies, and Conflicts

While the factors discussed above serve to explain many of the Iroquois appeals to both the laws of the United States and their own customary law, understanding the process by which their letters were created adds further clarity. At times references to two systems of law are a sign that those involved in composing the letter had reached a compromise when writing it. Many, if not most, letters were probably authorized, if not composed, by several people who held different opinions on which law to invoke in making a case to the federal government. More specifically, some evidence suggests that many of the letters sent in the course of the Iroquois removal crisis may have originated in councils, and that the range of opinions expressed in them are reproduced in the written messages to the federal government. The discussions and deliberations that took place in such councils, or on other occasions surrounding the writing of a letter, usually would have involved old as well as young, those Iroquois educated in the European and in the Native tradition, those of different religions, and quite possibly both men and women.[86] On such occasions, in accordance with Haudenosaunee custom, consensus would be sought in regard to the forms of statements and phrasings.[87] Such letters thus literally had multiple authors and reflected the range of opinion of those Iroquois present on the occasion and their attitudes to United States and Haudenosaunee customary law.

In some instances, letters from the Iroquois directed to the federal government may have originated as speeches delivered in a council. For the Iroquois, it was not unusual to empower a skilled orator with the task of conveying the opinion of others, and a few letters to the federal government appear to have been written in keeping with this tradition. These letters usually were composed to sound like a speech. For instance, they repeatedly addressed the recipient and quite often used traditional kinship terms such as "father" or "brother." In those rare cases that a letter primarily seems to have been based on a single speech, or was even composed in the form of one, it was probably indicative of a certain consensus among those present that this was the best way to proceed and agreement that the argument was a powerful one.

The Iroquois letter-writing process was also influenced by the identity of the actual writers. Older Iroquois, such as the highly influential Chief John Blacksmith of Tonawanda (a removal opponent), often understood English but

were unable to read or write it, and so were dependent on younger, western-educated, and often acculturated men such as Ely S. Parker. Parker started out as a teenage "runner" for the council, as someone who did the bidding of the chiefs but who was elevated to a chief after this training.[88] The collaboration of older chiefs like Jemmy Johnson or John Blacksmith with younger men such as Parker was often necessary if the Haudenosaunee were to communicate with the federal government in writing. Yet such cooperation was not always easy.[89] As Hauptman has remarked, in his private correspondence Parker was not only highly critical of Blacksmith's cautious approach, but also described himself as being like a slave to the chiefs, indicating that at times he acquiesced to their demands and instructions in spite of some misgivings.[90] Men like Parker would have seen their authority increase, and thus over time they may have achieved a greater degree of influence over what was said and the phrasing and style in the letters. However, even when they were acting as mere scribes, those in Parker's position chose what English phrases to use and exactly how to convey the matters at stake. When the content of the letter was discussed in the Iroquois language, this required English translation and undoubtedly also had an impact on which kinds of law were invoked in the letters and the way the law was used, since the person writing the message would most likely draw on their own knowledge of United States laws.

It is probable that invocation of the two kinds of law in the letters to the federal government on occasion constituted a deliberate strategy on the part of the Haudenosaunee authors. As already mentioned, this may have been a way of signaling that the two systems of law in Haudenosaunee eyes were not mutually exclusive, especially as they had coexisted until fairly recently. Further, it might also have been a way of indicating that while they were aware of United States law, they, too, had a law and lived a legal existence. Significantly, such a legal existence was one of the hallmarks of civilization, which was the removal policy's proclaimed goal.

While the appeal to different kinds of law was undoubtedly a product of the process by which the letters were composed, sometimes it was probably the result of unresolved political disagreements among members of the Confederacy over which law was most likely to stave off the threat of removal. Often these conflicts took place along lines of family-based politics that had developed over generations. More importantly, they are evidence that conflict could no longer be managed through traditional methods. In the past, as historian Olive Dickason has suggested, when unanimity in council had been impossible to achieve, temporary or permanent fragmentation had made it possible to accommodate such differences of opinion.[91] But since colonization had reduced the Iroquois' land base, such fragmentation was no longer feasible, and consequently those Iroquois determined to contest removal had to reach

an agreement or compromise on their strategies. The famous orator Red Jacket may have realized this by the end of the previous century, given that in 1797 at the Treaty of Big Tree he stated that land not only meant a certain amount of autonomy vis-à-vis the white outside world, but also afforded other choices to the members of the Confederacy.[92] By the time of the removal crisis, withdrawal had become much more difficult, unless those in disagreement with the others were prepared to move. Those members of the Confederacy who wrote letters specifically to try to remain in their homelands and who disputed with other Iroquois over the best way to accomplish this, were not willing to move. Unless they were to split into small opposing factions—as indeed happened with the relatively few proponents of removal—the Iroquois reservations had to agree to some extent on a strategy vis-à-vis the federal government.[93]

The debates among those Iroquois having a say in the production of letters to the federal government may have created or aggravated divisions among the members of the Confederacy, contributing to increasing fragmentation. Disputes over how best to deal with the federal government or to which specific law to turn might have been factors in a split that occurred among the Senecas in 1848. At that time Senecas resident on Cattaraugus and Allegany modified the traditional system of government by establishing an administration patterned after that of New York State.[94] They changed their governing laws by adopting a constitution with elected leaders and a tripartite governing structure, and became known as the Seneca Nation.[95] The decision-making processes that determined input into letters then changed for members of the Seneca Nation. This change is reflected in their letters, which at least initially were signed by only person, usually the president or clerk.[96] Anthropologist Thomas Abler identifies annuity-distribution arrangements as a factor in the conflict among the Seneca. While this is correct, there was also the view that the new governing structure would protect the Seneca better in the face of removal, if we judge by the letters dedicated to the topic.[97] A few years after its creation, members of the new Seneca Nation explained to Commissioner of Indian Affairs George W. Manypenny, "at no period since the first settlement of this country by white people, has the ancient irresponsible form of Government by chiefs been able to secure us against the arts and crafts of land speculators."[98] This sentiment was not a new one; for instance, in 1809 in a council at Buffalo Creek Iroquois warriors had threatened the chiefs with death were they to sell any more land, but even these threats had been unable to prevent further land cessions.[99] Drawing a lesson from past experience that their own customary laws had been unable to protect them from land loss, the letter to Manypenny suggests that the change of government had been effected in the hope that this would better protect Iroquois land.

Yet the newly created Seneca Nation's "progressive" acceptance of elements of US law cannot be seen as a complete embrace of, and surrender to, the United States and its legal system. While the Seneca Nation based their new law on that of New York State and of the United States, it did not completely abandon all elements of customary law. It even called for approval of all treaties by three-fourths of all voters, as well as by three-fourths of a group of people the constitution referred to as the "mothers of the nation."[100] After some initial protests against being deposed by this new form of government, the "old chiefs" entered and won the election for the council of elected chiefs in 1851, as well as the elections held in 1852 and 1854.[101]

At much the same time as the creation of the Seneca Nation, the Tonawanda Senecas were engaged in a separate process of constructing their own political identity. Even though the ultimate aim of both groups of Senecas was to protect themselves against further land losses and removal, the threat of removal and the fight against it had led to a break between them, and in the process their political organization turned to different systems of law. The Tonawanda Seneca had limited options since, according to anthropologist Elisabeth Tooker, "to abandon their system of governance by hereditary chiefs would have undermined their best argument" about the treaties being invalid as they had not agreed to them.[102] This gave them a good reason to preserve much of their customary system of law. In addition, the inquiries into the treaties of 1826 and 1838 had shown that the US legal system was unable to offer the Haudenosaunee much in terms of protection, largely due to the unwillingness of those in charge to enforce the laws, and this may have been a factor in the Tonawanda Senecas' decision to retain their customary laws and structures.

Arguably these differing conceptions on which law could offer the Iroquois and their lands the best protection reveal that they refused to let the United States decide what was best for them. They reserved the right to make their own decisions according to their own evaluation of the situation, even if they at times differed about this. Other tribes similarly struggled to work out what was the best way to oppose removal. And many of the authors of the letters agreed that they were unwilling to accept further loss and removal, no matter what other disagreements they may have had.

Conclusion

In their removal-era correspondence with the federal government the Haudenosaunee often appealed to US law as well as their own Native customary law. These appeals to two systems of law can probably be attributed to a number of factors, including the ways in which the letters were composed and written.

Often letters seem to have constituted compromises among letter writers who were debating which law to appeal to, and eventual decisions to appeal to both. By invoking both systems of law, the authors of the letters attempted to portray irregularities as doubly illegal, in that both United States laws and Native American laws were violated. The different versions of law invoked in the correspondence could also have been a sign of growing disagreements among the Iroquois over which law could protect them best. And in turn, the discussions over the content of the letters to the federal government may have contributed to growing disagreements among the Haudenosaunee.

In spite of disagreements over which kind of law to use, the Iroquois letter writers, regardless of differences in their backgrounds, levels of education, or acculturation, still generally agreed on one basic premise: that they were unwilling to sell their lands and remove.[103] The letters analyzed here confirm Laurence Hauptman's argument that, far from being mere victims at the mercy of the United States, Iroquois letter writers sought to actively shape their destiny and to influence the way in which the United States treated them, and that they employed their own ideas of law in trying to do so.[104]

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Notes

1. The Iroquois Confederacy, or Haudenosaunee, comprised the Mohawk, Oneida, Onondaga, Cayuga, Seneca and Tuscarora tribes.

2. For other forms of resistance, see Granville Ganter, "Red Jacket and the Decolonization of Republican Virtue," *American Indian Quarterly* 31, no. 4 (Fall 2007): 559–81, as well as Laurence Hauptman, *The Tonawanda Senecas' Heroic Battle Against Removal: Conservative Activist Indians* (Albany: State University of New York Press, 2011).

3. Literary scholar Lisa Brooks argues that scholars have assumed that the adoption of literacy meant the surrender of Native identity, speculating that this was another reason why Native American writing has not received more attention. See Lisa Brooks, *The Common Pot: The Recovery of Native Space in the Northeast* (Minneapolis: University of Minnesota Press, 2008), xxxi.

4. Laurence Hauptman is the author of much of the existing historical literature on the Iroquois in the nineteenth century. See *Conspiracy of Interests: Iroquois Dispossession and the Rise of New York State* (Syracuse: Syracuse University Press, 1999); *The Iroquois in the Civil War: From Battlefield to Reservation* (Syracuse: Syracuse University Press, 1993); *Seven Generations of Iroquois Leadership: The Six Nations Since 1800* (Syracuse: Syracuse University Press, 2008). Apart from Hauptman, only Matthew Dennis seems to have shown sustained interest in the nineteenth-century Iroquois. See *Seneca Possessed: Indians, Witchcraft, and Power in the Early American Republic* (Philadelphia: University of Pennsylvania Press, 2010), as well as "Sorcery and Sovereignty: Senecas, Citizens, and

the Contest for Power and Authority on the Frontiers of the Early American Republic," in *New World Orders: Violence, Sanction, and Authority in the Colonial Americas*, eds. John Smolenski and Thomas J. Humphrey (Philadelphia: University of Pennsylvania Press, 2005), 179–99. Elisabeth Tooker has also made significant smaller contributions in her encyclopaedia entries. See "Iroquois Since 1820" and "The League of the Iroquois: Its History, Politics, and Ritual," in *Handbook of North American Indians, Volume 15: Northeast*, ed. Bruce G. Trigger (Washington: Smithsonian Institution, 1978), 452–55, 422–25. Others who have touched upon Iroquois nineteenth-century history include Carl Benn, *The Iroquois in the War of 1812* (Toronto: University of Toronto Press, 1998); Jack Campisi, "The Oneida Treaty Period, 1783–1838," in *The Oneida Indian Experience: Two Perspectives*, eds. Jack Campisi and Laurence Hauptman (Syracuse: Syracuse University Press, 1988), 48–61; and Daniel F. Littlefield, ""They Ought to Enjoy the Home of their Fathers': The Treaty of 1838, Seneca Intellectuals, and Literary Genesis," in *Early Native American Writing: New Critical Essays*, ed. Helen Jaskosky (Cambridge: Cambridge University Press, 1996), 83–103.

5. In the 1831 *Cherokee v. Georgia* decision, Indians were cast as "domestic dependent nations" and were considered to be wards of their guardian, the United States government.

6. For an investigation of some examples of missionary activities, see Robert F. Berkhofer, *Salvation and the Savage: An Analysis of Protestant Missions and American Indian Response, 1787–1862* (New York: Atheneum, 1972).

7. Questions surrounding law and legality were prominent, but not the only focus. The debate also included discussions over the promise that removal would advance Indians in "civilization." See various speeches in *Speeches on the Passage of the Bill for the Removal of the Indians, Delivered in the Congress of the United States, April and May, 1830* (Millwood, NY: Kraus Reprint, 1973).

8. Ibid.

9. Andrew Jackson, First Annual Address to Congress, the American Presidency Project, http://www.presidency.ucsb.edu/ws/?pid=29471. Jackson also said that "they should be distinctly informed that if they remain within the limits of the States they must be subject to their laws." In his third annual address, Jackson reiterated that the United States would "remove beyond their limits every Indian who is not willing to submit to their laws." Andrew Jackson, Third Annual Address to Congress, the American Presidency Project, http://www.presidency.ucsb.edu/ws/?pid=29471.

10. Andrew Jackson, First Annual Address to Congress, the American Presidency Project, http://www.presidency.ucsb.edu/ws/?pid=29471. Jackson's second address reiterated the promise of protection. See the American Presidency Project, http://www.presidency.ucsb.edu/ws/?pid=29471.

11. See Hauptman, *The Tonawanda Senecas*, 150–65, and *Conspiracy of Interests*, 152–56.

12. Treaty with the New York Indians, 1838, Jan. 15, 1838. 7 Stat., 550. Proclamation, Apr. 4, 1840. See http://digital.library.okstate.edu/kappler/Vol2/treaties/new0502.htm.

13. For some of the activities of the Tonawanda Senecas in US courts, see Hauptman, *The Tonawanda Senecas*, chapter 7. See also Mary Conable, "A Steady Enemy: The Ogden Land Company and the Seneca Indians," (PhD diss., University of Rochester, 1995), ProQuest Dissertations and Theses (9523133). For the Cherokee Nation cases see, among many others, Jill Norgren: *The Cherokee Cases: The Confrontation of Law and Politics* (New York: McGraw-Hill, 1996).

14. See letter, February 28, 1838, from Big Kettle, James Robinson, Black Smith, and many others to Samuel Prentiss of the United States Senate, National Archives of the United States of America (NARA), M234/583. When referring to letters written by the Iroquois, I have preserved the spelling of names as appeared in the originals, even though at times this has resulted in the same individual's name being spelled differently, as in the case of John Blacksmith, whose name was also given as "Black Smith."

15. See James W. Van Hoeven, "Salvation and Indian Removal: The Career Biography of Rev. John Freeman Schermerhorn, Indian Commissioner," (PhD diss., Vanderbilt University, 1972), ProQuest Dissertations and Theses (7226134).

16. See Conable, "A Steady Enemy."

17. Only about 190 Seneca chose to remove to Indian Territory with federal agent Adrian Hogeboom in 1845–1846. Sixty-six of them died en route or after arrival, and only two remained in Kansas while thirty-eight returned to New York State. See Thomas S. Abler, "The Kansas Connection: The Seneca Nation and the Iroquois Confederacy Council," in *Extending the Rafters: Interdisciplinary Approaches to Iroquoian Studies*, ed. Michael K. Foster, Jack Campisi, Marianne Mithun (Albany: State University of New York Press, 1984), 87; Hauptman, *Conspiracy of Interests*, 209–10; Conable, "A Steady Enemy," 327.

18. Letter, March 20, 1838, from James Robinson, Black Smith, John Kennedy, Zachariah Jimeson, NARA, M234/583.

19. See letter, April 7, 1840, from Maris B. Pierce at Dartmouth College to President, NARA, M234/584 and an undated letter (probably November 1840) from William Devereux to Commissioner of Indian Affairs Hartley Crawford, NARA, M234/584. For other such allegations of illegal proceedings see for instance a letter about a Buffalo Creek council dated July 18, 1839, M234/583.

20. Letter, February 1838, from Captain Anliager and many others of Onondaga Castle to Senate and House of Representatives, NARA, M234/583.

21. Ibid.

22. Indian Removal Act of 1830; protection to removing tribes is promised in section 6.

23. See for instance the letter dated March 22, 1841, from Henry Two Guns and Maris B. Pierce to Secretary of War John Bell, NARA, M234/584 and the letter of February 23, 1841, from Seneca White and others to President William Henry Harrison, NARA, M234/584 and the November 23, 1850, letter from Zachariah Jimeson, President, to Secretary of the Interior Alexander H. H. Stuart ("Stewart"), NARA, M234/587.

24. See for instance letter of January 9, 1842, from John Mountpleasant and others to President Tyler, NARA, M234/584 and letter of February 19, 1855, from Joshua Turkey and many others to Commissioner of Indian Affairs George W. Manypenny, NARA, M234/588.

25. Petition, May 1, 1840, from Senecas, including Seneca White and Governor Blacksnake, to the (unnamed) President, NARA, M234/584. For Seneca titles and titleholders on the Confederacy council in 1838, see Thomas S. Abler, "Seneca Moieties and Hereditary Chieftainships: The Early Nineteenth-Century Political Organization of an Iroquois Nation," *Ethnohistory* 51, no. 3 (Summer 2004): 470.

26. Letter from William Devereux to Commissioner of Indian Affairs Hartley Crawford, reporting on a meeting with Tuscarora chiefs on November 11, NARA, M234/584 (undated but probably November 1840).

27. Letter, November 9, 1840, from "sachems, chiefs, and warriors of the Tuscarora Nation of Indians" to Secretary of War Poinsett and the Head of the Indian Department, Washington, NARA, M234/584.

28. Letter, March 4, 1841, from Governor Blacksnake (on behalf of Allegany River Indians) and others to President William Henry Harrison, NARA, M234/584. For more on Governor Blacksnake see *Chainbreaker: The Revolutionary War Memoirs of Governor Blacksnake as Told to Benjamin Williams*, ed. Thomas S. Abler (Lincoln: University of Nebraska Press, 1989).

29. Treaty with the Seneca, 1842. May 20, 1842. 7 Stat., 586. Proclamation. Aug 26, 1842. See http://digital.library.okstate.edu/kappler/Vol2/treaties/sen0537.htm.

30. See letter of February 1, 1843 from chiefs of Tonawanda and Buffalo reservations to President John Tyler, NARA, M234/585.

31. Ibid. For another such statement, see letter of April 1, 1844 from Buffalo Creek chiefs to President John Tyler, NARA, M234/585.

32. Letter, July 12, 1843, from Tonawanda chiefs, including John Blacksmith, to President, NARA, M234/585. See also letter of June 14, 1843 from Tonawanda chiefs to President John Tyler, NARA, M234/585 and letter of June 5, 1843 from Tonawanda chiefs to Secretary of War John C. Spencer, NARA, M234/585.

33. Letter of June 14, 1843 from Tonawanda chiefs to President John Tyler, NARA, M234/585.

34. Letter of April 1, 1844 from Buffalo Creek chiefs to President John Tyler, NARA, M234/585.

35. See letter of June 23, 1849 from chiefs and head men of Tonawanda Band of Seneca Nation of Indians to Commissioner of Indian Affairs Orlando Brown, NARA, M234/587.

36. Letter, February 10, 1838, from "Chiefs and Sachems of the Six Nations of Indians residing in the State of New York" to President Martin Van Buren, NARA, M234/583.

37. Letter, March 6, 1841, from Henry Two Guns and Maris B. Pierce to President William Henry Harrison, NARA, M234/584. Pierce had graduated from Dartmouth in 1840 and was a Quaker protégé. See Hauptman, *The Tonawanda Senecas*, 55. For more on Pierce, see H.A. Vernon, "Maris Bryant Pierce," in *Indian Lives: Essays on Nineteenth- and Twentieth-Century Native American Leaders*, ed. L. G. Moses and Raymond Wilson (Albuquerque: University of New Mexico Press, 1993). See also Littlefield, "'They Ought to Enjoy the Home of their Fathers.'" Little information appears to be available on Henry Two Guns, but in 1840 he served as speaker of the council of chiefs.

38. Letter, January 25, 1849, from Seneca chiefs to President, NARA, M234/587. As the Iroquois usually clearly identified the addressee in their letters, it seems likely that they omitted the name here due to the recent election and uncertainty about who was president.

39. Letter, June 1, 1842, from Jemmy Johnson, John Blacksmith, John Luke, Ely S. Parker and others of Tonawanda to President Tyler, NARA, M234/584. For more on Ely S. Parker see Elisabeth Tooker, "Ely S. Parker," in *American Indian Intellectuals*, ed. Margot Liberty (New York: West Publishing, 1978): 15–26, and William H. Armstrong, *Warrior in Two Camps: Ely S. Parker, Union General and Seneca Chief* (New York: Syracuse University Press, 1978).

40. Letter, June 1, 1842, from Jemmy Johnson, John Blacksmith, John Luke, Ely S. Parker and others of Tonawanda to President Tyler, NARA, M234/584.

41. Hauptman, *The Tonawanda Senecas*, 61; letter of January 25, 1841, from Jemmy Johnson, John Blacksmith and others of Tonawanda to Secretary of War Joel R. Poinsett, NARA, M234/584.

42. Andrew Jackson, First Annual Address to Congress, the American Presidency Project, http://www.presidency.ucsb.edu/ws/?pid=29471.

43. Letter, May 23, 1844, from Buffalo Creek chief and warriors to (unnamed) President, NARA, M234/585.

44. Letter, July 18, 1853, from Ely S. Parker, Chief and Special Delegate for the Tonawanda Senecas, to Commissioner of Indian Affairs George W. Manypenny, NARA, M234/588.

45. Letter, October 17, 1856, from Ely S. Parker and N.H. Parker, delegates, to President Franklin Pierce, NARA, M234/588. See also Conable, "A Steady Enemy."

46. Cherokee Nation v. the State of Georgia, 30 U.S. 1 (1831). The opinion that Chief Justice John Marshall delivered for the court also held that "their relation to the United States resembles that of a ward to his guardian."

47. See an undated petition, received May 13, 1840, from Senecas to the (unnamed) President, NARA, M234/584. It seems the letter writers were unclear over who was president at the time, due to the recent election.

48. See petition, March 28, 1840, from Little Johnson, Captain Strong and many others, NARA, M234/584. It seems the letter writers were unclear over who was president at the time, due to the recent election.

49. Letter, May 23, 1844, from Buffalo Creek chief and warriors to (unnamed) President, NARA, M234/585.

50. Letter, October 7, 1856, from William Parker and many others to (unnamed) President, NARA, M234/588.

51. See Lisa Ford, *Settler Sovereignty. Jurisdiction and Indigenous People in America and Australia, 1788–1836* (Cambridge: Harvard University Press, 2010), 3.

52. Christopher Densmore, *Red Jacket: Iroquois Diplomat and Orator* (Syracuse: Syracuse University Press, 1999), 95ff. See also Dennis, *Seneca Possessed*, 23 and 213; Hauptman, *The Tonawanda Senecas*, 18–19; Ford, *Settler Sovereignty*, 1, as well as Alyssa Mt. Pleasant, "After the Whirlwind: Maintaining a Haudenosaunee Place at Buffalo Creek, 1780–1825," 120f., (PhD diss., Cornell University, 2007), ProQuest Dissertations and Theses (3255482).

53. The subsequent *Cherokee Nation* and *Worcester* decisions by Chief Justice Marshall implicitly rejected New York's 1822 legislation as unconstitutional, but in practice this mattered little. See Dennis, *Seneca Possessed*, 24.

54. See William N. Fenton, *The Great Law and the Longhouse: A Political History of the Iroquois Confederacy* (Norman: University of Oklahoma Press, 1998), 299. Others who have used the term include such as historians Francis Jennings, James Merrell and Daniel Richter.

55. See Fenton, *The Great Law and the Longhouse*, 33. See also Anthony F. C. Wallace, "Origins of the Longhouse Religion," in *Handbook of North American Indians*, 65.

56. For more on Iroquois diplomacy in the colonial era, see Timothy J. Shannon, *Iroquois Diplomacy on the Early American Frontier* (New York: Penguin, 2008).

57. Daniel K. Richter, *Facing East from Indian Country: A Native History of Early America* (Cambridge: Harvard University Press, 2001), 134.

58. See Hauptman, *Conspiracy of Interests*, 50–65. Especially for the witchcraft aspects of the Gaiwiio in the nineteenth century, see Dennis, *Seneca Possessed*. For a brief overview of the New Religion introduced by Handsome Lake see Dean R. Snow, *The Iroquois* (Oxford: Blackwell, 1994), 159–62, but also, more generally, Anthony F. C. Wallace, *The Death and Rebirth of the Seneca* (New York: Knopf, 1970), especially at 272.

59. See Fenton, *The Great Law and the Longhouse*, 308.

60. Letter, August 17, 1837, from Moses Schuyler, head chief, and Abraham Schuyler, chief, at Onondaga Castle, to (unnamed) President, NARA, M234/583.

61. See letter, October 2, 1837, from Buffalo Creek Seneca chiefs to President, NARA, M234/583.

62. Letter, February 28, 1838, from Big Kettle, James Robinson, Black Smith, and many others to Samuel Prentiss of the United States Senate, NARA, M234/583.

63. Letter, March 20, 1838, from James Robinson, Black Smith, John Kennedy, Zachariah Jimeson in the presence of Thomas Evans and Joseph Elkinton, NARA, M234/583.

64. Letter, January 8, 1845, from John Seneca and many others, NARA, M234/586.

65. Letter, March 20, 1838, from James Robinson, Black Smith, John Kennedy, Zachariah Jimeson in the presence of Thomas Evans and Joseph Elkinton, NARA, M234/583.

66. This interpretation was verbally confirmed by Iroquois William Patterson at a government council with Allegany chiefs on November 3 1840. He insisted that "the Allegany chiefs never gave sanction to the present treaty, except Long John and one or two others." Therefore, Patterson went on to explain, his people were "determined . . . never to emigrate to the West." See undated letter,

probably from November 1840, from William Devereux to Commissioner of Indian Affairs Hartley Crawford, NARA, M234/584.

67. See Hauptman, *The Tonawanda Senecas' Heroic Battle*.

68. This, however, did not mean that everything always happened at the councils; groups could have discussions before the official council so that they could instruct those who were to speak for them. There were also talks "in the bushes" during which matters could be raised once the council was underway, and groups could use these more informal meetings to come to understandings prior to a further day of council debates. See Fenton, *The Great Law and the Longhouse*, 467.

69. See Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650–1815* (Cambridge: Cambridge University Press, 1991), 132, 496.

70. See letter, February 28, 1838, from Big Kettle, James Robinson, Black Smith, and many others to Samuel Prentiss of the United States Senate, NARA, M234/583.

71. Letter, February 10, 1838, from "Chiefs and Sachems of the Six Nations of Indians residing in the State of New York" to President Martin Van Buren, NARA, M234/583.

72. Letter, December 30, 1843, from Tonawanda chiefs to Secretary of War J. M. Porter, NARA, M234/585.

73. For example, in 1849 they insisted that "by the customs of the Seneca Nation, no band [could] be divested of their right to the land occupied by such band without their assent." See letter, March 8, 1849, from John Blacksmith and many others of Tonawanda to Secretary of War Thomas Ewing, NARA, M234/587. Later the same year they made a similar statement, but in this instance they talked specifically of "voluntary assent" in order to discount signatures obtained through fraud, intimidation, and bribery. Letter, January 21, 1849, from John Blacksmith, Jimmy Johnson and many others of Tonawanda to Secretary of War William Marcy, NARA, M234/587.

74. See letter, October 17, 1856, from E. S. Parker and N. H. Parker, delegates, to President Franklin Pierce, NARA, M234/588. See also letter, June 23, 1849, from chiefs and head men of Tonawanda Band of Seneca Nation of Indians to Commissioner of Indian Affairs Orlando Brown, NARA, M234/588. As their fight continued, the Tonawanda speakers felt the need to state specifically that "the laws and usages of the Seneca Nation of Indians did not permit the chiefs + head men, residing on the Buffalo Creek, Cattaraugus and Allegany Reservations[,] to convey away the Tonawanda Reservation without the assent of the Indians occupying the same." Letter, June 23, 1849, from chiefs and head men of Tonawanda Band of Seneca Nation of Indians to Commissioner of Indian Affairs Orlando Brown, NARA, M234/588. Well into the 1850s the Tonawandas asserted that nothing that had not been universally agreed upon could be considered an agreement that had to be kept. Through the Parker brothers as delegates they reiterated that they had refused to become parties to the two treaties, pointed out that "not a single chief or individual of our Band ever approved of them or executed them," and concluded that they had "never entered into any agreement or contract with any for the sale of . . . [their] lands." Letter, October 17, 1856, from E. S. Parker and N. H. Parker, delegates, to President Franklin Pierce, NARA, M234/588.

75. This self-description as head chief was inaccurate as Parker was not *Tadohado*, but it was how Parker referred to himself in this letter. Letter, July 18, 1853, from Ely S. Parker, Head chief and representative of the Six Nations, to Commissioner of Indian Affairs George W. Manypenny, NARA, M234/588. See also Hauptman, *The Tonawanda Senecas*, 96. Parker's use of the term Confederacy here is unusual as it seems to refer to the Great League of the Iroquois. Scholars generally consider the League to have been replaced by something they have referred to as the Confederacy. However, this is a modern scholarly term. See Daniel K. Richter, "Ordeals of the Longhouse: The Five Nations in Early American History," in *Beyond the Covenant Chain: The Iroquois and their Neighbors in Indian North America, 1600*–1800, eds. Daniel K. Richter and James H. Merrell (Syracuse: Syracuse University Press, 1987).

76. See Hauptman, *The Tonawanda Senecas*, 82.

77. See, for instance, letter, January 15, 1835, from Buffalo Chiefs to Secretary of War Lewis Cass, NARA, M234/583 and letter, July 13, 1839, from Jemmy Johnson, Black Smith, Black Chief, Blue Sky and several others, NARA, M234/583; letter, April 14, 1841, from Maris B. Pierce to Secretary of War John Bell, NARA, M234/584; and letter, May 19, 1845, from Peter Sky and others to (unnamed) President, NARA, M234/586. On some of the frustrations faced by delegations, see the examples in Hauptman, *The Tonawanda Senecas*, 75.

78. See letter, November 24, 1837, from Elijah Schenadoah and others to (unnamed) President, NARA, M234/583. See also letter, March 20, 1838, from James Robinson, Black Smith, John Kennedy, Zachariah Jimeson, in the presence of Thomas Evans and Joseph Elkinton, NARA, M234/583.

79. See letter, April 16, 1844, from Tonawanda chiefs to President John Tyler, NARA, M234/585.

80. Recent scholarship has "revealed that Iroquois success was usually more the result of diplomacy, adaptation, and necessity than of military genius or strength." Richard Aquila, *The Iroquois Restoration: Iroquois Diplomacy on the Colonial Frontier, 1701–1754* (Lincoln: University of Nebraska Press, 1983), 6.

81. Letter, November 11, 1840, from Henry Two Guns, speaker of the council of chiefs, Buffalo Creek, to Secretary of War Joel R. Poinsett, NARA, M234/584.

82. For instance, see Letter, January 20, 1835, from Thomson (S.) Harris and Little Johnson, Buffalo Reservation, to Secretary of War Lewis Cass, NARA, M234/583. See also letter, March 30, 1840, from "non-Emigrationist" Tuscarora chiefs to Secretary of War Joel R. Poinsett, NARA, M234/584; letter, January 15, 1835, from Buffalo Chiefs to Secretary of War Lewis Cass, NARA, M234/583; and letter, May 20, 1858, from Edward Pusse, President of Seneca Nations of Indians, to Phillip E. Thomas (a Quaker), NARA, M234/589.

83. See letter, April 16, 1839, from William King, Joseph Isaac, Jack Wheelbarrow and others, NARA, M234/583. See also Conable, "A Steady Enemy."

84. See letter, January 26, 1844, from Tonawanda chiefs to President John Tyler, NARA, M234/585.

85. See letter, February 19, 1855, from Joshua Turkey and many others to Commissioner of Indian Affairs George W. Manypenny, NARA, M234/588. Joshua Turkey is identified as a Seneca warrior (not as a chief) by a Quaker list. See Society of Friends, Executive Committee of the Yearly Meetings, *The Case of the Seneca Indians in the State of New York* (Philadelphia: Merrihew and Thompson, 1840).

86. The role of women was affected by white contact and especially efforts to suppress their influence by colonial agents such as Sir William Johnson and missionaries such as the Quakers. See for instance Diane Rothenberg, "The Mothers of the Nation: Seneca Resistance to Quaker Intervention," in *Women and Colonization*, ed. Mona Etienne and Eleanor Burke Leacock (New York: Holt, Rhinehart and Winston, 1980), 65–82, and John Mohawk, "The Power of Seneca Women and the Legacy of Handsome Lake," in *Native Voices: American Indian Identity and Resistance*, ed. Richard A. Grounds, George E. Tinker, and David E. Wilkins (Lawrence: University Press of Kansas, 2003), 20–34. Hauptman mentions the influence of the clan mothers of Tonawanda but there is little textual evidence in the letters analysed here to address his argument. See Hauptman, *The Tonawanda Senecas*, xxi, 67f, often referring to Deborah Doxtator, "What Happened to Iroquois Clans? A Study of Clans in Three Nineteenth-Century Rotinonhsyonni Communities," (PhD diss., University of Western Ontario, 1996), ProQuest Dissertations and Theses (NQ21284).

87. The council met in the presence of warriors and women and rarely diverged from a consensus but attendees could choose to stay silent. See Wallace, *The Death and Rebirth of the Seneca*, 39.

88. Hauptman, *The Tonawanda Senecas*, 64, xxiii.

89. White men, such as John H. Martindale, attorney for the Tonawanda Senecas, at times also helped with petitions, although he seems to have had no direct input into the ones analyzed here.

90. Hauptman, *The Tonawanda Senecas*, 78.

91. See Olive Patricia Dickason, *The Myth of the Savage and the Beginnings of French Colonialism in the Americas* (Edmonton: University of Alberta Press, 1984), 278. Prior to European arrival Iroquois villages seem to have moved periodically, which also would have given its members the chance to join another village.

92. Ibid. In another interpretation, historian Gail MacLeitch has suggested that "challenges to their territorial integrity caused some Iroquois to revise notions of selfhood by emphasizing a link between origins and land." See Gail D. MacLeitch, *Imperial Entanglements: Iroquois Change and Persistence on the Frontiers of Empire* (Philadelphia: University of Pennsylvania Press, 2011), 158.

93. There appear to have been several groupings of removal supporters among the Iroquois. Apart from some groups of Oneidas who emigrated in the 1820s and 1830s, some under the leadership of Mohawk missionary Eleazar Williams, the most sizable group of supporters seems to have been based at Buffalo Creek and encompassed men such as Captain Pollard or Young King of the Christian Village (both long-time rivals of the by then-deceased Red Jacket), Little Johnson, and White Seneca. Thomson S. Harris often served as their spokesperson. Some of these removal supporters finally did go west in the mid-1840s but this removal was to cost the lives of many of them. See Claudia B. Haake, "'In the same predicament as heretofore': Pro-Removal arguments in Seneca letters from the Buffalo Creek Reservation in the 1830s and 40s," *Ethnohistory*, forthcoming. See also Karim Michael Tiro, "The People of the Standing Stone: The Oneida Indian Nation from Revolution through Removal, 1765–1840," (PhD diss., University of Pennsylvania, 1998), ProQuest Dissertations and Theses (9953604).

94. See Conable, "A Steady Enemy."

95. Some of the supporters of the new system may have backed it for other reasons as well. For instance, Mary Conable suggests that Cayuga physician Peter Wilson supported the new form of government as it potentially enabled him to participate in it, while under the traditional system as a Cayuga resident among Senecas he would have been unable to do so. See Conable, "A Steady Enemy," 345–46. The Tonawanda Senecas at least initially retained their traditional system but also had to accept some state intrusions into the system of governance after they had bought back some of their lands. See Hauptman, *The Tonawanda Senecas*, chapter 9.

96. This changed when a party including the old chiefs was elected. For a discussion of Quaker influence on the creation of the Seneca Nation, see Hauptman, *Conspiracy of Interests*, and William H. Armstrong, *Warrior in Two Camps*.

97. Thomas Abler, "Friends, Factions and the Seneca Nation Revolution of 1848," *Niagara Frontier* 21 (1974): 76.

98. Letter, February 19, 1855, from Joshua Turkey and many others to Commissioner of Indian Affairs George W. Manypenny, NARA, M234/588.

99. See Mt. Pleasant, "After the Whirlwind," 151.

100. See Conable, "A Steady Enemy."

101. See Thomas S. Abler and Elisabeth Tooker, "Seneca," in *Handbook of North American Indians*, 512.

102. Tooker, "Iroquois Since 1820," *Handbook of North American Indians*, 453.

103. There were, however, relatively small groups who advocated removal or were at least willing to consider it. But even these proponents of the policy seem to have at least initially have felt that their support of the policy should not be binding on other Iroquois. See Haake, "'In the same predicament as heretofore.'"

104. Hauptman, *The Tonawanda Senecas*, 87.