

"We Have Never Parted with Such a Power" – Assertions of First Nations' Sovereignty and the Right to Trade and Travel in the Seventeenth- and Eighteenth-Century Great Lakes Region, by Jonathan Hart and Joan Holmes

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Aboriginal groups have challenged the federal government's authority to restrict their movement and right to trade freely across the current American-Canadian border. The roots of this issue extend back to the early contact period.

Even before formal European colonial boundaries were established, Europeans sought to direct and control the movement of trade to their advantage. First Nations resisted European efforts to constrain their movements and to direct their economic activity. While actively pursuing a trade relationship with Europeans, they repeatedly asserted their autonomy through both words and actions. Historically, aboriginal people tried to maintain their relationship with Europeans within the parameters of their own cultural values, encouraging Europeans to understand their cultural terrain and respect their sovereignty.

Ongoing diplomatic negotiations facilitating free movement were an essential component of aboriginal practices. To pass peacefully through or use neighbouring territories, aboriginal traders followed established protocols that required them to respect the principles of alliance, which involved the establishment of real and metaphorical kinship ties,¹ reciprocal gift giving and respectful resource harvesting. The aboriginal understanding of territorial use and inter-group boundaries was based on aboriginal cultural values, and was radically different from the European mercantile system.

In some instances, European colonies found it advantageous, economically and militarily, to exploit existing relationships between First Nations and to take advantage of their ability to forge new alliances amongst themselves. With respect to European trade, First Nations often acted as intermediaries and middlemen between disparate and competitive colonial powers.

¹ Richard White, The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650-1815 (Cambridge: Cambridge University Press, 1991) pp. 15-16.

Focusing on the geographical area of North America that currently encompasses the international border from the upper St. Lawrence through the Great Lakes, this paper highlights moments in which First Nation traders and leaders made declarations of sovereignty and agency. From early contact in the seventeenth century onwards, aboriginal groups consistently asserted their right to manage and control their boundaries in response to colonial attempts at controlling their movements. It was through this constant assertion by First Nations that European and North American governments in the seventeenth and eighteenth centuries came to recognize and acknowledge the aboriginal right of First Nations to travel and trade across the imprecise boundaries that the colonial powers had unilaterally drawn between their own spheres of influence.

Before contact, First Nations were connected through a complex network of trade and diplomatic relations. Though serving an economic function, trade also maintained and reinforced social and diplomatic alliances. These trading relations were within the dominion of participating First Nations who controlled their own boundaries, acting in accordance with their own cultural and socio-economic values to monitor the use of their lands. Trade was often carried on in areas where far-flung groups congregated for seasonal resource harvesting, such as prominent fishing locations.

The archaeological record from the area of central North America that is now transected by the Canadian-American border demonstrates that there were established trade networks in the pre-contact period.² The addition of European, and later North American, trade interests radically disrupted relationships amongst First Nations, reorienting trade patterns, exacerbating previously existing diplomatic tensions and creating new alliances and conflicts. The economic and cultural geography of North America was radically altered and the aboriginal map was redrawn.

European powers established spheres of influence across North America that reflected their military and economic relations with other Europeans. These territorial divisions were superimposed on the existing aboriginal map. However, First Nations influenced the geographical scope of European areas of interest both in terms of their trading

² J. V. Wright and Roy L. Carlson, "Prehistoric Trade" in Historical Atlas of Canada, Volume 1, From the Beginning to 1800 R. Cole Harris, ed. (Toronto: University of Toronto Press, 1987) Plate 14. See also J. V. Wright, Ontario Prehistory: An Eleven-Thousand-Year Archaeological Outline (Ottawa: National Museum of Man, 1972) Map 5, pp. 48-49, and J. V. Wright and R. Fecteau, "Iroquoian Agricultural Settlement" in Historical Atlas of Canada, Volume 1, From the Beginning to 1800 R. Cole Harris, ed. (Toronto: University of Toronto Press, 1987) Plate 12.

partnerships with the various powers, and in the context of relationships between First Nations which ultimately determined access to trade routes subject to the authority of the aboriginal owners of the land.

The evolution of regional economic competition through negotiations between various European national interests in North America created trade zones which had little direct impact on the movement of aboriginal people. Mobility across aboriginal boundaries continued to be defined by relationships between First Nations. The examples developed in this paper concern the trade conducted by Iroquoian and Algonquian First Nations with both French and English colonies.

Aboriginal traders considered that they determined their own level of activity in trade. They chose their own trade partners, be they aboriginal or European, and exploited alliances to further their own interests. The value of aboriginal trading partners to European traders was enhanced by their ability to trade with whomsoever they chose wherever they chose, which Europeans initially recognized and encouraged, though they often regarded aboriginal people as suppliers to be manipulated and even as mere carriers of trade goods. Eventually, Europeans sought to control First Nations in their exercise of their right to trade and travel freely, an issue which was also a continual source of conflict between European powers.

In response, First Nations adopted a number of strategies. There was both accommodation and resistance to these changes in their trading frontiers. First Nations in many cases emphatically asserted their right to free and unimpeded movement and their right to negotiate diplomatic and trading relations with other First Nations or Europeans. Other responses included the formation of multi-ethnic communities and the evolution of pan-Indian resistance movements.

In the early seventeenth century, there were two European colonies established within relatively close proximity to the present border. One encompassed the French settlements on the St. Lawrence River; the other was the Dutch colony in modern-day New York. The French established trade relationships with the Huron and their Algonquian trading partners; the Dutch traded with the Haudenosaunee, commonly referred to in historical literature as the Five Nations Iroquois. In 1664, the Dutch colony of New Netherland became the English colony of New York, though Dutch traders remained extremely prominent in the fur trade.

The Huron were involved in extensive trade with their Algonquian and Iroquoian neighbours of the Great Lakes. Europeans brought items that became highly valued either for their utilitarian or spiritual attributes. In turn, European markets placed a high value on the peltries of these nations.

European powers soon began to compete to attract and monopolize trade with First Nations by interfering in diplomatic relations between different aboriginal groups. As early as 1623, the French attempted to disrupt diplomatic alliances between the Huron and Haudenosaunee in an effort to control the Huron-Algonquian trade. A French expedition to Huronia, which included Recollet priests Father Joseph le Caron and Father Gabriel Sagard, was instructed to prevent a peace alliance between the Huron and Haudenosaunee.³ French officials feared that if peace was achieved, the Iroquois would bypass the French and bring the Huron and Algonquian furs to the Dutch posts on the Hudson.⁴

Strategic manoeuvrings were not limited to the French. Some Iroquois ambushed the Ottawa River route from the upper Great Lakes to seize furs, harvested from around the Great Lakes, which were destined for the French market at Montreal, and to pressure the Huron, Ottawa, and French traders into a trade alliance.⁵

Aboriginal groups made diplomatic alliances amongst themselves which dealt with land use management. In 1645/46, several Algonquian nations, Hurons, and Haudenosaunee in council at Trois Rivières agreed to allow the Iroquois access to hunting grounds north of the lower lakes.⁶ While confirming the peace, Tesouehat, an Algonquin leader who was also called Le Borgne, expressed the principle that the land should be open for all to use: "... that the chase be everywhere free; that the landmarks and boundaries of all

³ Francis Jennings, The Ambiguous Iroquois Empire: The Covenant Chain Confederation of Indian Tribes With English Colonies from its beginnings to the Lancaster Treaty of 1744 (New York, London: W. W. Norton & Company, 1984) pp. 86-87.

⁴ George T. Hunt, The Wars of the Iroquois: A Study in Intertribal Relations (Madison: University of Wisconsin Press, 1968) pp. 69-70.

⁵ Hunt, p. 36.

⁶ Victor P. Lytwyn, "A Dish With One Spoon: The Shared Hunting Grounds Agreement in the Great Lakes and St. Lawrence Valley Region" in Papers of the Twenty-Eighth Algonquian Conference David H. Pentland ed. (Winnipeg: University of Manitoba, 1997) pp. 213-214.

those great countries be raised; and that each one should find himself everywhere in his own country."⁷

The French continued to attempt to control trade. In 1684, an unsuccessful endeavor by an armed expedition led by the French Governor, Joseph Antoine Lefebvre de la Barre, to militarily intimidate the Haudenosaunee resulted in an heated diplomatic exchange. La Barre, adopting an authoritative tone, berated the Haudenosaunee for seizing the goods of French traders in the Great Lakes, attacking the Illinois and Miamis, and for bringing the English to the Great Lakes, "with a design to ruine the Commerce of his Subjects and to oblige these Nations to depart from their due Allegiance."⁸

Haudenosaunee leaders responded by declaring their sovereignty. Otreouti, an Onondaga sachem and orator,⁹ eloquently asserted the Haudenosaunee right to control their own trading relationships and which nations affected or passed through their territory.

Otreouti asserted both Haudenosaunee territorial rights in the Great Lakes and sovereignty equal to that of France and Britain. He also made it clear that there were definite Haudenosaunee boundaries that could not be crossed without permission.

Otreouti stated:

You must know Onnontio [the French governor], we have robb'd no French-Men but those who supplied the Illinese [Illinois] and Oumamis [Miamis] (our Enemies) with Fusees [muskets], with Powder, and with Ball: These indeed we took care of, because such Arms might have cost us our life. ...

We have conducted the English to our Lakes, in order to traffick with the Outaouas [Ottawa], and the Hurons; just as the Algonkins conducted the French to our five Cantons, in order to carry on a Commerce that the English lay claim to as their Right. We are born Freeman, and have no dependence either upon the Onnontio or the Corlar [the New York governor]. We have a power to go where we please, to conduct who we will to the places we resort to, and to buy and sell where we think fit. If your Allies are your

⁷ Lytwyn, p. 214.

⁸ Reuben Gold Thwaites, ed., New Voyages to North-America by the Baron de Lahontan Reprinted from the English edition of 1703, with facsimiles of original title pages, maps, and illustrations, and the addition of Introduction, Notes, and Index Volume I (New York: Burt Franklin, 1905) p. 78.

⁹ Thomas Grassman, "Otreouti" in Dictionary of Canadian Biography, Volume 1, 1000 to 1700 George Brown, ed. (Toronto: University of Toronto Press, 1979) pp. 525-526. Note: There were many different spellings of Otreouti. The French called him La Grande Gueule or Big Mouth. Lahontan referred to him as Grangula.

Slaves or Children, you may e'en treat them as such, and rob 'em of the liberty of entertaining any other Nation but your own.¹⁰

Otreouti particularly objected to the French expropriating aboriginal settlement areas for the use of French troops. He pointed out that the presence of a large armed force at Fort Frontenac was considered by the Haudenosaunee to be a violation of their trade agreement, which had not included a military occupation of Haudenosaunee lands:

... that 'twas then stipulated, that the Fort should be us'd as a place of retreat for Merchants, and not a refuge for Soldiers; and that instead of Arms and Ammunition, it should be made a Receptacle of only Beaver-Skins, and Merchandize Goods. ...¹¹

Access to European trade items, particularly iron goods, was a valuable resource for First Nations. Allowing passage through ancestral lands and facilitating contact with European traders encouraged agreements between First Nations that often included shared resource use and military alliance, based on their cultural understanding of territorial use. Europeans often misunderstood the dynamics of their relationship with aboriginal people, assuming that a trading relationship, cemented by declarations of metaphorical kinship, conferred upon them a patriarchal authority which, to the Europeans, implied a much more pervasive control than First Nations were prepared to acknowledge. Though anxious to accommodate and continue their trading relationship with Europeans, First Nations often refused to be drawn into European conflicts and acted in their own interests.

First Nations also tried to entice Europeans into participating in their own inter-nation disputes. At Montreal in 1695, the French Governor, Count Frontenac, had a meeting with representatives of the Ottawa, Huron and Saulteur. Chingouabé, a leader of the Saulteur of Chequamegon, Lake Superior, wanted to thank Frontenac, "for having given them some Frenchmen to dwell with them."¹² He further solicited assistance from Frontenac in a war which the Dakota and the Saulteur were waging with the

¹⁰ Thwaites, ed., Lahontan, Volume I, pp. 80-83.

¹¹ Thwaites, ed., Lahontan, Volume I, p. 83.

¹² E. B. O'Callaghan, ed., Documents Relative to the Colonial History of the State of New York; Procured in Holland, England and France by John Romeyn Brodhead, Agent, Volume IX (Albany: Weed, Parsons and Company, Printers, 1855) p. 609. See also Gary Clayton Anderson, Kinsmen of Another Kind: Dakota-White Relations in the Upper Mississippi Valley, 1650-1862 (St. Paul: Minnesota Historical Society Press, 1997) pp. 34-35.

Meskwahki•haki (the Fox)¹³ and the Mascoutens. Chingouabé was accompanied by a Dakota representative, named Tioskate, who spoke for 22 Dakota villages. Tioskate requested protection from the French. The Dakota were not asking for actual military assistance, however; they wanted French trade representatives from the French Governor, "a father that will send them Frenchmen to supply them with Iron of which they only begin to have a knowledge."¹⁴ Tioskate stated that "All the Nations had a Father who afforded them protection, all of them have Iron; that is every necessary."¹⁵ He further requested the right to trade at Montreal when he petitioned:

... that a path be opened to them, by which they may come here like the rest; that he had as yet done nothing to render him worthy of protection, but if the Sun could enlighten him on the path from his country to this place, t'would eventually be seen that the Scioux are men, and that all the nations in whose presence he speaks, know it.¹⁶

Though not explicitly stated, the Saulteur of Chequamegon, who already had a trade relationship with the French, were requesting that the French extend the same privileges to the Dakota. In this period, the Saulteur, had hunting privileges on the fur rich Dakota lands. In return, the Saulteur offered the Dakota military assistance as well as vouching for and attempting to mediate trade for the Dakota with their European trading partner.

Though the ceremonial appeal had been to establish a metaphorical kinship relation with a "Father", Tioskate referred to Frontenac as the "Master of Iron" and addressed him as "Great Captain."¹⁷ The Dakota leader stressed the wealth of his country when he advised Frontenac to "Take courage, Great Captain, and reject me not; despise me not, though I appear poor in your eyes. All the Nations present know that I am rich and that the little that they offer there is taken on my lands."¹⁸

¹³ Charles Callender, "Fox" in *Handbook of North American Indians*, Volume 15, *Northeast* William C. Sturtevant and Bruce G. Trigger, eds. (Washington: Smithsonian Institution, 1978), pp. 636, 646. Note: Callender explained that Meskwahki•haki meant 'Red Earths' and that the French commonly called the Fox the Outagami.

¹⁴ O'Callaghan, ed., Vol. IX, p. 610.

¹⁵ O'Callaghan, ed., Vol. IX, p. 610.

¹⁶ O'Callaghan, ed., Vol. IX, p. 610.

¹⁷ O'Callaghan, ed., Vol. IX, p. 610.

¹⁸ O'Callaghan, ed., Vol. IX, p. 610.

In this conference, Frontenac acquiesced to the Dakota request to be received as "children" as long as they would "hear only their father's voice and be obedient to him."¹⁹ Tioskate expressed his happiness at the establishment of a relationship with the French but then added a further contingency to the establishment of trade: he wanted Frontenac to mediate the return of Dakota prisoners among the Fox, Ottawa and Huron.²⁰

Frontenac, reminding Chingouabé of the trading advantages which the French offered the Saulteur of Chequamegon, asked that they not involve themselves in the Dakota quarrels with the Fox and Mascouten. He encouraged them to think only of making war on the Haudenosaunee in accordance with French political and military interests. Chingouabé sidestepped Frontenac's attempt to control the Saulteur relationship. He had come to request assistance in a conflict that affected his immediate livelihood and to mediate Dakota-French trade. He explained that there were cultural differences between the French and the Saulteur concept of leadership, tacitly and diplomatically asserting the Saulteur right to independent action:

Father: It is not the same with us as with you. When you command all the French obey you and go to war. But I shall not be heeded and obeyed by my nation in like manner. Therefore, I cannot answer except for myself and those immediately allied or related to me. Nevertheless I shall communicate your pleasure to all the Sauteurs, and in order that you may be satisfied of what I say, I will invite the French who are in my Village to be witnesses of what I shall tell my people on your behalf.²¹

Diplomatic transactions between First Nations continued to thwart European attempts to dominate trading partnerships. In a document dated June 19, 1700, Robert Livingston, the Secretary for Indian Affairs at Albany, reported an account of two Dutchmen, Messrs. Groenendyke and Provoost, who recently had been at the Onondaga villages. There they had learned that, during the past winter, some Algonquians had warned the Seneca that the French were pressuring the western Algonquians to attack the Haudenosaunee. The Algonquians rejected the French request to make war on the Haudenosaunee. Also present at the Onondaga village were representatives of three Algonquian nations who had come to negotiate a peace with the Haudenosaunee. These Algonquians, who were

¹⁹ O'Callaghan, ed., Vol. IX, p. 610.

²⁰ O'Callaghan, ed., Vol. IX, p. 611.

²¹ O'Callaghan, ed., Vol. IX, p. 612.

described as "strong and numerous",²² proposed to settle on the north shore of Lake Ontario. They wanted to open trade relations with the English at Albany which involved negotiating passage through Haudenosaunee lands and compensating the Haudenosaunee for their trading contacts. Though the English were eventually informed of these proceedings, these negotiations were independently conducted between First Nations during the winter hunting season.²³

It is important to recognize the significance of diplomacy and trade in the Algonquian occupation of south and central Ontario in this period. Without denying the effectiveness of Francophile Algonquian ambushes of Haudenosaunee hunting parties, it should be observed that peaceful encounters between Algonquian-speaking hunters and Haudenosaunee hunters did occur. Despite the attempts of the French to exert control of their diplomatic and trading relationships, Algonquians chose to establish independent trade relations with the Haudenosaunee. The Algonquian negotiators understood that peaceful relations safeguarded proximity to the Haudenosaunee in this valuable hunting territory as well as providing them with ready access to Albany. For the Haudenosaunee, the proposed settlement of this contentious area by friendly groups of Algonquians linked by trade and permissive hunting rights was a peaceful resolution to the preceding years of debilitating warfare.

On June 30, 1700, Haudenosaunee sachems arrived at Albany to explain what had happened at Onondaga with the representatives of the three Algonquian Nations. The proposed terms of their agreement were quite clear. The sachems reported that the Algonquians had stated that:

Wee are come to acquaint you that wee are settled on y^e North side of Cadarachqui Lake near Tchojachiage where wee plant a tree of peace and open a path for all people, quite to Corlaer's house, where wee desire to have free liberty of trade; wee make a firme league with y^e Five Nations and Corlaer and desire to be united in y^e Covenant Chain, our hunting places to be one, and to boil in one kettle, eat out of one dish, & with one spoon, and so be one; and

²² E. B. O'Callaghan, ed., Documents Relative to the Colonial History of the State of New York; Procured in Holland, England and France by John Romeyn Brodhead, Agent, Volume IV (Albany: Weed, Parsons and Company, Printers, 1854) p. 691.

²³ O'Callaghan, ed., Vol. IV, p. 691, 694.

because the path to Corlaer's house may be open & clear, doe give
a drest elke skin to cover y^e path to walke upon.²⁴

The Haudenosaunee told the Albany commissioners that they had accepted these Algonquian nations in a long lasting peaceful alliance, and intended to assist them in establishing trade at Albany. The Haudenosaunee had promised the Algonquians that they would be "well received and treated by us in our Castles."²⁵

Similarly there were overtures of peace and trade made to the Haudenosaunee by members of the French Mission Indians in June of 1700. They stated that, "[w]ee are come here to trade with you as formerly, and therefore desire you to use us well, and receive us kindly being only come here on the score of trade".²⁶

Throughout this period, First Nations conducted their trade with both the English and the French. In October of 1700, Onondaga and Seneca sachems reported their negotiations with the French Governor, Louis Hector de Callières, to an English colonel. Callières had pragmatically realized that the ability to control Haudenosaunee trade with the English or other nations was limited. The sachems contended that Callières had stated, "Children I know very well yo^r Brother Corlaer makes much of Beavers, but I like Moose & Elk skins w^{ch} you may sell to me; also if y^e remote Indians have a mind to trade wth your people I will not hinder it".²⁷

Other French commanders were less practical, and went to varied lengths to exert control with differing results. For example, on May 20, 1707, a group of Mississauga and Saulteur, having traded a portion of their pelts at Fort Frontenac, asked the French agent, Sieur de la Gorgendière, to seek the leave of Tonty, the French Commander, to travel to Onondaga to trade for corn. Tonty declined to approach the Mississauga and Saulteur until they had spoken to him directly. Consequently, the Saulteur and Mississauga proceeded to Onondaga without any further contact.²⁸

²⁴ O'Callaghan, ed., Vol. IV, p. 694.

²⁵ O'Callaghan, ed., Vol. IV, p. 695.

²⁶ O'Callaghan, ed., Vol. IV, p. 692.

²⁷ O'Callaghan, ed., Vol. IV, pp. 798-799.

²⁸ Richard A. Preston, transl., and Leopold Lamontagne, ed., Royal Fort Frontenac (Toronto: The Champlain Society, 1958) p. 206.

The following month another group of Mississauga and Saulteur traders, trading at Fort Frontenac, had reserved their beaver pelts for trade at Onondaga. When they told Commander Tonty that they were going to Onondaga he denied them passage. The Mississauga and Saulteur were puzzled by his response and attempted to resolve the problem by resorting to established aboriginal protocol, that is, to offer gifts. Though Tonty accepted the furs, he still prohibited their trading expedition. It is interesting to observe that it was the Haudenosaunee at the fort who complained of the commandant's breach of manners. In 1707, François Clairambault d'Aigremont, assistant to the French Intendant Jacques Raudot,²⁹ explained that:

... the said Mississaugas and Sauteurs said among themselves, "It is because we have not given him any presents," and said to M. de Tonty that they would come back to see him that evening, which they did and brought him a moose-hide and four beavers, saying to him, "we again ask, by these skins that the road to the English be opened"; that M. de Tonty kept these skins and did not let them pass, which had a bad effect on the minds of these Indians and on the Iroquois who were present who complained about it to me; when the thing requested is not granted, the presents ought not to be kept – such is the custom of the Indians.³⁰

In 1709 the French resorted to murdering Mohawk-French trade guide Alexander Montour, who was regularly escorting Mississauga, Saulteur and other Anishnaabeg groups to Albany. The Anishnaabeg party which accompanied Montour seized the murderer, Louis Thomas Chabert de Joncaire, a French officer popular with the Seneca, and brought him to the nearest Cayuga town for justice.³¹ Undeterred by this attempt to obstruct their trade, this group proceeded on their journey to Albany in the company of Montour's sister, and negotiated with the Albany Commissioners for a trade agreement. They promised the Commissioners on May 17, 1709 that, "if we are well treated we shall always keep the Path clean & open & forget the old Path to Canada w^{ch} we have hitherto used."³² Expressing regret at the death of their guide, the Anishnaabeg maintained that

²⁹ Étienne Taillemite, "Clairambault d'Aigremont, François" in Dictionary of Canadian Biography. Volume II, 1701 to 1740 David M. Hayne, ed. (Toronto: University of Toronto Press, 1982) pp. 146-147.

³⁰ Preston and Lamontagne, pp. 206-207.

³¹ Daniel K. Richter, The Ordeal of the Longhouse: The Peoples of the Iroquois League in the Era of European Colonization (Chapel Hill and London: University of North Carolina Press, 1992) p. 225.

³² Peter Wraaxall, An Abridgment of the Indian Affairs Contained in Four Folio Volumes, Transacted in the Colony of New York, from the Year 1678 to the Year 1751 Charles Howard McIlwain, ed. (Cambridge: Harvard University Press 1915) p. 66.

future trade at Albany was conditional. They requested that the traders at Albany "treat Civily with us & give us Merchandise at a reasonable rate. You see our company is but small, but there shall come such a Company from our Nation hereafter as you will wonder at."³³

The British and French continued to compete for aboriginal trading partnerships after the 1713 Treaty of Utrecht recognized aboriginal trading freedoms. Between 1702 and 1713 England and France had been at war. This war was enacted on the frontiers between New France and some of the colonies which comprised New England. During this period, the Haudenosaunee had precariously maintained their neutrality with the English and French. This was to the advantage of the colony of New York as Haudenosaunee territory provided a geographical buffer between New France and New York thus protecting New York from French attacks.³⁴ Algonquian trade with the Haudenosaunee and their English and Dutch contacts flourished despite French efforts to control and restrict it.

The War of the Spanish Succession, or Queen Anne's War, was formally concluded with the Treaty of Utrecht on July 13, 1713. This document codified the right of First Nations to trade with either European power and to enter into French or British areas without any interference. Article XV of the treaty included the following provision concerning North America:

The Subjects of France inhabiting Canada, and others, shall hereafter give no Hindrance or Molestation to the five Nations or Cantons of Indians, subject to the Dominion of Great Britain, nor to the other Natives of America who are Friends to the same. In like manner, the Subjects of Great Britain shall behave themselves peaceably towards the Americans, who are Subjects or Friends to France; and on both sides they shall enjoy full Liberty of going and coming on account of Trade. Also the Natives of those Countrys shall, with the same Liberty, resort, as they please, to the British and French Colonys, for promoting Trade on one side and the other, without any Molestation or Hindrance, either on the part of the British Subjects, or of the French. But it is to be exactly and

³³ Wraxall, pp. 65-66.

³⁴ Thomas Elliot Norton, The Fur Trade in Colonial New York, 1668-1776 (Madison: University of Wisconsin Press, 1974) p. 72.

distinctly settled by Commissarys, who are, and who ought to be accounted the Subjects and Friends of Britain or of France.³⁵

After the Treaty of Utrecht, the area around Niagara, Lake Erie and the southern shores of Lake Ontario became an area which both French and British traders sought to control. It was in these areas that many First Nations had established connections with Haudenosaunee middlemen which enabled them to obtain passage to Albany. The French Governor, Philippe de Rigaud, Marquis de Vaudreuil, in an effort to impede trade with the Haudenosaunee and the British, "sought to establish a permanent French presence at either or both of two strategic spots along the trade route: Irondequoit or Niagara, where western Indians passed between the upper lakes and Lake Ontario."³⁶

The French attempted to dissuade Algonquians from trading at Albany. *An Abridgment of the Indian Affairs*, by the Secretary to Sir William Johnson, Peter Wraxall, contained many reports of attempts to obstruct First Nations. Several 1719 entries referred to French efforts to siphon off Algonquian furs before the Algonquian traders arrived at Albany. Aboriginal traders ignored these attempts to hinder their trading in the colony of New York and continued their journeys, asserting their right to travel and trade where they chose. They travelled from such locations as the west end of Lake Erie, and as far away as the Mississippi, to trade at Albany.³⁷

A major figure in the French attempt to intercept trade with Albany was French officer Sieur de Joncaire. With tremendous prestige as an adopted member of the Seneca, Joncaire cultivated a large Francophile following. It was through his influence that some Seneca permitted the building of a fortified trading post at Niagara. The Albany traders and the New York Governor requested that the Seneca expel him from their cantons and tear down the post. The Seneca, though not unanimous in their support of this post, were reluctant to commit such an act of aggression and refused to be directly involved in trade disputes between European colonies. They explained that this policy would antagonize the French and that Albany traders should implement these radical policies themselves.³⁸

³⁵ Treaty of Peace and Friendship Between the Most Serene and Most Potent Princess Anne, by the Grace of God, Queen of Great Britain, France, and Ireland, and the Most Serene and Most Potent Prince Lewis XIV, the Most Christian King [also known as the Treaty of Utrecht], July 13, 1713.

³⁶ Richter, p. 246. See also Wraxall, pp. 113-114.

³⁷ Wraxall, pp. 122-123.

³⁸ Wraxall, p. 126.

The Haudenosaunee pointedly explained to the Albany traders that the clandestine fur trade between Albany and New France was furnishing the French posts with essential goods:

You say that Jean Coeur [Joncaire] is to stay among us this Winter & that hele make it his Interest to hinder the far Indians from coming to Trade here [Albany], You can better prevent his hindering those Indians from coming to Trade here than we, for if you do not supply the French with Goods from hence they cant furnish the Far Indians with what they want & hardly those who live near them for they get but little Goods themselves from France, we are desirous to know whether you will send a Messenger to our Country to banish Jean Coeur from thence & write to the Gov^r of Canada about that Subject.³⁹

After the 1713 Treaty of Utrecht, the French began to reestablish fur trade posts that had been abandoned in 1696. The French were attempting to counteract the trade that had developed between Albany and First Nations who had previously traded with the French either in the upper Great Lakes or at Montreal. The reestablished posts included: Michilimackinac on the south side of the Straits of Makinac; Fort LaBaye, Green Bay, Wisconsin; Fort Lapointe, on Madelaine Island in Chequamegon Bay, Lake Superior; Fort Ouiatenon on the Wabash River, close to West Lafayette, Indiana; Fort Miami, now Fort Wayne, Indiana; Fort St. Joseph, Niles, Michigan; Fort Pimitoui, on the Illinois River near modern day Peoria, Illinois; and, Fort Chartres on the Mississippi River above the mouth of the Kaskaskia River.⁴⁰ These posts were placed along important aboriginal trade routes.⁴¹ In 1721 the French fortified their trading post at Niagara and in 1727 the British constructed their post at Oswego in Onondaga country.⁴²

The colony of New York had become a principal trading area to which many First Nations were travelling. In 1720, Seneca sachems complained about the encroachments of the French, asserting that there were French traders situated in their "principal Passages & hunting Places".⁴³ They named five locations –Teoondoroquo (Irondequoit),

³⁹ Wraxall, p. 126.

⁴⁰ Helen Hornbeck Tanner, ed., Atlas of Great Lakes Indian History (Norman: University of Oklahoma Press, 1987) p. 39 and Map 9, "The French Era 1720-1761", on pp. 40-41.

⁴¹ Louise Phelps Kellogg, The French Régime in Wisconsin and the Northwest (Madison: State Historical Society of Wisconsin, 1925) p. 292.

⁴² Tanner, pp. 39, 42.

⁴³ Wraxall, pp. 130-131.

Jehagee (possibly Cayuga), Ochswagee (Oswego), Cahaquee (Cayouhage, east of Oswego or possibly the Salmon River) and Ochjagare (Niagara).⁴⁴

Algonquian First Nations persisted in their trading at Albany in the early 1720s. For example, Peter Wraxall's entry for May 21, 1722 stated that "[s]ixteen Ottowawa Indians come to Trade at Albany & say they broke thro many Obstacles from the French."⁴⁵ Sometimes the French were successful at coercing First Nations to confine their trade to New France. An entry for July 14, 1724 stated:

Several Far Indians arrive to trade with Bever &^c & say the French used every Artifice in their Power to prevent their coming to Albany & had by promises & Threatenings prevailed upon 30 Canoes of Indians to go to Canada who had never been at Albany & intended to have come with them hither.⁴⁶

French goods were not of a sufficient quality to secure the trade of Lake Ontario communities of Mississauga and Ojibwa. Though in contact with the French and willing to conduct some trade with them, the Mississauga and Ojibwa continued to exercise their trading options to their best advantage. In 1721, Father Jean Durant, the French Chaplain at Catarqui, explained that:

... the Indians declared in my presence that the[y] would not have these Serges & that they would go for the future to Albany to trade with their Pelletrie so long as the French brought them no cloathes which is already happened three Canoes of Indians from Cataracouy itself being come to trade at Corlaierd and at Albany.⁴⁷

In the early 1720s, despite the proliferation of French posts in the upper Great Lakes and the Niagara area, the New York trade increased tenfold from the previous decade. New York traders successfully established trade at Oswego in 1724 and built a fortified post in 1727. The erection of the post at Oswego greatly augmented trade.⁴⁸

⁴⁴ Wraxall, pp. 130-131. The bracketed place names were given in a footnote by Wraxall's editor, Charles McIlwain.

⁴⁵ Wraxall, p. 140.

⁴⁶ Wraxall, p. 152.

⁴⁷ E. B. O'Callaghan, ed., Documents Relative to the Colonial History of the State of New York; Procured in Holland, England and France by John Romeyn Brodhead, Agent, Volume V (Albany: Weed, Parsons and Company, Printers, 1855) pp. 590-591.

⁴⁸ Richter, pp. 249-251.

The French continued to go great lengths to prevent Algonquian trade on the south side of Lake Ontario or to divert that trade to Niagara. They threatened to tear down the British Oswego post in March of 1725, made plans to fortify their own post at Niagara and had two boats built at Cataraqui to transport furs from Niagara.⁴⁹ In 1731, they spread rumours of the presence of small pox at New York.⁵⁰ First Nations resisted these attempts to intimidate them. An August 1724 letter from New York Governor Burnet to the British Lords of Trade commented on the response of First Nations to French attempts to dominate trade:

That in Cadracqui Lake [Lake Ontario] they met with Monsieur Tonti [sic], Commander of Le Detroit, as it is called in the French Map but by our Indians called Tughsaghrondie – that Monsieur Tonti [sic] had with him 70 Men and asked those Indians where they were going the[y] replied to Albany on that reply Tondi [sic] told them he was sent by the Governor of Canada to stop that path & proposed to them that they should go to Canada, and gave them in Presents a Belt of Wampum a cag of Brandy and some Tobacco, That after a long debate one of their Sachims stood up and said that the country they lived in belonged to them & that they were masters of what they had hunted in the woods, and would go with it where they pleased and were resolved to keep the path open or fight their way through – This answer nettled the French Commander but he thought fit to leave them & retire with his men to Canada and these Indians are all expected in a few days at Albany.

The same thing happen^d last year and ended almost in the same manner, by which it is plain, that the great body of Indians in the Continent assert their Independency & will go and trade with those that can supply them cheapest which will always be at Albany and in the Country of the five Nations if they preserve our goods to sell them there by Retail, and don't dispose of them to the French by wholesale.⁵¹

As noted, the French Fort Frontenac at Cataraqui impeded, with limited effectiveness, the routes to Oswego and Albany.

⁴⁹ Wraxall, pp. 156, 165.

⁵⁰ Wraxall, p. 182.

⁵¹ O'Callaghan, ed., Vol. V, pp. 709-710.

Another aboriginal strategy to avoid conflict and confrontation was to relocate away from areas where the French could interfere with their trading choices. Alliances between the Algonquian nations and the Haudenosaunee were repeatedly renewed. An entry by Wraxall documented this:

Albany 10 June 1735. a Cayouge Warrior reports to the Commiss^{rs} that he & another Indian returning this Spring from their Winter hunting stopped at a Castle of the Wagenhaes or Uttawawa Indians who received them kindly & that their Sachems met & told them that a Peace & good Correspondence had been formerly established between their Nation & the 5 Nations & tho the Sachems were dead who made it yet they now renewed it & desired it might be continued.

They said they had tried their Father the Gov^r of Canada & liked him not. that they had tried their Brethren of New York & found themselves well used, & that they intended to build a New Castle that they might come & Trade at Oswego without being obliged to touch at Fort Cadaraqui. ...⁵²

In July 1736 Wraxall documented the persistence and perhaps the importance of aboriginal trade at the Oswego post. The French were becoming increasingly forceful and coercive in their approach to stopping trade between the English and the Algonquians:

The Commiss^{rs} receive a Letter from one of our Residents at Oswego acquainting them. That a Great Sachem of the Ottawawa Nation had been there & given Information that the French had been among the far Nations & told them they were detirmined [sic] to cut off Oswego & kill all those Indians who should go there to Trade.

That they had also forced Three Nations of far Indians who were coming to trade at Oswego to go to Canada.

That they have also sent for the Messasagas another Nation of Far Indians who used to trade at Oswego to come to Canada.

⁵² Wraxall, pp. 191-193.

That (sold) some Miamies Indians who were arrived at Oswego complained that the French had stopped them at Niagara & forcibly taken from them part of their Goods.⁵³

The trade to Oswego continued to be a profitable venture though the French at Niagara persisted in their attempts to prevent it. On September 23, 1749, Lieutenant Lindsay, the Commissary officer at Oswego, sent a report to Governor Clinton on the progress of this trade. He stated that:

The first summer I was here I was at great Pains as I could with the farr off Indians to promote this Trade, and incorporate them with the five nations in which I spared no expence [sic] and had all the assurance from them I could desire. You will see by the number that have been here this summer that their intentions were to fulfill their Engagements and there would have been at least one third more Canoes here had they not been stopped at Niagara by the French, who used them most barbarously. ...⁵⁴

Lindsay tried to convince the Haudenosaunee to "protect & defend" their Algonquian allies at Niagara, which he referred to as "a place that belonged to them".⁵⁵ In this case, the Haudenosaunee refused to become entangled in a dispute with the French, preserving a neutral position.⁵⁶

The French established a post at Sault Ste. Marie in an effort to control the long established Ojibwa trade routes of Lake Superior and Lake Huron. Michilimackinac was being bypassed by Ojibwa traders on their way to Albany. On September 20, 1750, the French Governor, the Marquis de la Jonquière, wrote the French Minister relating the account of the commandant at Michilimackinac concerning the fur trade in his area. Commandant Sieur Duplessis Fabert had reported that:

... the greater portion of the nations in the neighbourhood of his post, have gone to the English, passing by Sault Ste. Marie, taking over 300 packages of fur there; that the English are causing collars to be introduced among the nations by the Iroquois, in order to

⁵³ Wraxall, p. 197.

⁵⁴ E. B. O'Callaghan, ed., Documents Relative to the Colonial History of the State of New York: Procured in Holland, England and France by John Romeyn Brodhead, Agent, Volume VI (Albany: Weed, Parsons and Company, Printers, 1855) pp. 537-538.

⁵⁵ O'Callaghan, ed., Vol. VI, p. 538.

⁵⁶ O'Callaghan, ed., Vol. VI, p. 538.

make them dissatisfied with the trade they carry on with the French and make them averse to the latter. I trust their actions will have no untoward consequences thanks to the precautions I have ordered the said Sieur Duplessis to take to avert them. Moreover, in the councils I held at Montreal on the 29th of June and 4th of July last with the Outaouis Kiskakons, Saulteux, Outaouois of the band la fourche, and other savage bands of the said post, I strongly advised them to have nothing to do with the English and to trade with the French only. ...⁵⁷

By the mid-eighteenth century, encouraged by the British, nations from distant locations on the Great Lakes travelled to Oswego to trade. Lieutenant Lindesay provided a return of trade at Oswego for the summer of 1749. According to Lindesay, a total of 1,526 aboriginal people had visited in 240 canoes, bringing 1,350 packs of furs. He recorded the trading nations as the Potawatomis, Mississauga, Michilimackinacs, Chippewa or Ojibwa, Wyandots, Miamis, Menominee, Algonquins, Caughnawagas and the Shoendies, who were likely the people of Kanesatake.⁵⁸ In addition, 86 French traders had brought 85 packs of furs. The total value of the trade, including the furs brought by the French, had been £21,406.⁵⁹

During the same period a considerable aboriginal trade was still being conducted along the route from Montreal, via Lake Champlain to Albany. The French attempted to check this trade by establishing Fort Frédéric at Crown Point. The First Nations had prepared for this contingency, and steadfastly asserted their right to travel and trade in New York. On July 17, 1751, New York Governor Clinton reported to the Lords of Trade that:

... It may be proper to inform your LordPPS, that while I was at Albany 33 Canoes, with French Indians, consisting of near 200 Men, came to that place [Albany] with their Beaver of considerable value for trade, and that they laid the Gov^t of Canada under a necessity to grant them passports, least the French Commandant at Crown Point (or Fort St^t Frederick) should stop

⁵⁷ Reuben Gold Thwaites, ed., Collections of the State Historical Society of Wisconsin Volume XVIII (Madison: State Historical Society of Wisconsin, 1908) pp. 67-68.

⁵⁸ William Fenton and Elisabeth Tooker, "Mohawk" in Handbook of North American Indians, Volume 15 Northeast William C. Sturtevant and Bruce G. Trigger, eds. (Washington: Smithsonian Institution, 1978) p. 479. The variations given for the inhabitants of Kanesatake are Scawendadeys, Scenondidies and Shouwendadies.

⁵⁹ O'Callaghan, ed., Vol. VI, p. 538.

them, threatening that otherwise they would leave the French, and settle with the Six Nations. ...⁶⁰

On May 15, 1750 members of the Cayuga Nation met in conference with the French Governor, the Marquis de la Jonquière, regarding his attempts to disperse and control the multi-ethnic communities of First Nations gathering and settling on the Ohio, which was a prime hunting area.⁶¹ This statement reflected not only an expression of First Nations' autonomy and agency but also delivered a pointed reminder to the French of their futile efforts to control their own traders and young men in a North American setting, despite their patriarchal, authoritative claims. The Cayuga representatives stated:

Father, It appears that you wish all the Indians who are on the Beautiful River [the Ohio River] to withdraw; you know that is a Republic composed of all sorts of Nations, and even many of those who lived near you have settled there. It is a country abounding in game, and this it is that attracts them thither. The island belongs to the Red Man (Nations noires); it is the Master of Life who had placed them on it, for he hath located those who are White on the other side of the Sea.

Father, You cannot easily get back all your Frenchman who are dispersed throughout the entire country, each seeking to obtain a living; how do you suppose it possible to get back our young men? you know there exists no subordination among us.⁶²

In 1761, after the conclusion of the final war between the English and French in North America, the British mistakenly considered the nations that had been allied with the French to have been conquered or defeated as well. Consequently, the British demonstrated considerable arrogance towards First Nations, assuming that because a major trade competitor was effectively removed from the equation, First Nations were no longer important. This attitude was expressed by General Thomas Gage when he asserted that "All North America in the hands of a single power robs them of their

⁶⁰ O'Callaghan, ed., Vol. VI, p. 714.

⁶¹ White, pp. 187-188.

⁶² E. B. O'Callaghan, ed., Documents Relative to the Colonial History of the State of New York; Procured in Holland, England and France by John Romeyn Brodhead, Agent, Volume X (Albany: Weed, Parsons and Company, Printers, 1858) p. 206.

Consequence, presents, & pay."⁶³ Similarly, Colonel Hugh Mercer claimed the British "can now speak to Indians in proper stile since services are not necessary."⁶⁴

British traders travelling to former French trade posts, such as Michilimackinac, neglected to open trade in the formal manner, which was considered a severe breach of protocol by the nations whose lands they so glibly entered. One of these British traders was Alexander Henry, who experienced some very uncomfortable moments when he found himself visited by the Ojibwa of Michilimackinac. Their speaker, Minavavana, expressed the self-reliance and sovereignty of the Ojibwa Nation, cautioning Henry not to depend too much on the attraction of European trade items to the Ojibwa:

Englishman, although you have conquered the French, you have not yet conquered us! We are not your slaves. These lakes, these woods and mountains, were left to us by our ancestors. They are our inheritance; and we will part with them to none. Your nation supposes that we, like the white people, cannot live without bread - - and pork -- and beef! But, you ought to know, that He, the Great Spirit and Master of Life, has provided food for us, in these spacious lakes, and on these woody mountains. ...

Englishman your king has never sent us any presents, nor entered into any treaty with us, wherefore he and we are still at war; and, until he does these things, we must consider that we have no other father, nor friend, among the whitemen, than the king of France; but, for you, we have taken into consideration, that you have ventured your life among us, in the expectation that we should not molest you. You do not come armed, with an intention to make war; you come in peace, to trade with us, and supply us with necessaries, of which we are much in want. We shall regard you, therefore, as a brother; and you may sleep tranquilly without fear of the Chipeways. --As a token of our friendship, we present you with this pipe, to smoke.⁶⁵

First Nations' rights respecting movement and trade were recognized by Sir William Johnson, Northern Superintendent for Indian Affairs, in the 1760s. During the years of the Pontiac War (1763-1766), members of various Algonquian and Iroquoian nations had participated in a widespread organized military resistance to the British. In the first few

⁶³ White, pp. 256-257.

⁶⁴ White, pp. 256-257.

⁶⁵ Alexander Henry, Travels and Adventures in Canada and the Indian Territories Between the Years 1760 and 1776 (Ann Arbor: University Microfilms, Inc., 1966) pp. 44-45.

months of the war many former French posts, newly occupied by the British, were seized by Pontiac and his allies. In 1764, Sir William Johnson, held a peace council at Niagara which was widely attended by representatives from many nations. Prior to the meeting, Johnson had made a number of suggestions to the British authorities, proposing policy guidelines for the management of First Nations. He recommended the use of traditional aboriginal diplomatic protocol, which employed wampum belts and gift exchanges as well as renewals of treaties in frequent meetings.⁶⁶ Johnson recognized the sovereignty of First Nations and their right to control trade and incursions on their lands. He considered that one of the functions of the proposed treaty was to negotiate these rights. Johnson was aware that First Nations could effectively disrupt and control essential trade routes, and consequently made a number of proposals concerning freedom of movement and conduct of trade. He suggested to General Gage that:

... The occupancy of all the French posts &ca to be left to our discretion & a free passage by land or Water to them, as also the Navigation of the upper Lakes &ca. The payment of debts & free permission to all Traders to pass unmolested. – with regard to the Senecas, that they Guarranty the carrying place. ... That a free passage be likewise granted thro' their Country to & from Niagara when occasion required. That the Misisaga's &ca living on the N side of Ontario Guarranty the Communication down the R. St^t. Lawrence to *Oswegatchy*. ... on our part I believe it will be necessary To assure them of A Free fair & open Trade, at the principal Posts, & a free intercourse, & passage into our Country, That we will make no Settlements or Encroachments contrary to Treaty, or without their permission. ...⁶⁷

Johnson was sympathetic to the concerns of First Nations and aware of their cultural expectations. In part of his oration to the nations present at the Treaty of Fort Stanwix in 1768, Johnson addressed trade and free passage, employing accepted aboriginal metaphors:

Brethren

I persuade myself that you are all sensible of the benefits which will result from our strict union, and that having it always before your eyes, you will be careful in preserving it. This will protect you from all dangers, and secure to you the Blessings of peace, and

⁶⁶ Alexander C. Flick, ed., The Papers of Sir William Johnson Volume IV (Albany: The University of the State of New York, 1925) pp. 328-333.

⁶⁷ Flick, ed., Vol. IV, pp. 331-332.

the advantages of commerce with a People able to supply all your wants. And as this is a consideration of much importance, which depends on the friendship subsisting between us, and a free open and safe communications for all our people to you. I do now by this Belt clear the rivers and Paths throughout our respective Countrys of all Obstructions removing Trees out of our Creeks, and Logs Briars, and rubbish out of our roads, that our canoes may pass along without danger, and that our people may travell freely and securely by night or by day without any risk or Impediment whatsoever. – And I recommend to you all to contribute to this good Work, and to assist in keeping it free and open to the latest Posterity. – A large Belt.⁶⁸

Non-Native territorial boundaries in North America were modified again following the American Revolution, and the British and Americans made no attempt to include or consult First Nations in the agreements they had reached. On May 18, 1783, in conference with British General Allen Maclean, Mohawk leader Aaron Hill made an impassioned speech chastising the British for making an agreement that summarily ceded First Nations lands to the Americans without their consent. Hill pointedly declared:

... That the Indians were a free People subject to no Power upon Earth, that they were the faithfull Allies of the King of England, but not his Subjects – that he had no right whatever to grant away to the States of America, their Rights or properties without a manifest breach of all Justice and Equity, and they would not Submit to it, They added, that Many Years ago, their ancestors had granted permission to the French King to build trading houses; or Small Forts on the Water Communication between Canada and the Western Indians, in the Heart of their Country for the Convenience of Trade only without granting one Inch of Land ...⁶⁹

As noted earlier, pan-Indian resistance movements evolved in response to European and North American attempts to control and restrict First Nations' trade, travel and sovereign rights. In the late 1780s and the early 1790s a coalition or confederacy of First Nations from the Great Lakes region attempted to renegotiate the Ohio River as the established

⁶⁸ Proceedings at a Treaty held by Sir William Johnson Baronet with the Six Nations, Shawanese, Delawares, Senecas of Ohio and other dependant Tribes at Fort Stanwix in the months of October and November one thousand seven hundred and sixty eight for the Settlement of a Boundary between the Colonies and Indians pursuant to his Majesty's orders [also known as the Treaty of Fort Stanwix], October to November 1768. NAC MG 11 Vol. CO 5/69 Reel B-6112.

⁶⁹ Letter from Brigadier General Allan Maclean to General Haldimand, Governor of Quebec, May 18, 1783. NAC MG 21 Add. Mss. 21763 pp. 118-119.

boundary for an exclusive, sovereign aboriginal territory. The Americans refused to acknowledge this limit which First Nations had previously secured with the British by the Treaty of Fort Stanwix.

This pan-Indian movement was supported in its efforts by both British officials and British traders who were anxious to preserve their profitable Great Lakes trading on both sides of the American-Canadian border. Freedom of trade and movement for First Nations was therefore a key issue. In a letter of April 23, 1792, merchants of Montreal, represented by McTavish, Frobisher & Co., Forsyth, Richardson & Co. and Todd, McGill & Co., asserted the sovereignty of First Nations and cited the Treaty of Utrecht to Lieutenant Governor Simcoe, arguing that:

... The Indians are free and independent People, if any on Earth were so, and by the Law of Nations we are entitled to trade with them – *Our* running a Line of Boundary by Treaty conveys no *right* of Territory without obtaining one from the aboriginal Proprietors – We cannot give what is not our own – The Cession of that Territory therefore to America, which is still occupied by the Natives and not sold to them – means therefore we apprehend, nothing more than that we cede the right of pre-emption of purchase from the Natives – We understand there is also an implied right of neutral Trade with Indians by the Treaty of Utrecht and as we now represent the *then French Government* of this Country, we must enjoy whatever rights they were entitled to and that have not been expressly given away since –⁷⁰

Lieutenant Governor Simcoe reaffirmed this interpretation in an April 28, 1792 letter to British Secretary of State for Home Affairs, Henry Dundas, when he stated that:

... the definitive construction placed by the Treaty of *Utrecht* upon the intercourse which Great Britain and France had with the Indians, and considering them as *free Nations* gave to the Subjects of both Countries the right of trading with them, and carefully secured to the Indians the liberty, attached to Independent Nations of carrying their commercial Articles to such places in the dominions of either nation, as they should prefer ... nor can the claims of the American Indians to the natural privileges of Independent Nations as guaranteed to them by their European

⁷⁰ E. A. Cruikshank, ed., The Correspondence of Lieut. Governor John Graves Simcoe, with Allied Documents Relating to His Administration of the Government of Upper Canada Volume I, 1789-1793 (Toronto: The Ontario Historical Society, 1923) p. 136.

neighbours in the Compact of Utrecht, be more amply expressed and implied than in the general Representation of the State of the Indian Department by Sir William Johnson in 1763 to the Lords of Trade that altho' "fair speeches, promises, and the conveniency of Trade induced them to afford us and the French a Settlement in the Country, yet they never understood such settlement as Dominion," and the Indian sense of their own Independency is brought down to so late a period prior to the late War, as the second of February one thousand seven hundred and sixty nine, when a Seneca Chief in his Complaints against the Officer Commanding at Niagara, said, as appears by Sir William Johnson's Report, "We are a free people and accustomed to sell whatever we have to whom and where we like best." ⁷¹

On August 13, 1793, the above-noted Confederacy of First Nations sent a message to the Treaty Commissioners of the United States. Though primarily concerned with previous agreements designed to prevent the purchase of aboriginal lands by private individuals, the statements of the coalition reflected the position that they were sovereign nations who were not legally obligated by negotiations and agreements between nations whose authority they did not recognize and who had not invited their participation or consent. The Confederacy stated that:

BROTHERS

You have talked also a great deal about pre-emption and your exclusive right to purchase Indian lands, as ceded to you by the King at the Treaty of peace.

BROTHERS

We never made any agreement with the King, nor with any other Nation that we would give to either the exclusive right of purchasing our lands. And we declare to you that we consider ourselves free to make any bargain or cession of lands, whenever & to whomsoever we please, if the white people as you say, made a treaty that none of them but the King should purchase of us and that he has given that right to the U. States, it is an affair which concerns you & him not us. We have never parted with such a power.⁷²

⁷¹ Cruikshank, ed., Vol. I, p. 140.

⁷² E. A. Cruikshank, ed., The Correspondence of Lieut. Governor John Graves Simcoe, with Allied Documents Relating to His Administration of the Government of Upper Canada Volume II, 1793-1794 (Toronto: The Ontario Historical Society, 1924) pp. 19-20.

Despite the deep resentment the Americans had for the relationship between the British and the nations of the Great Lakes, certain aboriginal trade provisions were included in the Jay Treaty of 1794. This treaty was negotiated in Paris between representatives of the British and American governments, once again without First Nations' input or participation. When negotiating the treaty, the American negotiator John Jay had originally stated that he would not include a proposed article allowing aboriginal goods to pass through the border duty free.⁷³ Nevertheless, when the Jay Treaty was signed in November 1794, it guaranteed, at British insistence, the right of First Nations to pass and repass "with their own proper goods and effects" duty free. Article III stated:

It is agreed that it shall at all times be free to His Majesty's subjects, and to the citizens of the United States, and also to the Indians dwelling on either side of the said boundary line, freely to pass and repass by land or inland navigation, into the respective territories and countries of the two parties, on the continent of America, (the country within the limits of the Hudson's Bay Company only excepted) and to navigate all the lakes, rivers and waters thereof, and freely to carry on trade and commerce with each other. ...

No duty of entry shall ever be levied by either party on peltries brought by land or inland navigation into the said territories respectively, nor shall the Indians passing or repassing with their own proper goods and effects of whatever nature, pay for the same any impost or duty whatever. But goods in bales, or other large packages, unusual among Indians, shall not be considered as goods belonging bona fide to Indians.⁷⁴

The Duke of Portland, Secretary of State for the British Home Department, instructed both Governor Dorchester and Lieutenant Governor Simcoe that they should inform First Nations that trade was protected by the Jay Treaty.⁷⁵ The provisions of the Jay Treaty

⁷³ Letter from John Jay to Edmund Randolph, dated October 29, 1794, in E. A. Cruikshank, ed., The Correspondence of Lieut. Governor John Graves Simcoe, with Allied Documents Relating to His Administration of the Government of Upper Canada Volume III, 1794-1795 (Toronto: The Ontario Historical Society, 1925) pp. 158-159. Jay wrote: "It was proposed that goods for the Indian trade should pass from Canada to the Indians within the United States, *duty free*; to this I could not consent."

⁷⁴ The Treaty of Amity, Commerce and Navigation, 1794, dated November 19, 1794. This treaty was signed on November 19, 1794 by William Wyndham, Baron Grenville of Wotton for Britain, and John Jay for the United States of America. Ratifications were exchanged in October 1795 and the treaty was proclaimed on 29 February 1796.

⁷⁵ Instructions from the Duke of Portland, Secretary of State for the Home Department, to Lieutenant Governor Simcoe and Lord Dorchester, November 19, 1794. NAC MG 11 "Q" Series Vol. 77a pp. 167-170 Reel C-11,911.

regarding the aboriginal right of free passage with their goods were explained to the Six Nations at Fort Erie in 1795 and to the Chippewa and Ottawa at Chenail Ecarté in 1796.

When Lieutenant Governor Simcoe met with the Six Nations at Fort Erie in August 1795 he made the following statements about their rights under the Jay Treaty:

...

Brothers. - By the Present Treaty your rights are guarded, and specifically placed on their ancient footing.

Brothers. - I have the Treaty in my hands, as printed in the U. States, it establishes your rights upon the same Basis that had been formerly agreed upon between the French and British Nations, and which I repeated in October last to the Western Nations, in the following word, "Children. In the victory over the French Nation, the common Enemy, the interests of your Forefathers, and of you, their Children were not forgotten, in the Treaty between the English the Conquerors, and the French, it was stipulated that your rights should be preserved, those rights which you enjoy as an Independent People. It was declared that you had a right to go to the English and French fires for the purpose of traffic, and that you had a right inseparable from an independent people to admit the Traders of either Nation to Your Fires as suited your interest or inclinations."

Brothers of the Six Nations. -

Upon these principles the present Treaty is established, you have a right to go to the British Settlements, or those of the U. States, as shall suit your convenience, nor shall your passing or repassing with your own proper goods and effects of whatever nature, pay for the same any impost or duty whatever.

Brothers. - You see therefore that by the Treaty a perpetual and constant communication is secured between you and the King's Subjects and our future Trade and intercourse, is guaranteed on the most unrestrained and General footing.⁷⁶

Colonel McKee, the Deputy Superintendent General of Indian Affairs, met with the Chiefs of the Chippewas and Ottawas at Chenail Ecarté in August 1796. He made reference to promises contained in the Jay Treaty and invited all the Indian nations,

⁷⁶ Lieutenant Governor Simcoe's address to the Six Nations at Fort Erie on August 28, 1795 in E. A. Cruikshank, ed., The Correspondence of Lieut. Governor John Graves Simcoe, with Allied Documents Relating to His Administration of the Government of Upper Canada, Volume IV, 1795-1796 (Toronto: The Ontario Historical Society, 1926) pp. 83-88.

including those of the Mississippi, to use Chenail Ecarté (in present day Ontario) as a meeting place and place of residence:

Children, The change I allude to is the delivery of the Posts to the United States; these People have at last fulfilled the Treaty [of Paris] of 1783 and the Justice of the King towards all the world would not suffer him to withhold the right of another after a compliance with the terms stipulated in that Treaty but has notwithstanding taken the greatest care of the rights and independence of all the Indian Nations who by the last Treaty with America, are to be perfectly free and unmolested in their Trade and hunting grounds and to pass and repass freely and undisturbed to trade with whom they please.⁷⁷

The right of free intercourse and commerce was reiterated in an explanatory article protecting the third article of the Jay Treaty from derogation by any other treaty between the United States or Great Britain, and any other state, nation or First Nation.⁷⁸

The seventeenth- and eighteenth-century dialogue between First Nations and European and later American government representatives was one in which First Nations consistently asserted their sovereignty and their right to travel and trade freely on their lands. They insisted that trade be negotiated on their terms, according to the customs of their cultures. The imposition of boundaries by Europeans or Americans was never recognized by aboriginal people. Though Europeans often attempted to interfere with the aboriginal right of unrestricted trade, their efforts were consistently resisted and often thwarted by First Nations. European powers formally acknowledged aboriginal trading rights when it suited their purposes.

There is perhaps too much emphasis placed on the documentary evidence that remains in the form of negotiation proceedings between Europeans, and too little attention paid to surviving records demonstrating the consistent, emphatic and eloquent assertions of their inherent natural rights by First Nations. Though not codified in European law, these seventeenth- and eighteenth-century aboriginal declarations should be considered and weighed in the legal discussions of today.

⁷⁷ Council held at Chenail Ecarté, August 30, 1796. NAC RG 10 Vol. 39 pp. 21,652-56.

⁷⁸ Letter from Lord Dorchester to J. G. Simcoe, dated 26 May 1796 in Cruikshank, ed., Vol. IV, p. 277. For the previous instructions regarding this explanatory article, see letter from Lord Grenville to Phineas Bond, British Chargé d'Affaires, dated January 18, 1796 in Cruikshank, ed., Vol. IV, pp. 172-176.

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