

UCLA

American Indian Culture and Research Journal

Title

“Ours from the top to the very bottom”: Seneca Land, Colonial Development, Proto-Conservation, and Resistance in the Early American Republic

Permalink

<https://escholarship.org/uc/item/29d948vw>

Journal

American Indian Culture and Research Journal , 44(1)

ISSN

0161-6463

Author

Dennis, Matthew

Publication Date

2020

DOI

10.17953/aicrj.44.1.dennis

Copyright Information

This work is made available under the terms of a Creative Commons Attribution-NonCommercial License, available at <https://creativecommons.org/licenses/by-nc/4.0/>

Peer reviewed



“Ours from the top to the very bottom”: Seneca Land, Colonial Development, Proto-Conservation, and Resistance in the Early American Republic

Matthew Dennis

In 1809, David A. Ogden, a wealthy, well-connected former US member of congress from New York, acquired the preemption rights to more than 200,000 acres of land in western New York and in 1810 formed the Ogden Land Company to develop it. This land was not vacant. It was the residual homeland of the Senecas, one of the constituent nations of the Haudenosaunee, or Iroquois, who had possessed the territory for hundreds of years—from their perspective, since time immemorial. Their dominion had been challenged repeatedly, particularly during the upheaval of the American Revolution, but they had endured, maintaining their sovereignty and possession by adjusting effectively to the new, dynamic political and economic realities of the early American republic.¹

No one had consulted Senecas or any other Native people throughout the protracted, technical, and arcane negotiations that adjudicated the overlapping claims of Massachusetts and New York on this western landscape, or that conveyed the preemption rights to purchase these lands, first to the Holland Land Company, and then to Ogden and his partners. The Senecas rejected such claims outright, and they

MATTHEW DENNIS is professor emeritus of history and environmental studies at the University of Oregon. His books include *Cultivating a Landscape of Peace: Iroquois-European Encounters in 17th-Century America*; *Red, White, and Blue Letter Days: An American Calendar*; *Riot and Revelry in Early America* (coeditor); *Encyclopedia of Holidays and Celebrations*, (general editor); and *Seneca Possessed: Indians, Witchcraft, and Power in the Early American Republic*. He is currently at work on *American Relics and the Politics of Public Memory*, to be published by the University of Massachusetts Press.

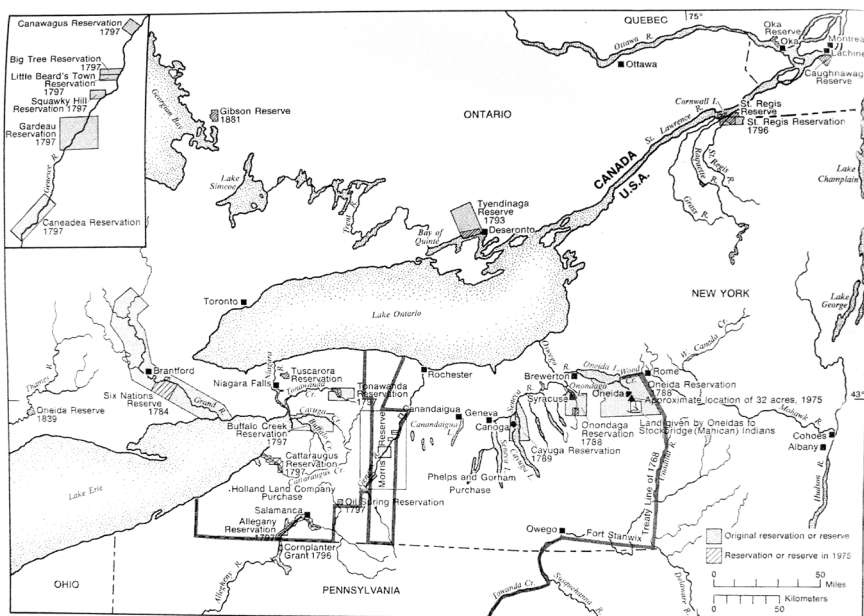


FIGURE 1. Iroquois reservations and reserves, in the aftermath of the American Revolution and into the nineteenth century. Author's photograph of map in Matthew Dennis, *Seneca Possessed* (University of Pennsylvania Press, 2010), 15.

seemed to have the law on their side.² As the Buffalo Creek Seneca leader Red Jacket would later proclaim,

“You tell us of a pre-emptive right. Such men you say own one reservation; Such men another. But they are all ours: Ours from the top to the very bottom. [Addressing Ogden directly] I told you you . . . [were] unfortunate in buying [the preemption right]. . . . And I again tell you that one and all, Chiefs & Warriors are of the same mind. We will not part with any of our reservations. Do not make your application anew in any other shape. Let us hear no more of it.”³

The following day, a rival coalition of seven Seneca chiefs, the self-described Christian Party led by Pollard, more deferentially addressed the US delegation and apologized for some of Red Jacket’s “harsh and improper” language. Nonetheless, they “concluded that the Speaker’s [Red Jacket’s] answer was right. We all thought it was not right to part with the land.” And the Allegany Seneca community, led by Blue Eyes, expressed similar determination, later writing their Quaker advocates and benefactors in Philadelphia: “We likewise wish our Brothers to know that our [people] are much opposed to selling their land, but wish to live upon it for [all time] to come and not move off to the westward or other places.”⁴

By the early nineteenth century, the Senecas of western New York—a people of the Iroquois Six Nations—had experienced European colonialism for two hundred

years, enduring through their spirit, power, resourcefulness, and creativity. The American Revolution had dealt a particularly devastating blow to the Haudenosaunee Confederacy, but in its aftermath the Senecas and other Iroquois nations reconstituted themselves and persisted in their shrinking lands. The early nineteenth century found them arrayed in the communities of Allegany, a relatively large reserve near the Pennsylvania border, and Buffalo Creek, where white development clamored to expel them to construct the western terminus of New York State's imperial project, the Erie Canal, which opened in 1825. Seneca communities also situated themselves at Cattaraugus, adjacent to Lake Erie and between Buffalo Creek and Allegany, and further north at Tonawanda and Oil Spring, communities notable as guardians of the Good Message of Handsome, the new faith founded by the Seneca prophet Handsome Lake, which had helped revitalize the Haudenosaunee. Small Seneca hamlets persisted as well in their traditional homeland of the Genesee Valley—at Caneadea, Gardeau, Squaky Hill, Little Beard's Town, Big Tree, and Canawagus—that is, until they were dispossessed in the fraudulent Treaty of 1826. Though diminished, the Senecas had not disappeared.

Ogden pressed his proprietary rights aggressively, asserting not merely his exclusive entitlement to purchase these lands at some future moment, when Senecas were willing to sell, but charging in 1819 that the Senecas were currently destroying *his* property, devaluing it by “wasting” its timber and other resources and assigning or leasing it to others. Ogden's rhetorical complaints and political machinations in 1819 displayed the radical threat to Seneca sovereignty, land, and resources in the early republic. His interpretation of his preemption rights denied Senecas an unqualified ownership of their own reserves; his grievances misrepresented and disparaged Seneca economic and environmental practice; and his objections, if sustained, would undermine the Senecas' ability to use or develop (and conserve) their land and resources autonomously. Most Senecas sought *not* to sell their land. But even if the Senecas determined that they did wish to sell some of their holdings, such sales were illegal, according to Ogden, if the purchaser was any party other than the Ogden Land Company. Even the transfer of land to other Indians, including their own Haudenosaunee kinspeople, was illegal, Ogden believed. Leasing arrangements were similarly prohibited. Seneca extraction and sale of natural resources (principally timber and its byproducts) was proscribed—in the interest of conservation, it was alleged, but more importantly to preserve the rights of others (the Ogden Land Company and its customers) to exploit the land and its resources once the Senecas' actual possession had been relinquished.⁵

The New Nation's destiny lay in the West, American nationalists believed, and the West in this era began in western New York. Territorial expansion, economic development, individual opportunity, and democracy were intricately intertwined in the Jeffersonian republic—independence was dependent on the availability of land. Colonialism would thus continue in postcolonial America, by necessity and by design, to acquire land essential to the American project, and colonial expansion would come at the expense of Senecas and other Indians who stood in the way. This project of expropriation has often been masked in our national narrative because its story is mostly told from the perspective of (white) nationalism, democracy, and expanding

opportunity, embedded in the Declaration of Independence's promise of "life, liberty, and the pursuit of happiness." White Americans then and since have generally preferred to believe that national expansion occurred by right, not might. Focusing on the Senecas of western New York, this essay will assess and critique that powerful but obscuring myth, examining white misrepresentation of Native social and economic practice and the dismissal of Native sovereignty and rights based on the Constitution, law, and treaty. This case study adds detail, variation, and nuance to the larger saga of "How the Indians Lost Their Land," particularly because the Senecas, despite setbacks, were able to conserve a measure of their autonomy, their land base, and their national status, while largely avoiding removal west of the Mississippi.

But it will also introduce and briefly examine another emerging, self-serving rhetoric and practice—one with a greenish tinge—that increasingly helped rationalize, justify, advance, and obscure Native dispossession, not merely in the supposed interest of American democracy and economic prosperity, but later in alleged support of the conservation of natural resources critical to the long-term growth and prosperity of the United States.

What do we make of David A. Ogden's attentiveness to conservation of natural resources in western New York in the early nineteenth century? Might we characterize Ogden as some sort of proto-Conservationist?⁶ His preferred schemes would not likely protect the natural landscape long-term or produce what we might now call "sustainable" development. They were calculated to enrich himself, his investors, and perhaps white settlers—at Seneca expense.⁷ Senecas were not necessarily opposed to economic development, but they had formulated their own social, cultural, economic, and environmental sustainability at odds with Ogden's designs. And yet, we can see in David Ogden's rhetoric the harbinger of an American environmental consciousness, as yet inchoate. Such a consciousness would betray growing anxiety about resource exhaustion or destruction, decry pollution, express a stark, dichotomous view of nature and culture, and ultimately seek to conserve resources through utilitarian "wise use," or to preserve nature as sublime, non-human space—as wilderness defined largely by the absence of human inhabitants, including Native people.⁸

In the early nineteenth century, men like Ogden and New York State and US federal officials articulated proto-conservationist sentiments in various, colonialist ways. As in other colonial settings globally, conservation and economic development in New York and farther west seemed to require fundamental social transformation of Indigenous people and a radical reorganization of their landscapes. Senecas hardly needed intrusive speculators, settlers, government officials, or missionaries to teach them sustainable land use or viable paths to economic development. And attempts by whites to impose their prescribed economic and ecological regimes—often self-interested (for whites) and often self-defeating (for Indians)—met with resistance. For Senecas, conservation of their landscape was deeply embedded and essential to avoid dispossession and preserve themselves as a people. Nonetheless, when white speculators or officials observed landscape alterations that they characterized as resource exhaustion or ruin, they authorized their own conservationist intervention, with little regard for, and at the expense of, Native rights, autonomy, sovereignty, or economic

viability. And they did so even when such degradation was caused by non-Native activity, or was misunderstood, overstated, or willfully misrepresented. This was the case in 1819, and would remain the case through the twentieth century, even after it became routine to acknowledge the “tragedy” of Native dispossession.⁹

American conservationism developed along multiple tracks, and as early as the eighteenth century some thinkers and writers advanced non-utilitarian, spiritual, aesthetic, and therapeutic views of nature. Most dominant and persistent, however, was an approach that tethered conservation and prudent use of resources to economic development. To later conservationists, preservationists, and modern environmentalists (and no doubt to most of us today) this brand of “conservation” could look a lot like the looting of nature’s windfall. There *were* looters aplenty in the colonial and early national America. But it’s nonetheless useful to consider conservation and development together, as they emerged and exist in the world, in different mixtures that were more or less sustainable, more or less self-interested, more or less exploitative and destructive of people and their landscapes. And, of course, we must examine what or whose interests these conservationist-developmental schemes served.

In western New York in the early nineteenth century, such schemes served the Ogden Land Company and white settlers and expansionists. Their conservationism, if it can even be termed that, merely conserved resources for white exploitation, not for the larger public interest. And yet, we can hear, faintly, early expressions of a utilitarian rhetoric that would grow into a clearer, more fulsome concern about environmental exhaustion and resource depletion that later conservationists and environmental technocrats would decry as dangerous to the United States. To be clear: Ogden was *not* a Teddy Roosevelt conservationist or any sort of modern environmentalist. His advocacy for the management of resources served only his own interests—that is, to enrich himself. But he employed the available means of persuasion in his political and legal rhetoric, and increasingly American officials and the public would become persuaded that American opportunity and democracy depended on the wise use of land and natural resources, some of which, supposedly, was being hoarded, ill-used, or wasted by Native people. Western New York in the early nineteenth century thus offers an instructive case study in early national American colonialism, its evolving rhetoric and practices, and Native resistance to it. And we can see here a preview of a developing conservationism devoid of environmental justice and, at its worst, a premonition of a later American practice of “greenwashing.”¹⁰

By the late eighteenth century, some Americans were already expressing conservationist anxieties, particularly related to ruinous agricultural practices, such as those that beset tobacco-producing lands in the Chesapeake. One Virginia observer called the eroded terrain of Albemarle County “a scene of desolation that baffles description—farm after farm . . . worn out, washed and gullied, so that scarcely an acre could be found fit for cultivation.” Agricultural reformers in the early republic increasingly prescribed new farming approaches and techniques to preserve soil fertility, sustain or increase yields, and reclaim “sour lands.” American writers echoed those in Europe, where in fact new agricultural regimes—e.g., enclosure—had long been advanced through criticism and at the expense of common holders and peasants. And given the

critical importance of land in the United States, as the means of economic production and American democracy, moments of scarcity of available land also produced apprehension. Yet such limits were persistently breached, given that westward expansion was an important consequence of the American Revolution, the Louisiana Purchase, the War of 1812, and subsequent nineteenth-century enlargements of the country's continental reach. The seemingly limitless store of American land and resources militated against a broad acceptance of disparate conservationist or preservationist voices early in the century, with dire consequences for the continent's Native people.¹¹

When David Ogden spoke about the destruction of resources on Seneca land his rhetoric masked base self-interest, but it did not occur in a void. It is therefore worth investigating such rhetoric, even when it was insincere or dishonest. Rhetoric is the deployment of the available means of persuasion. As such, it helps us understand the world in which Ogden and the Senecas confronted each other. It exhibits Ogden's tactics as he sought to dispossess the Senecas, and it framed the Senecas' rhetorical and practical resistance. Its darker side might suggest that later conservationist programs might too have unacknowledged consequences that compromised social and environmental justice. The high stakes contest between speculators and Senecas, of course, was not merely rhetorical—the debate was grounded in real landscapes, had real consequences, involved real people living real lives embedded in real physical space, enmeshed in ecological processes. But rhetoric is revealing because it is not disembodied; it emerges only as a product and reflection of the real worlds we are trying to recover.

DEBATING THE RHETORICAL AND LEGAL CASE FOR SENECA DISPOSSESSION

In August 1818, one Cotton Fletcher appeared at the Allegany Seneca reservation in western New York to conduct a land survey. The Senecas anticipated his arrival, and they were not pleased. Fletcher was unwelcome as a former employee of the Holland Land Company (precursor to the Ogden Land Company), and Senecas understood the implications of his assignment—to measure land for sale, to clarify possession, and, many feared, to promote their dispossession. Some immediately contested Fletcher's work and expelled him. The Senecas by now had seen their territory diminished and had been concentrated on shrinking reserves, but they retained substantial lands in southwestern New York and sought to protect their ownership and sovereignty.¹²

How to do so was not always clear. The Senecas disagreed about how best to address the threats to land and sovereignty they faced. Some had concluded that division of lands in severalty—into discrete farmsteads owned and worked by individual families, on a white, Christian, yeoman-farmer model—offered a prudent means to develop and preserve Seneca holdings. Others rejected such “land reform” (and the social transformation that was meant to accompany it) and continued to favor common ownership and collective patterns of work—mostly by women in agricultural fields and men in forests.¹³

In the face of these new threats, Seneca leaders—even those chiefs who had supported the land division (but not the alienation of Seneca property)—asked their

resident missionary Friends and patrons, Quaker representatives of the Philadelphia Yearly Meeting, to “obtain a written instrument from the President of the United States having the seal affixed to it, strengthening (as they say) their title to their lands so that they may be easy themselves and their children after them.”¹⁴

The Senecas received instead a troubling letter from the US Secretary of War John C. Calhoun, speaking on behalf of the president, intensifying the sense of crisis. It advised that the Senecas accept removal west of the Mississippi—to Arkansas. In a follow-up communication, President James Monroe himself endorsed the Quakers’ Indian civilization program and specifically advocated allotment: “By thus dividing your land, each one could then say, this is mine; and he would have inducements to put up good houses on it, and improve his land by Cultivation.” Such advice displayed little sense of Seneca economy or gender organization. Its radical and yet by now conventional prescriptions, for example, betrayed ignorance in its use of male-gendered pronouns associated with land ownership and farm work, as traditionally women farmed and controlled Seneca land. Monroe failed to mention Arkansas, but the omission’s significance was opaque. Was it meant simply to disguise removal plans to a trans-Mississippi reservation? Did the president imply that failure to submit to allotment would itself activate forced relocation, as some suggested? Mixed and obscured messages provoked puzzlement and anxiety.¹⁵

Seneca leaders encouraged their Philadelphia Friends also to intercede on their behalf with the governor of New York. If they did so, their efforts foundered. Inauspiciously, an act of the New York Assembly (March 4, 1819) soon

resolved . . . that his Excellency the Governor be required to co-operate with the government of the United States in such measures as may be deemed most advisable, in order . . . to induce the several Indian tribes within this state to concentrate themselves in some suitable situation, under such provisions, and subject to such regulations as may [be] judged most effectual to secure to them the best means of protection and instruction in piety, and agriculture, and gradually to extend to them the benefits of civilization.

Such legislation promoted the Ogden Land Company’s interests by proposing to consolidate Seneca population and in the process free large tracts of land for sale and development; simultaneously it advanced New York’s goal of extending state jurisdiction over Native people and their lands. The resolution, ominously, “authorized and requested [the governor] to take such measures, either with or without the co-operation of the government of the united States.”¹⁶

David Ogden meanwhile petitioned the president to effect Seneca removal, or at least their concentration in a single reserve. He characterized his company, presumptuously, as the “Proprietor” of lands now “occupied by the Remains of the Seneca Nation of Indians.” The claim inflated the Ogden Land Company’s legal status to the rank of owners and demoted the Senecas to mere occupants. He then outlined a simple, increasingly familiar, and (for the Senecas) hazardous plan for

collecting the scattered Tribes of the Seneca Nation, so as to form them into one or more compact Settlements, in order to their more easy and economical Instruction, to purchase at a fair Price, such Lands as they could not possibly use or improve, and to convey to their Use upon equitable Terms, the preemption Right in an adequate Portion of those which they might wish to retain for the Purpose of a permanent Seat.¹⁷

Ironically, Senecas who persisted in their homeland would need to acquire Ogden's preemption rights to their remaining land—that is, purchase land they already owned and had never sold.

Ogden played on common myths and prejudices about Native life and landscapes and cast his proposal as benevolent and just. The Indians were unsettled and uncivilized, he suggested, and government intervention would promote Seneca welfare, compensate them equitably, and advance the republic's larger development by transferring wasted lands to others for improvement. Ogden's proposal deployed a Jeffersonian discourse of yeoman republicanism, based on the broad distribution of land to common (white) people; such land represented economic opportunity, promoted economic independence and public responsibility, and ensured political democracy. This white pursuit of happiness demanded that Senecas, and other Native landowners, underwrite it. Yet they selfishly and irrationally obstructed such advancement. As Ogden wrote, "To the State of New York, these Indians are becoming a heavy Incumbrance, retarding the progress of civilization & Improvement; and detracting from the public resources and prosperity." Ogden pointed out that they paid no taxes, nor did they bear the burdens of road building or other local improvements. "These extensive Tracts being situated principally along the Western Frontier, the acquisition of a dense and hardy white Population, in that quarter, would appear moreover to be an object of immense Importance to the United States," he wrote.

When it is considered that the Seneca Nation comprises little more than 2000 Souls, and that they retain upward of 220,000 Acres of rich land capable of giving support in profuse abundance to 50,000 of our Citizens; and that not one Acre in an hundred is cultivated or improved; the Importance of throwing open at least a portion of these extensive forests to the hand of Industry and enterprise, must be too obvious to require illustration.¹⁸

Ogden's argument had deep American historical roots, mobilizing a rationale for dispossession voiced since the beginnings of English colonization itself. John Winthrop's 1629 "Reasons to Be Considered for Justifying the Undertakers of the Intended Plantation in New England," for example, cited the bible: "The whole earth is the Lord's garden, and he has given it to the sons of man upon a condition (Genesis 1:28): Increase and multiply, replenish the earth and subdue it." Winthrop asked, "Why, then, should we stay here [in overcrowded England] striving for places to live (many men sometimes spending as much labor and money to recover or keep an acre or two of land as would secure them many hundred acres of equally good or better land in another country), and meanwhile allow a whole continent . . . to lie empty and

unimproved?” Winthrop reasoned in 1629 (much as Ogden would reason in 1819), “That wch lies common & hath never been replenished or subdued is free for any that will possesse and improve it.” Winthrop distinguished between a natural and civil right to land, with the latter right accruing to those who enclosed it and “improved” it, unlike (he argued) the New World’s Native inhabitants. He argued, benevolently in his view, “Soe as if wee leave them [that is, Native people] sufficient [land] for their use wee may lawfully take the rest, there being more than enough for them & us.”¹⁹ Seneca lands seemed to Ogden and other white speculators and officials as *vacuum domicilium*—lands supposedly waiting to be inhabited by a more productive people. Perhaps ignorant of such nomenclature, Ogden nonetheless would have agreed with the notable seventeenth-century Massachusetts cleric John Cotton, who argued that it was “a Principle of Nature, That in a vacant soyle, hee that taketh possession of it [land], and bestoweth culture and husbandry upon it, his Right it is.”²⁰

Ogden’s 1819 memorial evinced his frustration. Senecas declined to sell the lands the Ogden Company claimed it owned. Indeed, the Senecas refused even “to listen to these overtures.” Ogden voiced dismay that the Seneca nation assumed “an unqualified Title to the Lands they occupy,” guaranteed to them, they claimed, in 1794 by the Treaty of Canandaigua. Red Jacket and other Seneca leaders displayed the treaty in Ogden’s presence, cited it directly, and argued that Ogden’s very appearance on such business breached the agreement.²¹ Ogden’s Memorial challenged such a reading of the Treaty of Canandaigua. It could not legally diminish his company’s proprietary rights, Ogden argued. He pressed for clarification and confirmation of the company’s rights, as he saw them. The treaty could not, in his view, “enlarge” Seneca ownership after such claims had been legally reduced and transferred. Such confusion had encouraged the Senecas to resist “any change in their Location”; it had impeded Ogden’s efforts to arrange “the relinquishment of the Native claim”; it had allowed the Indians, Ogden asserted, “to waste the timber and assume the Right of making Sales to other Indians Tribes in a manner highly prejudicial to the rights of the proprietors of the preemption Title”; and it had enabled the Senecas “to lease their Lands to White People.”²²

Ogden thus identified the Treaty of Canandaigua—or, in his view, an erroneous interpretation of it—as a major impediment to progress and democracy. It threatened his own interests and imperiled the landscape and economy of New York and the United States. It encouraged Indian holders to withdraw land from “improvement,” monopolizing and wasting land better suited to energetic white farmers and developers. Even worse, the Senecas’ construction of the treaty seemed to promote not merely the neglect, but the positive destruction of land and resources.²³ Ogden sought expert legal opinions. One such authority was Richard Harrison. Harrison was a prominent New York City attorney who taught at Columbia College and was closely associated with Ogden and his brother and business associate, Thomas Ludlow Ogden, who had been his student.

Harrison largely endorsed the Ogden Land Company’s claims. With regard to natural resource production, he wrote

The Indians can certainly cut timber for their own use; they can also cut it to clear the land for actual cultivation by themselves. In short, they have a right to the timber so far as such right is essential to the free use and enjoyment of the land. But where more destruction of timber takes place than is required for the use of the Indians and particularly where the destruction is for the purpose of sale, I am of [the] opinion that the Proprietors under Massachusetts /as the legal owners of the Land/ [that is, the Ogden Land Company] may bring actions . . . against the purchasers or restrain them by Injunction.²⁴

Harrison seemed to endorse the imposition of a land use and conservation regimen on Seneca occupants (not exactly owners, perhaps future purchasers), representing their status as tenants legally subordinate to the proprietor, the Ogden Land Company.

The New York jurist further rejected the Senecas' right to lease their land to whites. He even argued that Seneca transfers of land to their Cayuga kinspeople, who lived among them, were illegal and void. Harrison's legal opinion implicitly but radically redefined Seneca and Haudenosaunee identity, setting aside ancient social and political relations among the Six Nations, creating a national identity for the Senecas at odds with their own, and isolating them as residents of exclusive (rather than inclusive), spatially defined reservations and communities (e.g., Allegany Senecas vs. Buffalo Creek Senecas or those of Cattaraugus or Tonawanda). Harrison and white authorities thus alienated the Cayugas, even though they were real and fictive kinspeople of the Senecas (e.g., members of the same clans), defining them as non-Allegany Senecas, and in the process declaring them legally unfit to "own" Native lands within this Seneca reserve.²⁵

The US attorney general, William Wirt, largely concurred with Harrison in an equivocal but disconcerting opinion. He judged that the Treaty of Canandaigua did not divest the legal titles of New York, Massachusetts, or grantees, "nor are the preexisting rights of the Indians in any manner enlarged by that treaty." Wirt granted that the Senecas' land title, "however narrow," was nonetheless "a title in fee simple." Senecas held "a title of perpetual inheritance because it will be admitted on all hands that neither the present occupants nor their heirs so long as the nation subsists can be rightfully driven from their possessions." But that "fee simple" title was peculiar, unlike those held by white landowners, Wirt reasoned. It was "a legal anomaly" because the Senecas, he believed, lacked "the right of alienation." Like Harrison, Wirt denied the Senecas the right to lease as well as to sell their land, and he placed even greater restrictions on how Senecas might legally use their property. He wrote, "They have no more right to sell the standing timber, the natural production of the soil as an article of traffic than they have to sell the soil itself." Wirt believed that the Senecas could use their land for "the purpose of subsistence" but not for commerce. Cutting and selling timber would "waste" or destroy the value of their reserves; it would represent "a trespass against their right," whether they managed the process of extraction and market exchange themselves or whether it was pursued by others, with or without the permission of the Senecas.²⁶

Wirt's opinion was uninformed about the Senecas' hybrid, subsistence-surplus economy that engaged the market, and (despite the concern he would later display in the famous Cherokee cases), it was ungenerous to the Senecas' interests. "This Restriction upon the Indian right may be at first revolting to us," the attorney general admitted. "But," he asked, "are not all the restrictions on the aboriginal rights of the same character?" Wirt's sympathy seemed to lie with "the Indian," but this romantic and anachronistic Indian hardly resembled the nineteenth-century Senecas. Wirt nobly resigned himself to his version of history and progress.²⁷

Such a view directly contradicted the words President Thomas Jefferson had used in his address to the Senecas on November 3, 1802. Then he had assured them that Seneca lands "would remain yours, and shall never go from you but when you should be disposed to sell." Jefferson acknowledged, "We, indeed, are always ready to buy land; but we will never ask but when you wish to sell." Not that the president believed, as he told the Senecas, "that the sale of lands is, under all circumstances, injurious to your people." But the sale of Seneca land—or their refusal to sell land—was a Seneca prerogative. Indeed, Jefferson offered Senecas a lesson in the rights of property, which he applied to Native as well as to white land. "The right to sell is one of the rights of property," he wrote. "To forbid you the exercise of that right would be a wrong to your nation." Jefferson, a man we might recognize as an expert on unalienable rights, thus acknowledged Seneca ownership of their property, explicitly relating land ownership to the unconstrained right to sell (or *not* sell) it. But Harrison and Wirt and others imagined and asserted considerable constraints, not merely on Senecas' right to sell or not sell their property but even on their right to use that property freely, for their own subsistence or for others' "pursuits of happiness," including modern commerce.²⁸

Ironically, the restrictions imposed on the sale of Seneca lands did less to protect Seneca territory (which in any case most Senecas sought not to sell) than they did to undermine Seneca ownership rights and sovereignty. Such legal constraints—as interpreted by the likes of Ogden, Harrison, Wirt, and others—limited the Senecas' use of their own property, imposing economic rules and expectations that were often ethnocentric and anachronistic, even as they could be construed as proto-conservationist. They threatened Senecas' national sovereignty, community autonomy, and the ability to adapt successfully, sustainably, to changing economic and environmental circumstances in the early republic.

Though justified in legal terms and supported by humanitarian claims, this unfavorable interpretation of Seneca possession struck at the heart of their hybrid exchange economy and imperiled Seneca sovereignty and national existence. Ogden and others presented Senecas as a backward people, but in fact it was their innovation and success in accommodating the new economic realities of the early republic—engaging in extensive market exchange, amassing land and developing its resources, and promoting economic development through leasing—that made them an obstacle to concerns such as the Ogden Land Company.²⁹ "The History of every Indian Tribe on the Atlantic Coast without exception," Ogden wrote, "proves that they cannot long exist in their savage character in the Neighborhood of civilized Society." Such a claim was at least as much willful prophecy as it was fact or "history." As early as 1783, George Washington

had recommended a gradual expansionist policy that eroded the Indian-white frontier progressively. To James Duane, he wrote

the Indians . . . will ever retreat as our Settlements advance upon them and they will be as ready to sell, as we are to buy; That it is the cheapest as well as the least distressing way of dealing with them, none who are acquainted with the Nature of Indian warfare, and has ever been at the trouble of estimating the expence of one, and comparing it with the cost of purchasing their Lands, will hesitate to acknowledge.³⁰

Jefferson later advanced a similar though more aggressive and subversive strategy, as he outlined in a private letter to Governor William Henry Harrison (February 27, 1803), just three months after the address to the Senecas quoted above. Like Washington, Jefferson anticipated that white encroachment would spoil the habitats that were the basis of Native subsistence, which would make Native people willing to sell land and adopt white agriculture on smaller, individually owned farmsteads. But Jefferson hoped to accelerate the process:

To promote this disposition to exchange lands, which they have to spare and we want, for necessaries, which we have to spare and they want, we shall push our trading uses, and be glad to see the good and influential individuals among them run in debt, because we observe that when these debts get beyond what the individuals can pay, they become willing to lop them off by a cession of lands.

Jefferson thus conjured the Vanishing Indian, anticipating assimilation and Removal: “In this way our settlements will gradually circumscribe and approach the Indians, and they will in time either incorporate with us as citizens of the United States, or remove beyond the Mississippi.”³¹

Ogden hoped that the current president, James Monroe, would help him fulfill such a prophecy. But what if Indians failed to retreat, avoided debt, eschewed land sales, and sought to develop lands themselves, on their own sustainable terms? In fact the Senecas had withstood white encroachment for some time and they wished not to disappear. And for Ogden and other land jobbers, it was Seneca civility and facility in this new national world—not their alleged savagery—that made them troublesome. The future that Ogden feared belonged not to the Senecas, but to himself and his land company.³²

SENECA ECONOMIC AND ENVIRONMENTAL PRACTICE

The Senecas themselves frequently complained of white intrusion. They would have admitted that the exploitation of natural resources within their reservations in some instances was damaging, and their leasing arrangements with white neighbors could sometimes work out badly. They frequently protested the timber theft of white poachers, for example, and urged enforcement of New York laws that prohibited trespassing and illegal timber cutting. White squatters sometimes expropriated tribal resources and could be difficult to expel. But the Senecas required not protection from

themselves, as men such as Ogden asserted, but from outsiders. And they sought to preserve their land base and the ability to use their land autonomously and resourcefully. Ogden, on the other hand, challenged their ownership, sought to restrain their “destruction” of lands he claimed, and, casting them as backward and irredeemable, recommended removal to “Lands remote from settlement.”³³

In seeing the Senecas as “a heavy Incumbrance” that impeded progress (not to mention his own enrichment), Ogden echoed the predictions and predilections of Washington, Jefferson, and countless others: that Indians, incapable of change and mired in a “Hunter State,” would degenerate and then expire once encircled by white settlers. Consider the words of Morris I. Miller, the federal treaty commissioner appointed to meet with the Senecas early in the summer of 1819. Morris repeated the conventional objections to Seneca land use (or, rather, its supposed waste), which he saw as the cause of their likely demise. Addressing the Seneca Council, he expressed the displeasure of the “Great Father” and “his white children in your neighborhood [who] are dissatisfied at seeing the lands in your occupation remain wild and uncultivated; neither paying taxes, nor assisting to make roads and other improvements; nor in any way contributing to the public burthens as white peoples’ [*sic*] lands do.” He told the Senecas, “you occupy more land than you can advantageously till, or use for any valuable purpose; whilst at the same time the scarcity of game prevents your engaging in those pursuits, to which your Fathers were accustomed.”³⁴

Certainly white encroachment was willfully destructive of Native subsistence economies, particularly those based on hunting and gathering, as habitat destruction and over-hunting destroyed game resources and as settlers’ livestock ruined Native agricultural fields and gathering places. As Richard White has demonstrated, such ecological assaults planted the roots of dependency among numerous Native people.³⁵ But Miller’s and Ogden’s complaints ignored inconvenient economic and ecological realities at Allegany and other Seneca reserves. Senecas had proven to be as adaptive as any people in the early republic. Their mixed subsistence was not highly dependent on hunting, and although the depletion of game that attended white expansion was unwelcome it was not economically crippling. Senecas had long been an agricultural people, though one might not know it from the constant harangues of white reformers who sought to transform the Senecas into something they already were—that is, farmers. Although Seneca men increasingly participated in agricultural activities, especially plowing fields newly dedicated to grain production, Native farmers were largely women, not men, and they favored horticultural crops and labor practices that varied from white agrarian regimes. Seneca farming was more communal than individualistic, more extensive than intensive, more oriented toward subsistence than the market, and generally sustainable rather than depleting. If men hunted less in the early republic, they continued to value and to work in forests—cutting pines, processing timber and forest byproducts, and engaging in market exchanges often distant from their homeland. Senecas were well aware they could no longer live like their fathers and mothers, and in the course of their innovation forests (like all their lands) remained essential, not redundant, to their hybrid economy.³⁶

As early as 1803, a Pittsburgh merchant noted that the Senecas had a sawmill, “and being surrounded with lofty pine trees, they cut them into boards or scantling and float them down to Pittsburgh at the time of high water. And on these rafts they bring their peltry, furs, and good canoes, to push up their return cargoes . . . and sometimes shingles, the latter of which I have bought for one dollar and fifty cents per thousand and paid for them in merchandize.” Similarly, a missionary passing through the Allegany reservation in 1805 reported that Senecas “have learnt the smith business, so as to do common work. Many are ingenious in house carpenter work. One learned how to make axes in three days. One learned to make sacks in two days. Two are good coopers in making buckets and churns.” The report commented as well on the Senecas’ wealth of livestock, particularly their “great number of swine,” noting “some have salted down pork for sale.” Such industry and trade represented the exchange of raw materials (logs), processed items (furs, tallow, meat), finished goods (moccasins, boards, and shingles, axes, buckets, and churns), and sometimes labor by enterprising Seneca men for necessary supplies, things unavailable to Senecas locally, and perhaps even for cash.³⁷

If these Senecas were largely unrecognizable in Ogden’s memorial, so was their landscape. Seneca lands were not undeveloped—that is, simply “wild,” “uncultivated,” lacking “improvement,” or not “employed for any valuable purpose”—but, rather, they were developed in a fashion that inconveniently profited the wrong party. Typically, early national land speculators and developers viewed “improvement” as an evolutionary process, as lands passed from hunting and pasturage to agriculture and commerce. Even white squatters, though characterized as unauthorized and wasteful settlers, contributed some improvements through forest clearing—from the colonial period one of the most onerous tasks required to transform the vastly wooded continent into productive agricultural land. Other, better pioneers would supplant them and perform the progressive work of improvement, as illustrated, for example, in a quartet of images in O. Turner, *A Pioneer History of the Holland Purchase of Western New York* (1850). In sequential views of a single, progressively transformed landscape, we see first, a white settler and his rude log cabin amid a clearing hacked from an ancient forest; second, a humble, still rudimentary farmstead representing two years’ labor; third, a modestly prosperous farm with cleared fields and well-constructed buildings, the result of ten years’ toil; and finally, a vast, virtually treeless landscape of fields, substantial structures, and roads—a scene of advanced, lucrative commercial agriculture, “the work of a lifetime.”³⁸ [See figures.]

The Senecas were not the pioneers that Ogden imagined might embody such progressive development, and Senecas themselves did not seem to favor constructing an ecological and economic world like the one depicted in Turner’s *Pioneer History*. It does seem clear, though, that the Senecas held rich tracts of land made *more* valuable by their development of them than if such lands had actually constituted wilderness.³⁹ And Ogden coveted those lands precisely for this reason. Yet he worried that their acquisition would be endlessly delayed. Meanwhile, he expressed concern about “waste.” Waste here is not another noun describing “wilderness,” as in Michael Wigglesworth’s classic characterization of the environs of seventeenth-century Massachusetts: “A

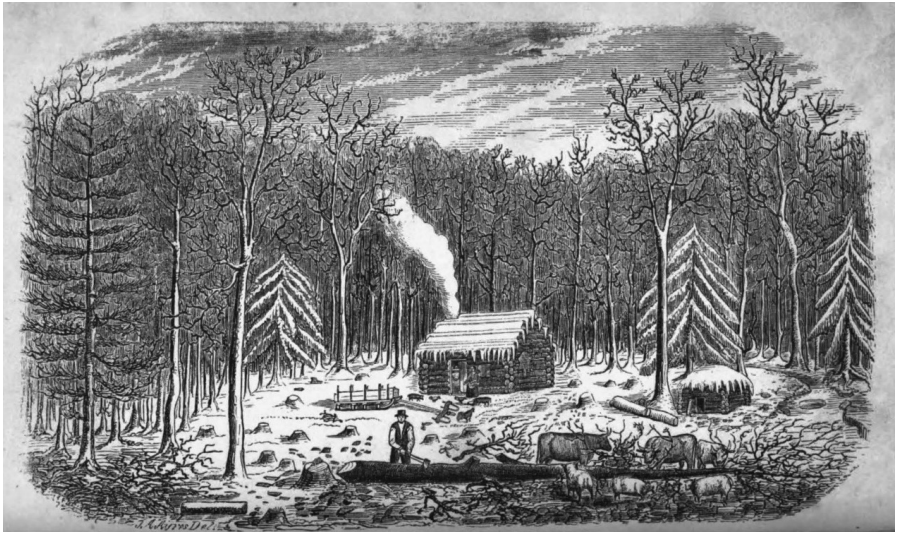


FIGURE 2. *Pioneer Beginnings*. Figure nos. 2–5 are from O. Turner, *Pioneer History of the Holland Purchase of Western New York* (1850), 652–66.

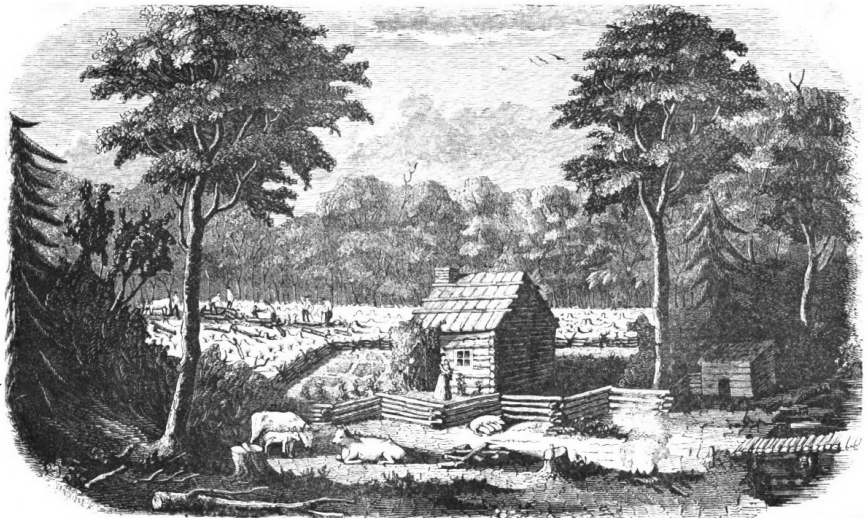


FIGURE 3. *Progress and modest improvement*.

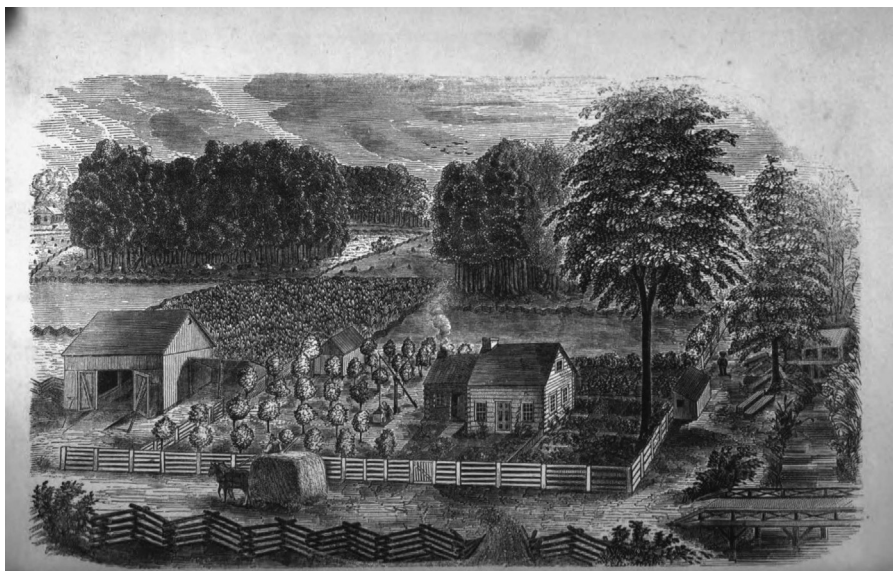


FIGURE 4. *Progress and refinement.*

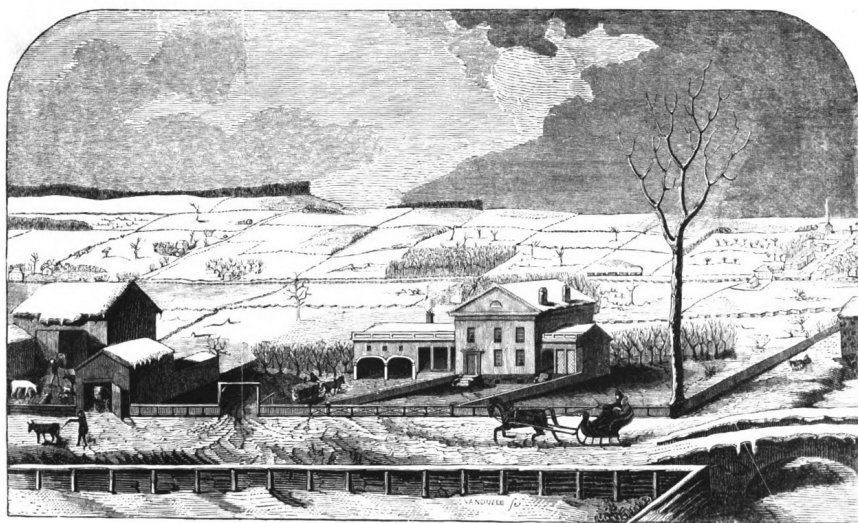


FIGURE 5. “The scene has progressed to a consummation! The Pioneer is an independent Farmer of the Holland Purchase . . . the conversion of Western New York, from a wilderness, to a theatre of wealth, enterprise, such as it is now” (Turner, *Pioneer History of the Holland Purchase of Western New York*, 566).

Waste and howling wilderness / Where none inhabited / But hellish fiends, and brutish men / That devils worshipped,"⁴⁰ but rather a verb meaning to squander nature's bounty. Ogden was especially anxious about timber, which Seneca men cut, processed, and sold, as did neighboring whites under leasing arrangements. In a June 1819 speech, he complained to the assembled Senecas: "Large quantities of Timber are continually sold to, and carried off by White People, without any restraint, from the Seneca Nation, and in prejudice to my legal Rights." Sometimes whites did illegally poach Seneca timber, but in other instances they acted with Seneca authorization, and typically Seneca men did much of this work themselves.

Ogden rejected all of it—not necessarily the extraction itself, but whom it benefited. If Senecas failed to expel white foresters and desist themselves, Ogden threatened to take matters into his own hands, sending in his own woodcutters or encouraging timber poachers, with dire consequences: "If I should encourage white people to cut timber on your lands, all that is good and valuable would soon be destroyed."⁴¹ Such was Ogden's resource conservation. Here he seemed to threaten to produce a "tragedy of the commons" where one had failed to emerge. Seneca collective ownership conserved these woodlands for Senecas, but the excluded Ogden threatened to unleash wanton overharvesting in Seneca forests by encouraging illicit trespass and expropriation of resources.⁴²

The trade in timber could cause environmental damage (though trees are a renewable resource and forestry can be practiced on a sustainable basis), but Ogden was clearly worried about the injury to his company's revenues. His ambition was to possess, not merely the Senecas' improved agricultural bottom lands, but also their intervalle pine forests in an undamaged state, which could then be clear-cut for profit. Ogden's preferred scheme, then, was a preservationist policy for Seneca woodlands while they remained in Seneca possession—not to maintain those forests inviolate forever, but only until they were within his own grasp.⁴³

SENECA LAND MANAGEMENT, SUSTAINABILITY, AND RESISTANCE TO DISPOSSESSION

The Senecas had their own economic and ecological plans. Leasing, for example, made economic sense—it helped compensate for limited Seneca labor and technological resources; it avoided the constraints imposed on their ownership rights; and it stimulated economic development and generated needed cash. And these benefits accrued while Senecas retained their land—as physical space, as national and cultural place, and as capital. White tenant farmers would "improve" tribal land, model new agricultural techniques, and produce Seneca income through rents. As a group of Christian Seneca chiefs later explained to President John Quincy Adams, "We have a great deal of land, all fit for fence and plow, which we cannot improve for a great many years. Our old people also live on some of this land. We want our Father the President, to say that we may lease such lands for the benefit of the Nation, and of such poor people." Similarly, Senecas negotiated leases that permitted local whites to operate sawmills on Seneca property. Though officially proscribed (on questionable legal grounds), such

partnerships promoted economic competency among both Natives and newcomers and allowed Senecas to raise capital for further development. But Seneca entrepreneurial activity challenged the ethnocentric expectations of reformers and officials and thwarted Ogden Land Company interests. A petition to the New York State legislature later objected that such leasing placed Indians in “the relation of Landlord to a tenantry of white citizens.”⁴⁴

Amid internal debates over appropriate land use and “improvement” strategies, Senecas widely agreed that their remaining property, even when not under direct cultivation, did not constitute surplus. As the Seneca chief and spokesman Red Jacket corrected David Ogden in July 1819,

You told us that we had large and many unproductive tracts of land. We do not view it so. Our seats are considered small; and if left here long by the great Spirit, we shall stand in need of them. We shall want timber. Land after improvement of many years wears out. We shall want to renew our fields; and we do not think that there is any land in any of our reservations but what is useful.

Seneca residual lands were critical to their environmental, economic, and national sustainability. Red Jacket insisted on behalf of the Senecas: “We will not part with any, not one of our reservations.”⁴⁵

While Senecas largely sought *not* to sell their land, constraints imposed on their possession nonetheless depressed their land’s value and burdened the Senecas’ ability to realize its appreciation. Such restrictions, along with white encroachment, could even make the alienation of Seneca land more likely. Yet the Senecas held fast against this pressure. As Quaker Friends at the Cattaraugus reservation reported to their superiors in Philadelphia, the Senecas “have intirely [sic] refused any negotiation [with Ogden] . . . and say they are determined never to move to the westward.” Another white supporter, Augustus Fox, wrote in August 1819 that the Senecas completely rejected Ogden’s legal claims and pretensions:

Red-jacket told the United States’ agent & a gentleman that owns the Prescription [that is, preemption] right (speaking of the Indians) that “We don’t make land: the Great Spirit made this land, & gave it to our fathers, who handed it down to us to sit down upon. You tell us that Mr. O[gden] has a prescription right to our reservations. You surprise us: this is new to us. God gave us this Land; and if Mr. O. had come down from Him, with his blood & flesh upon his bones, then we might be disposed to believe he has a prescription right, for we derived our rights from the Great Spirit.”⁴⁶

The Ogden Land Company nonetheless persisted, and President Monroe ordered an inquiry, while officials sought new means to extinguish Seneca land title, concentrate Senecas on smaller reserves, and remove them west of the Mississippi.⁴⁷

Quaker advocates for the Senecas remained concerned. Missionary Friends at Cattaraugus reported encroaching white settlers. The Senecas’ possession of “so large a portion of open lands of superior quality induce frequent applications from many

of their neighbors for privilege to settle among them[,] flattering the Indians with the prospect of an easy method of obtaining large increase of crops & by permitting them as tenants to cultivate their Lands.” Quakers feared not only the influence of degenerate whites on Seneca hosts or the prospects of Seneca dispossession by speculators. They worried that leasing arrangements encouraged Native male idleness, enabling Seneca men to avoid agriculture and industry. And they remained largely blind or hostile to Seneca entrepreneurial behavior. As the success of leasing paid Senecas dividends, “a number of [white] families of inferior grade had lately obtained a partial grant to move onto the Reservation,” a Quaker observer noted. Where would it end?⁴⁸

White speculators like Ogden acquired and sold land; other white grandees rented or leased it to white farmers. But Quaker reformers expected Native people to cultivate their land themselves, through their own manly toil, and they hoped to deter Seneca renting and leasing practices. Some Seneca chiefs agreed, and some white families were ordered off Seneca lands. But such eviction, if a moral victory for the Friends, served the Ogden Land Company interests as well—why should white farmers buy land from Ogden when they could lease it from Seneca proprietors? For the company, the Seneca nation was not merely an obstacle; it was a competitor. The well-meaning Quakers of the Philadelphia Indian Committee remained Seneca advocates, opposing the machinations of Ogden and his ilk, but like Ogden they harbored a view of the Senecas that was anachronistic, affected by their own hopes and biases.⁴⁹

CHANGING PROPERTY RIGHTS AND THE THREAT OF EXPROPRIATION IN THE EARLY REPUBLIC

In the 1820s and 1830s and beyond, the Senecas’ saga would be filled with twists and turns, setbacks and modest victories. They did lose thousands of acres of land, but the Senecas successfully preserved some of their reservations, wrested some stolen land back from white hands, and largely escaped removal beyond the Mississippi. Though it is axiomatic that property was sacred in America, the legal understanding of property—its uses, its rights, its protection—was changing. Opportunities for some meant new threats for others. As the legal historian Morton Horwitz has shown, the United States witnessed a transformation in the nineteenth century “from a static agrarian conception [of property] entitling an owner to undisturbed enjoyment, to a dynamic, instrumental, and more abstract view of property that emphasized the newly paramount virtues of productive use and development.”⁵⁰ Increasingly, state legislatures and the courts permitted or encouraged the taking of public and even private property, persuaded that such expropriation by private interests (not merely the state) promoted economic development. We see this shift clearly in changing riparian law in New England as it industrialized, which favored factory owners at the expense of common holders. If the property rights of white male landowning Yankees were so vulnerable in the early republic, how much more susceptible would Indians be to expropriation?

As early as the eighteenth century in New England, we can detect cracks in the foundation of property rights among some white landowners. By the mid-nineteenth century, the dams of New England textile manufacturers would be judged “reasonable

nuisances” that promoted economic development and the public good, even when their operations destroyed other people’s property. By common law, landowners had the right to take fish and use water from streams that flowed through their property. Water, according to the great eighteenth-century English jurist William Blackstone, “is a moveable, wandering thing, and must of necessity continue common by the law of nature”; one could have only “a temporary, transient, usufructuary property therein.”⁵¹ Riparian landowners were expected to use property so as not to injure the property of others. But what happened when someone in a community occluded a stream and interfered with the common rights of others to use the water themselves, take fish, or avoid flooding, as the backed-up water of a new dam drowned their meadows?

By common law, the injured could abate such a nuisance themselves—that is, physically remove the dam—though in practice, farmers and mill owners worked out mutually beneficial compromises that would allow dams, and useful sawmills or gristmills, to remain. In the eighteenth century, however, colonial and then state legislatures began to pass various mill acts that replaced such common law arrangements and increasingly eroded property owners’ protections. Such laws eventually regularized and standardized damage payments when mills destroyed others’ property. But in providing a remedy (and forestalling violence and lengthy litigation), authorities treated a symptom while tolerating or condoning its cause. Such laws undermined the rights of those whose ownership and use of property—even if undisputed, longstanding, and reasonable—were judged subordinate to uses by other property owners, if the latter were construed to serve “the publick good” or promote economic growth.⁵²

This sort of economic imperialism was legally aggressive, occasionally even rewarding the “adverse use” of land and resources, even those owned in common or by others. The legal doctrine of adverse use or “adverse possession” emerged in the context of water litigation in New Hampshire in 1830, as historian Theodore Steinberg has explained; the term perfectly expressed the new developmental sensibility. The details of changing riparian law are complicated, but essentially adverse possession held that one established a claim to a resource (in this case, water) by interfering with another’s use (or potential use) of it. “Adverse use,” Steinberg writes, “compelled riparian owners to develop their water resources in order to maintain their rights to the water. The doctrine thus encouraged the productive, instrumental use of water.” Simultaneously, the understanding of what was “reasonable” use changed to accommodate the ways that industry might utilize water—backing it up in dams, storing it in ponds that could flood fields, releasing it to power wheels and manufacture cloth, using it to wash away industrial waste. New England legislatures and courts increasingly sanctioned unprecedented forms of “noncompensable harm to property.”

What was reasonable? According to New Hampshire Justice Henry Adams Bellows writing in the 1860s, “the rule is flexible, and suited to the growing and changing wants of communities.”⁵³ In these years, new forms of industrial production created an astonishing abundance of new goods, thousands of new jobs, and enormous wealth. If the goal in this new world was efficiency, maximizing production, and promoting the general welfare of the community—identified increasingly in terms of the new wonders of industrial production and consumption—then society and the

law (or those who came to dominate it) might condone the damage done to some individual property holders in the interest of a greater common good.

What does all this have to do with the Senecas of western New York in the early republic? Nothing, at least in any direct sense. In dispute was land, not water, property possessed by some, not held in common. But Seneca efforts to protect their lands, as well as their sovereignty, were challenged by this emerging instrumental political economy and legal culture, by those hoping to profit from it, and by persistent white prejudice that misunderstood or willfully misconstrued Native realities. If the property rights of common white male landowners were threatened in the early republic, with legal doctrines such as “reasonable use” favoring economic expansion and development, what were the implications for more vulnerable Others like Native landowners? The Declaration of Independence had changed the equation of “life, liberty, and property” to “life, liberty, and the pursuit of happiness.” “Happiness,” defined as economic competency, still largely required property. But the “pursuit of happiness” implied greater mobility (social as well as geographic) than the static noun it replaced. All did not own property (yet), but opportunity through the acquisition of the means of production and land, the formula suggested, could be construed as a natural right. Where could that land be found and acquired? Whose land, whose property rights, might be harmed to serve this higher purpose?

Like other Native people, the Senecas had land, which whites coveted, and they seemed destined to lose it to support white America’s pursuit of happiness. As we have seen, in his appeals Ogden mixed promotion of development, and self-serving proto-conservationism, with a rhetoric of democracy—it was selfish for some to monopolize land, hoarded and unused or wasted, while there were others who sought to improve it, improve themselves, and improve their country. Ogden would suggest that his (for-profit) scheme supported the American dream by offering opportunity in the form of land to common, hard-working white Americans. This was at once a social, economic, environmental, and moral program. And Senecas, like other Indians, were in the way.⁵⁴

Ogden swam in the emerging mainstream of American thought about property as dynamic and instrumental. In his maneuverings, he sought to trump the natural and legal property claims of Senecas, even while acknowledging their long-term occupancy and use of land, with the assertion that, in essence, the Senecas had failed to use the land reasonably—that is, to alter and economically develop or “improve” it. Ogden’s dubious claims depended in part on the misrepresentation of Seneca economic and environmental practice, and in part on the growing consensus that not all uses of land were created equal, that some better served the public good than others. Ironically, the Senecas’ own “adverse possession” of their timber resources, which Ogden bewailed, might have actually helped establish Seneca property ownership claims—that is, if Senecas too were allowed to participate in the early national “release of individual creative energy,” if their distinctive economic development had been acknowledged and valued. Seneca use of land and resources could be doubly destructive for Ogden, however—by cutting timber they degraded the land, he argued; but in degrading it, in a sense, they asserted their own prior and greater claim by improving and developing it, after a fashion. So, the ethnocentric and self-interested Ogden easily and

unself-consciously shifted the rules, like so many facing superior Native claims, and embraced a double standard.⁵⁵

Seneca development was discounted or disparaged, and the ultimate loss of their lands was understood to be inevitable and beneficial. Ancient forms of Native land use were deemed primitive and condemned as backward, and in any event they had been undermined by the encroachment and destruction of habitats by whites. Yet the Senecas' actual hybrid land uses were ignored or rejected by most whites, sometimes because they challenged ethnocentric notions about Indians, or because their success made dispossession less likely. In the meantime, Ogden sought to impose a conservation policy on the Senecas that served his own interest, insisting that they preserve their forests for the land's future owners. Such a policy would preserve the "rights" of later exploiters to develop the land adversely. The fact that some white "losers" in New England, the Middle Atlantic, or elsewhere shared Ogden's ethnocentrism and might themselves benefit from the "free" land offered by land companies or the federal government, at Indians' expense, perhaps dampened the inclination to think through these contradictions.⁵⁶

But, surprisingly, the Senecas actually managed to hang onto a considerable amount of land and survive—through political skill, by playing various white officials and notables against each other, with some help from Quaker Friends, and through economic and social innovation. They possessed a collective strength and certain constitutional and treaty rights that white farmers lacked, and they used them well. Eminent domain claims could still assault them,⁵⁷ but the Senecas' imminent demise was greatly exaggerated. Senecas continued to use their land in ways they deemed reasonable and beneficial, in a manner that was socially, economically, environmentally, and nationally sustainable. Ogden did his best, but his economic development plans largely failed in the face of Seneca resistance.

EPILOGUE: PROTO-CONSERVATIONIST RHETORIC, COLONIALISM, AND ENVIRONMENTAL INJUSTICE

It is uncanny that David A. Ogden stumbled upon a proto-conservationist argument in the course of his efforts to dispossess the Senecas. When I first encountered it, I found Ogden's expressed concern for safeguarding timber resources and his criticism of Seneca land use eerily familiar, if unconvincing. His rhetoric seemed to anticipate the warnings of late nineteenth and early twentieth-century Progressive Conservationists such as Bernhard Fernow, Gifford Pinchott, or Theodore Roosevelt, who were reacting to decades of resource exhaustion, pollution, and public health problems that seemed to imperil the United States. Fernow wrote in 1902, for example, "The natural resources of the earth have in all ages and in all countries, for a time at least, been squandered by man with a wanton disregard of the future, and are still being squandered wherever absolute necessity has not yet forced a more careful utilization."⁵⁸ Indeed, Ogden said as much about the Senecas in 1819. Fernow later advocated external restrictions on private property and, much like Ogden, argued that because "the welfare of the whole may be jeopardized by the unrestricted exercise of the rights of the few, the necessity for

the limitation of the rights of the members arises.” He promoted the “restrictive function of the state,” *faire-marcher* over *laissez-faire*. “Whatever the greed and selfishness of the individual may dictate,” Fernow reasoned, “society recognizes its right to interfere with the individual in the use of resources, not only for its present objects, but even for considerations of the future.”⁵⁹ But, we might ask, who constituted “the whole,” “the few,” “society,” according to whom, and whose future mattered and was worthy of protection?

President Roosevelt affirmed Fernow’s regulatory approach. Writing in 1908, for example, he called “the wise use of all our natural resources . . . the great material question of today.”

The enormous consumption of these resources, and the threat of immanent exhaustion . . . due to reckless and wasteful use . . . calls for common effort, common action. . . . In the past we have admitted the right of the individual to injure the future of the Republic for his own present profit. In fact there has been a good deal of a demand for unrestricted individualism, for the right of the individual to injure the future of all of us for his own temporary and immediate profit. The time has come for a change.⁶⁰

Of course, things had changed since the early republic, and I’m wary of anachronism. Ogden jockeyed only for a temporary restraint on Seneca forestry—the future he sought to protect was his own, and it would come at Seneca expense. Seneca “squandering” (as Ogden perceived it) could become, after his preemption, white “beneficial use.” And once in possession of Seneca lands, Ogden hoped to develop it and sell it without state restriction. Ogden (and men like him) would have been a more fitting object for Progressive Conservationist restriction than the Senecas, as their own profligate use of resources produced unprecedented environmental crisis late in the nineteenth century.

But the irony is that such restrictions—better suited to wanton speculators and developers—sometime fell heavily on Native people, making Progressive conservation and modern environmentalism sometimes suspect and at odds with Native rights and sovereignty. If it’s unnerving that a proto-conservationist discourse in an earlier era could serve the interests of colonial control, dispossession, and despoliation, it’s also disconcerting that conservation and environmental regulation in the twentieth century—despite good intentions and genuine threats to local and global environments—could sometimes produce similarly distressing violations of social and environmental justice. In an era before broad public consciousness of environmental limits or outcries about environmental pollution, the dispossession of Native people opened lands and resources to extraordinary environmental alteration and, too often, degradation. And in modern times borderless environmental problems have leaked and spread across residual Native homelands and reserves, as they have across non-Native rural and urban landscapes.

Native land and resources contributed disproportionately to the growth of American democracy, national wealth, and international economic power. It is less well-known that Native people also have shouldered an inordinate burden in funding conservation and preservation initiatives and the remediation of environmental problems, the

byproduct of that development. Environmental solutions too often entailed social and environmental transformation that targeted Native people—removing them from Native territories to create national parks; restricting their hunting, fishing, and gathering rights after others had endangered numerous species; constraining their access to water that others had over-allocated or to religious sites that others sought for recreation; reducing Native livestock and curtailing grazing on rangelands others had helped to degrade; and relocating environmental hazards, concentrating them in areas considered remote, often in or near places materially and spiritually vital to Native people.⁶¹

National and global consolidation, complex matters of sovereignty, the course and consequences of land development and resource extraction, environmental calamities, now including the existential dangers posed by the global climate crisis, produced particularly by some and suffered particularly by others: These are complicated trans-historical matters that are beyond my scope here. But considering our contemporary world and its dilemmas in such a historical perspective, particularly through the lens of Native experience, and examining the rhetoric of environmental conservation as well as development, can render the strange past more familiar and the familiar present a bit more complicated—perhaps a useful exercise for imagining a future that is more socially and environmentally just.

NOTES

1. The best study of the Ogden Land Company is Mary H. Conable, “A Steady Enemy: The Ogden Land Company and the Seneca Indians” (Ph.D. diss., University of Rochester, 1994). White settlement and development of the far western New York region under the auspices of the Holland Land Company, the Ogden Company’s precursor, is expertly analyzed in Charles E. Brooks, *Frontier Settlement and Market Revolution: The Holland Land Purchase* (Ithaca, NY: Cornell University Press, 1996). The best study of the Six Nations and the aftermath of the American Revolution is Alan Taylor, *The Divided Ground: Indians, Settlers, and the Northern Borderland of the American Revolution* (New York: Knopf, 2006).

2. “Memorial of David A. Ogden to the President of the United States, regarding removal of Senecas,” ca. 1819, David Ogden Papers, Clement Library, University of Michigan, Ann Arbor, in Francis Jennings, ed., *Iroquois Indians: A Documentary History of the Diplomacy of the Six Nations and their League* [hereafter *DHSN*], 50 microfilm reels (Woodbridge, CT: Research Publications, 1985), reel 46. Ogden was a rich and influential former member of the US Congress. His claim was based on his acquisition of a “preemption” right (the exclusive right to purchase land from a tribe such as the Senecas, under the supervision of the national government) from the Holland Land Company, which held such rights from 1798 to 1809, having obtained them in complicated fashion from previous holders who had purchased them from New York and Massachusetts, which claimed political jurisdiction and actual ownership of the land based on various British colonial grants and their victory in the American Revolution. New York and Massachusetts worked out their disputed claims in 1786 at a conference in Hartford, CT. But note that Senecas themselves were not a party to these deliberations or later transfers, nor did they accept the legitimacy of such preemption rights. Technically, of course, a preemption right was nothing more than the exclusive right to purchase whatever property, if any,

that Senecas chose to sell. See Matthew Dennis, *Seneca Possessed: Indians, Witchcraft, and Power in the Early American Republic* (Philadelphia: University of Pennsylvania Press, 2010), esp. 181–82.

3. Red Jacket's reply, in council, July 9, 1819, in Morris I. Miller to John C. Calhoun, secretary of war, enclosing documents in relation to his proceedings in negotiating [*sic*] with the Indians, Utica, July 25, 1819, Letters Received (LR), Office of Indian Affairs (OIA), Roll 2 (1817–19), National Archives (NA), Washington, DC [recd. in Indian Office Aug. 1819]. The Pollard group included the "Christian Party" chiefs Young King, Destroy Town, Jim Robertson, White Seneca, Capt. William Prentiss, and Capt. Johnson. The Allegany Senecas' letter (April 15, 1819) appeared in the 1819 Indian Committee Report, *The Minutes of the Committee Appointed by the Yearly Meeting of Friends Pennsylvania, New York, &c for Promoting the Improvement and Gradual Civilization of the Indian Natives, or "Indian Committee," of the Philadelphia Yearly Meeting*, housed in the Quaker Collection, Special Collections, Haverford College, Haverford, Pennsylvania (hereafter ICM), vol. 2.

4. *Ibid.*

5. Ogden, "Memorial." See Conable, "A Steady Enemy"; see also Laurence M. Hauptman, *Conspiracy of Interests: Iroquois Dispossession and the Rise of New York State* (Syracuse, NY: Syracuse University Press, 1999).

6. As I suggest below, Ogden's rhetoric might be seen as laying the groundwork for the less self-interested, public-oriented American Conservation movement, which would develop in the late nineteenth and early twentieth centuries in the United States. Progressive reformers, such as the foresters Bernhard Fernow and Gifford Pinchot, and President Theodore Roosevelt, shared with men like Ogden (at least rhetorically) an interest in controlling resource exploitation in the interest of a utilitarian ethos—supposedly ensuring the greatest good to the greatest number for the longest time—as well as an appeal to democracy, opportunity, and long-term social health. Implementation of such conservation policies could come at the expense of Native rights, property, and sovereignty, however, not merely in the early nineteenth century, but also in the twentieth.

7. Ogden's actions should be understood in the context of the "working principle" of American law in the nineteenth century, which the legal historian Willard Hurst famously called "the release of energy." According to Hurst, in this era it was fundamental that "the legal order should protect and promote the release of individual creative energy to the greatest extent compatible with the broad sharing of opportunity for such expression." And Ogden—not the Senecas, who sought to quarantine and monopolize their supposedly undeveloped lands—was just the man to advance such an objective. See James Willard Hurst, *Law and the Conditions of Freedom in the Nineteenth-Century United States* (Madison: University of Wisconsin Press, 1956), 6.

8. The historiography of American Conservation is substantial but begins with Samuel P. Hays, *Conservation and the Gospel of Efficiency: The Progressive Conservation Movement, 1890–1920* (Cambridge: Harvard University Press, 1959). The now classic critique of American thinking about "wilderness" is William Cronon, "In Search of Nature" and "The Trouble with Wilderness; or, Getting Back to the Wrong Nature," in *Uncommon Ground: Toward Reinventing Nature*, ed. William Cronon (New York: W. W. Norton, 1996), 23–66, 69–90. Native people were assigned an ambiguous place in the nature/culture dichotomy. Sometimes they were represented as mere "children of nature," or worse, as less-than-fully-human denizens of wild spaces; sometimes as fully human, but backward, actors who, in failing to "improve" wild lands, compromised their claims to them, and who by their inability or unwillingness to evolve and progress were destined to disappear, or were justifiably removed.

9. See Richard H. Grove, *Green Imperialism: Colonial Expansion, Tropical Island Edens, and the Origins of Environmentalism, 1600–1860* (Cambridge, UK: Cambridge University Press, 1995), 3, 12. As Grove and others have demonstrated, modern conservationism developed as an integral part of European colonialism as early as the seventeenth century. The periphery of an expanding Europe

was “central to the formulation of western environmental ideas,” scientifically, philosophically, socially, and economically. Colonial states were quick to recognize that conservation served their economic interests. In places like India, by the second half of the nineteenth century, forest conservation and related forced resettlement schemes became convenient forms of social control. And, in turn, as Grove notes, local resistance to colonial conservation programs became central to many early anti-imperialist nationalist movements. Grove’s insights can profitably be extended to North America, even to the United States—that is, to the postcolonial predicament of Native people such as the Senecas of western New York. To be clear, I do not share the cynicism of some—for example, Paul Driessen, *Eco-Imperialism: Green Power, Black Death* (Bellevue, WA: Free Enterprise Press, 2003)—who see environmentalism, especially in its present forms, as merely or even primarily imperial. Environmental ideas, motives, policies, and practices are, and remain, much more complicated.

10. Though the term “wise use” was first coined in the early twentieth century by the Progressive conservationist Gifford Pinchot, it has been appropriated and employed since the 1980s by anti-environmentalist, reactionary individuals and groups contesting US environmental policies, particularly those originating in the 1970s (e.g., the Endangered Species Act, and the entire apparatus of the Environmental Protection Agency). These right-wing activists promote the expansion of private property rights and the reduction of government regulation of federal (that is, public) property, promoting local exploitation of those lands. “Greenwashing,” a term coined in the 1980s, is a form of deceptive marketing or rhetoric designed to persuade the public that an organization’s approach, products, or policies are environmentally friendly. As with a “whitewash,” the deception is meant to obscure or conceal self-interested, destructive behavior.

11. On the moral and economic critique of wasteful and environmentally destructive farming, see generally Anonymous, *American Husbandry: Containing an Account of the Soil, Climate, Production and Agriculture of the British Colonies in North-America and the West-Indies; . . . by an American*, 2 vols. (London: J. Bew, 1775). The unidentified author commented, “In these colonies . . . land cost nothing. . . . But this circumstance, which is such an undoubted advantage, in fact turns out the contrary; and for this reason, they depend on this plenty of land as a substitute for all industry and good management; neglecting the efforts of good husbandry” (1:85). Forest depletion inspired earlier conservation policies by British royal authorities in the interest of national security and commerce. Such regulations reached colonial America as early as the 1690s and spread in the first decades of the eighteenth century. They were routinely evaded. See Avery O. Craven, *Soil Exhaustion as a Factor in Agricultural History of Virginia and Maryland, 1601–1860*, *University of Illinois Studies in Social Sciences* 13 (1926): 83 (quotation). For New England, see William Cronon, *Changes in the Land: Indians, Colonists, and the Ecology of New England* (New York: Hill & Wang, 1983), 110–11; for the South Atlantic forests, see Timothy Silver, *A New Face of the Countryside: Indians, Colonists, and Slaves in South Atlantic Forests* (New York: Cambridge University Press, 1990), 104–38. On royal conservation efforts imposed on southern forests, see also Albert E. Cowdrey, *This Land, This South: An Environmental History* (Lexington: University of Kentucky Press, 1983), 53–4; and also see Joyce E. Chaplin, *An Anxious Pursuit: Agricultural Innovation and Modernity in the Lower South, 1713–1815* (Chapel Hill: University of North Carolina Press, 1996). In “Nature’s Currency: The Atlantic Mahogany Trade and the Commodification of Nature in the Eighteenth Century,” *Early American Studies* 2, no. 1 (2004): 47–80, <https://doi.org/10.1353/eam.2007.0033>, Jennifer L. Anderson offers a sophisticated account of commodification, colonial craft and business, deforestation and environmental degradation, and generally futile efforts at conservation which links the Caribbean, Central America, and Britain’s mainland colonies.

12. See the 1818 Indian Committee Report, The Minutes of the Committee Appointed by the Yearly Meeting of Friends Pennsylvania, New York, &c for Promoting the Improvement and Gradual Civilization of the Indian Natives, or “Indian Committee,” of the Philadelphia Yearly Meeting, housed

in the Quaker Collection, Special Collections, Haverford College, Haverford, Pennsylvania (hereafter ICM), vol. 2; Halliday Jackson, *Civilization of the Indian Natives; or, a Brief View of the Friendly Conduct of William Penn toward them in the Settlement of Pennsylvania . . . and a Concise Narrative of the Proceedings of the Yearly Meeting of Friends, of Pennsylvania . . . in Promoting their Improvement and Gradual Civilization* (Philadelphia: Marcus T.C. Gould, 1820), 68–72; Jonathan Thomas at Tunesassah to the Committee, August 11 and 24, 1818, Indian Committee Records, Quaker Collection, Haverford College (hereafter ICR), box 3; the August 11 letter first reported the broad opposition of the Allegany Senecas, including the disapproval of their most famous leader, Cornplanter, and their directive to Fletcher “to desist and depart from our Land.”

13. One party of Allegany Seneca chiefs and their followers was more favorably disposed to land division and more open-minded about relocation in the West. While Oneidas explored moving to Wisconsin, some Senecas contemplated a similar move, even going so far as to authorize an expedition to survey tracts of land in Sandusky, Ohio in 1817; see “Committee to Chiefs and Indians on the Allegany Reservation,” January 30, 1817, in ICM, vol. 2, 6–37. On the political situation at Allegany in this period, see Mark A. Nicholas, “A Little School, A Reservation Divided: Quaker Education and Allegany Seneca Leadership in the Early American Republic,” *American Indian Culture and Research Journal* 30, no. 3 (2006): 1–21, <https://doi.org/10.17953/aicr.30.3.b2ht4k20g4231150>; Dennis, *Seneca Possessed*, 179–220. Note that early nineteenth-century Seneca agriculture itself had transformed to include greater participation by men, though in selective, gendered fashion, with men more likely to plow fields employing draft animals and to focus more exclusively on new, nontraditional grain crops (e.g., wheat).

14. See Jacob Taylor to the Indian Committee, November 15, 1816 and 1818 Indian Committee Report, ICM, vol. 2; Report from Cattaraugus Council in October 1817, ICR, box 3; Jackson, *Civilization of the Indian Natives*, 68–72; Diane Brodatz Rothenberg, “Friends Like These: An Ethno-historical Analysis of the Interaction between Allegany Senecas and Quakers, 1798–1823,” Ph.D. diss., City University of New York, 1976), 243; Jonathan Thomas at Tunesassah to the Committee, August 24, 1818, ICR, box 3.

15. “A Copy of a Letter read and delivered the six Nations of Indians in Council at Buffalo by Jasper Parrish, Sub Agent on the 19th of Sept. 1818” in ICR, box 3. Also see “James Monroe to the Seneca Indians living on the Allegany Reservation,” January 15, 1819, in ICR, box 3; Rothenberg, “Friends Like These,” 244–46. James Robinson, a Christian Seneca chief at Allegany, later acknowledged that “his party were afraid to oppose the views of the President,” to whom “they looked for safety respecting the holding of their lands.” Robinson and other Senecas worried “if they should be driven off from their present possessions and sent to the westward the Indians that were there were very warlike and no doubt many of them would lose their lives if they went there.” See “letter from Tunesassah, September 16, 1821,” ICM, vol. 2.

16. Jonathan Thomas to the Committee, August 24, 1818, ICR, box 3; In Assembly [New York], March 4, 1819, Resolution on Indian Affairs, in ICR, box 3.; see Resolution of the New York State Senate to concur with the United States in encouraging the Indians within New York to concentrate themselves in suitable locations so as to secure their protection, obtain instruction in piety, and agriculture, and gradually to extend to them the benefits of civilization, Legislative Assembly Papers, vol. 41, 149, New York State Archives (NYS), Albany, New York; and see Report of the committee of the New York Legislature, about Indian Lands, presented in Assembly, March 4, 1819, in *ibid.*, vol. 41, 143–48.

17. Ogden, “Memorial.”

18. *Ibid.* Note that Ogden’s contradictory claims—that the Senecas were poor and a burden to the republic, and yet apparently rich in their possession of land and resources, and greedy in their hoarding of such riches—would be echoed in later white discourse about Indians, a theme developed

brilliantly in Alexandra Harmon, *Rich Indians: Native People and the Problem of Wealth in American History* (Chapel Hill: University of North Carolina Press, 2010). As Harmon writes, “the desire to control wealth has given Indians and non-Indians their most common and compelling motivation to deal with each other. Therefore, if and when Indians had substantial wealth, debate about the morality of Indian and Euro-American economic conduct was apt to flare up” (4).

19. John Winthrop, “Reasons to Be Considered for Justifying the Undertakers of the Intended Plantation in New England and for Encouraging Such Whose Hearts God Shall Move to Join with Them in It,” *Massachusetts Historical Society, Proceedings* 8 (1864–1865), 420–25.

20. John Cotton, “God’s Promise to His Plantation” (1630), *Electronic Texts in American Studies*, ed. Reiner Smolinski (Digital Common at the University of Nebraska-Lincoln), 5, <http://digitalcommons.unl.edu/etas/22/>. In short, productive use (“improvement”), or prospective, prescribed development, not merely prior possession, was linked to legitimate ownership of land and resources.

21. Ogden, “Memorial.” This interpretation of Native ownership—that is, that the Senecas actually owned the land they retained in their reservations and possessed all the rights associated with such ownership—fundamentally threatened the economic interests of those holding the preemption rights in those lands, the Ogden Land Company. The 1794 Treaty of Canandaigua, negotiated by Timothy Pickering (and sometimes called the Pickering Treaty), seemed to contradict Ogden’s allegedly superior claims, derived, he argued, from an earlier title conveyed to his company indirectly by Massachusetts. (Massachusetts had settled its colonial land claims with New York at a conference at Hartford in 1786, where Massachusetts secured preemption rights in western New York, while New York established its sovereignty over those lands). As Ogden acknowledged, the treaty’s third article held that the lands in question were “the Property of the Seneca Nation.” It promised that the United States would not disturb the Senecas and would guarantee them “the free use & enjoyment thereof, but it shall remain theirs until they choose to sell the same to the People of the United States who have the right to purchase.” On the Hartford conference, see Edward Countryman, “From Revolution to Statehood,” part 3, in *The Empire State: A History of New York*, ed. Milton Klein (Ithaca: Cornell University Press, 2001), 262. On the Pickering Treaty, see also *Treaty of Canandaigua 1794: Two Hundred Years of Treaty Relations between the Iroquois Confederacy and the United States*, ed. G. Peter Jemison and Anna M. Schein (Santa Fe, NM: Clear Light Publishers, 2000).

22. Ogden, “Memorial.”

23. Also complicating Ogden’s claim was the Indian Intercourse Act (or Nonintercourse Act), actually a series of federal laws first passed in 1790 and subsequently renewed or revised in 1793, 1796, 1799, 1802, and 1835. These statutes prohibited the purchase of Indian land without the approval of the federal government (a point implicit in the Treaty of Canandaigua’s third article, quoted above in endnote 20). The original Act, passed July 22, 1790, mandated that “no sale of lands made by any Indians, or any nation or tribe of Indians within the United States, shall be valid to any person or persons, or to any state, whether having the right of pre-emption to such lands or not, unless the same shall be made and duly executed at some public treaty, held under the authority of the United States” (Pub. L. No. 1–33, § 4, 1 Stat. 137, 138). Such legislation was designed to stabilize and pacify Indian relations. In an address to the Senecas in 1790, President Washington specifically referenced the Act to reassure them that their land was secure: “I am not uninformed that the six Nations have been led into some difficulties with respect to the sale of their lands since the peace. But I must inform you that these evils arose before the present government of the United States was established, when the separate States and individuals under their authority, undertook to treat with the Indian tribes respecting the sale of their lands. *But the case is now entirely altered. The general Government only* [that is, exclusively] *has the power, to treat with the Indian Nations, and any treaty formed and held without its authority will not be binding. Here then is the security for the remainder of your lands. No State nor person can purchase your lands, unless at some public treaty held under the authority*

of the United States. The general government will never consent to your being defrauded. But it will protect you in all your just rights" (emphasis added). See "From George Washington to the Seneca Chiefs, December 29, 1790," *The Papers of George Washington*, Presidential Series, vol. 7, 1 December 1790–21 March 1791, ed. Jack D. Warren, Jr. (Charlottesville: University Press of Virginia, 1998), 146–50, available online at *Founders Online*, National Archives, <http://founders.archives.gov/documents/Washington/05-07-02-0080>.

24. "Copy of Mr. Harrison's opinion" (April 1819), Indian Collection, BOO-2, Box 1, Folder 2: Government and business, land claims and treaties, Buffalo and Erie County Historical Society, Buffalo, New York.

25. Ibid. On Seneca and Cayuga history, kinship, and community, see Marian E. White, William E. Engelbrecht, and Elisabeth Tooker, "Cayuga," and Thomas A. Ablor and Elisabeth Tooker, "Seneca," in Bruce G. Trigger, ed., *Northeast 15* (1978), 500–17, in *Handbook of the North American Indians*, gen. ed. William C. Sturtevant, 20 vols. projected (Washington, DC: Smithsonian Institution, 1978–).

26. Copy of the Opinion of Wm. Wirt, Atty. General, March 26, 1819, Roll 2: Letters Received by the Office of the Secretary of War relating to Indian Affairs (LR, OSW), 1817–1819, NA. The legal historian, Stuart Banner, *How the Indians Lost Their Land: Law and Power on the Frontier* (Cambridge: Harvard University Press, 2005), 183–85, has shown the fallacy in the legal reasoning, based on faulty historical analysis, of numerous jurists in the early republic. Wirt and others erroneously assigned proprietary rights to "the Christian Sovereigns of Europe" as they colonized America in order to reassign such sovereignty and ownership rights to their successors, the state and federal governments.

27. Copy of the Opinion of Wm. Wirt, Atty. General, March 26, 1819. Contradicting Wirt was a later opinion expressed by Robert Montgomery Livingston, appointed to investigate fraud in the treaty negotiations of 1826. Livingston objected, "It cannot be that the Company can say to the Indians 'when the right of preemption was granted your Hunter condition was a Guarantee [sic] to the purchasers that you should always remain wandering & never till the ground or cut the timber (which until recently was as valueless except to cover the game—as the game is now & could not have entered into the estimate at the time of the Purchase).'" Unlike others, Livingston recognized Seneca social and economic transformation. "The Company seeks to restrict the Indians to their aboriginal use of their acknowledged right of occupancy. I assumed the liberty of telling the Indians that they had the right of occupancy in perpetuity unrestricted as to the mode of occupying and that as they had left the Hunter State & adopted the Agricultural they had the right to fell their trees to make room for the plough—that it would be advancing their Interests so to do—that the trees cut with such intentions would be theirs"; see R. M. Livingston to Peter B. Porter, Sec. of War, Buffalo, July 4, 1828, LR, OIA, Six Nations Agency, M234, Roll 832, NA.

28. President Thomas Jefferson to Brother Handsome Lake (Seneca League Chief), Washington, November 3, 1802, in Merrill D. Peterson, ed., *Thomas Jefferson: Writings* (New York: Library of America, 1984), 556. Note that, in addition, the Indian Nonintercourse Act did constrain the sale of Indian land, to the extent that it mandated the following (again, quoting the original Act of July 22, 1790): "No sale of lands made by any Indians, or any nation or tribe of Indians within the United States, shall be valid to any person or persons, or to any state, whether having the right of pre-emption to such lands or not, unless the same shall be made and duly executed at some public treaty, held under the authority of the United States." Land sales might still occur, of course, but they would require formal treaty negotiations between Native tribes and the US government and approval by Congress.

29. See Dennis, *Seneca Possessed*, esp. 148–78.

30. Washington to James Duane, Rocky Hill, September 7, 1783, in *George Washington: Writings*, ed. John Rhodehamel (New York: New American Library, 1997), 538.

31. Jefferson to Governor William Henry Harrison, Washington, February 27, 1803, in *Writings*, 1,118.

32. Ogden, "Memorial." Claiming concern about Seneca extinction, Ogden dismissed all previous attempts at "civilizing" them, especially those of religious societies, such as the Quakers, who in fact opposed Ogden and his associates as Seneca advocates. Ogden called for government intervention, a radical experiment in social transformation, to be imposed on the Senecas. Such action would benefit the Indians, he claimed, and promote greater public good.

33. Ogden, "Memorial." Ogden's complaints about the devaluation of Seneca lands through timber exploitation and sales and leasing activity was echoed in the New York State Assembly's report of March 4, 1819: "The facts pretty conclusively show that they [the Senecas] are incapable of protecting themselves in consequence of being surrounded by the whites and who have usurped nearly all their possessions, and from thence pilfer every stick and stone which can be converted into money, highly injurious to the interests of the State; who frequently pilfer the personal effects of those unfortunate beings; that they are overreached by the aid of ardent spirits & and after illegally obtaining the possession of those lands refuse to yield the possession; & when prosecuted delay the trial, until either the wants of the owner, or legislative provisions compel them to abandon justice & their rights, that most those invaders are of the most abandoned cast, by their conduct disarming"; Legislative Assembly Papers, vol. 41, 143–48, NYSA. Ogden commented on this report and lobbied further for Seneca concentration and removal in D. A. Ogden to J. C. Calhoun [Secretary of War], March 16, 1819, David Ogden Papers, Clements Library, University of Michigan, Ann Arbor, MI, in DHSN, reel 46. For an example of later, repeated complaints of trespassing and timber theft, see Petition to the legislature of New York, proposing a law to govern trespassing, keeping of tavern or grocery, or selling spirituous liquors, etc., on lands of the Senecas in New York, January 18, 1836, Ely S. Parker Papers, PA 19, Huntington Library, San Marino, CA.

34. Morris I. Miller to John C. Calhoun, Secretary of War, enclosing documents in relation to his proceedings in negotiating [*sic*] with the Indians, Utica, July 25, 1819, LR, OSW, Aug. 1819, NA.

35. Richard White, *The Roots of Dependency: Subsistence, Environment, and Social Change among the Choctaws, Pawnees, and Navajos* (Lincoln: University of Nebraska Press, 1981).

36. See Dennis, *Seneca Possessed*, 148–78.

37. John Wrenshall, "The Journal of John Wrenshall" (Pittsburgh Historical Society of Western Pennsylvania, 1816), qtd. in Diane Rothenberg, "The Mothers of the Nation: Seneca Resistance to Quaker Intervention," in *Women and Colonization: Anthropological Perspectives*, ed. Mona Etienne and Eleanor Leacock (New York: Praeger, 1980), 71; Rev. Jacob Cram, "Religious Intelligence: Summary Report of Mr. Cram's Late Mission," *The Massachusetts Missionary Magazine* 3, no. 10 (March 1806): 393. On rafting and its economic importance and environmental impact, see Michael Williams, *Americans and Their Forests: A Historical Geography* (Cambridge University Press, 1989), esp. 96–100. Around Buffalo Creek, at least, Senecas also gathered bark and sold it to Buffalo tanneries, the city's first industry to expand beyond local markets; see Conable, "A Steady Enemy," 16, 33. On livestock, Quakers often noted the quantity of horses held by the Senecas, which they saw as useless, compared to animals that might produce food or fiber (e.g., sheep and cattle) or that could perform much heavier work (oxen). Yet horses were quite useful in logging and thus critical to the Seneca forest economy and could be sold to others, including non-Indians.

38. O[rasmus] Turner, *A Pioneer History of the Holland Purchase of Western New York* (Buffalo: Jewett, Thomas, & Co., 1850); see 562–67, which offers four images and commentary about the progressive transformation of the land, from the first six months (a rude cabin hacked out of the forest), to the second year, to ten years later, to a final image: the work of a lifetime, which shows a

vast deforested, agricultural landscape, with substantial fields, large and refined structures, and a road system to facilitate commerce.

39. Joseph Ellicott, who had formerly represented the Holland Land Company (before it sold its interests to Ogden) evaluated the Allegany lands of the Senecas in these terms, in a report of June 7, 1819 (contained in Morris I. Miller to John C. Calhoun, Secretary of War, enclosing documents in relation to his proceedings in negotiating [*sic*] with the Indians, Utica, July 25, 1819, LR, OSW, Aug. 1819, NA): "This tract affords excellent pine timber and furnished valuable mill seats on the streams which pass through the hilly part of the tract. . . . With regard to the value of the land I can only observe that taking into consideration the alluvial flats, the pine timber and the mill seats it affords Situate on the navigable Streams I consider the tract valuable;—and that latterly I have sold lands belonging to the Holland Land Company adjoining and contiguous to the Allegany river from 14 to 10 miles above the eastern extremity of this tract, no part of which was bottom land or alluvial flats, and but partially timbered with pine, at prices from 5 to \$6 per acre; and my impressions are that the lands of the Allegany Reservation are worth double those I sold for the Holland Land Company."

40. Michael Wigglesworth, "God's Controversy with New England," in *Proceedings of the Massachusetts Historical Society* 10, 1871–1873 (Boston, 1873): 83.

41. Ogden's speech and proposal, July 1819, among the documents accompanying Miller to Calhoun, July 25, 1819, LR, OSW, Roll 2, NA.

42. The classic statement is Garrett Hardin, "The Tragedy of the Commons," *Science* 162, no. 3859 (December 13, 1968), 1243–48. Critiques of the idea point out its limitations in explaining the environmental practices of Native Americas and other non-Westerners; see, for example, Richard White, *The Organic Machine: The Remaking of the Columbia River* (New York: Hill & Wang, 1995), 39–40.

43. I am not able to establish whether Seneca forestry was actually conducted on a sustainable basis or not, though I have no evidence that it was actually exploitive; and it seems clear that Seneca logging was more sustainable than the industrialized timber regimes that followed. Nor does available evidence allow me to evaluate the sustainability of the activities of those who leased Seneca land. My sense is that timber cutting on such land more or less proceeded as it did on lands directly managed by Seneca men, and that agricultural activity by white leaseholders was primarily small-scale and subsistence-oriented, given the limited possibilities then for market-based agriculture. Ogden's approach anticipates some later conservationist prescriptions in that its preservation was not for preservation's sake, but rather for later use, allegedly in the public's interest.

44. This "talk" of the Christian Party of chiefs is enclosed with documents related to a removal proposal to Green Bay, in Jasper Parrish to McKinney, Canandaigua, November 30, 1826, LR, OIA, Six Nations Agency, 1824–1834, M234, Roll 832, NA. See also the Seneca chief Pollard's communication of July 10, 1819, a document enclosed with Morris I. Miller to John C. Calhoun, Secretary of State, Utica, New York, July 25, 1819, LR, OSW, 1817–1819, M271, Roll 2, NA. On Seneca leasing and its threatening quality, see Conable, "Steady Enemy," 112–13 (quotation), 117. Note that the 1799 version (and subsequent versions) of the Indian Nonintercourse Act added leasing to the Native land transactions that required federal approval: "No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian, or nation or tribe of Indians, within the bounds of the United States, shall be of any validity, in law or equity, unless the same be made by treaty, or convention, entered into pursuant to the constitution" (Act of May 19, 1796, Pub. L. No. 4–30, § 12, 1 Stat. 469, 472). Again, such a requirement did not proscribe leasing necessarily, but it seemed to demand federal mediation and approval. Needless to say, these laws were passed without Native consultation or approval.

45. Red Jacket's reply to Ogden's proposal, in council, July 9, 1819, document accompanying Miller to Calhoun, July 25, 1819, LR, OSW, Roll 2, NA.

46. David Ogden to Thomas Stewardson, and the Indian Committee, April 7, 1819, ICR, box 3; Letter from Friends at Cattaraugus, October 2, 1818, ICM, vol. 2; Fox to Elizabeth Fothergill, August 1, 1819, in Fothergill, "Account of Seven American Indians of the Seneca Nation Who Visited York during Three Weeks in the Month of May, 1818," 146, New-York Historical Society, New York, NY. Fox was an impresario from Canandaigua, NY, who in 1818 took a troupe of Seneca men to Britain to perform "Wild West" shows. Fothergill was an English Quaker who had met and befriended the Seneca performers near York, England. Fox's description accurately reflects the Seneca resistance, reported also in Miller to Calhoun, July 25, 1819, LR, OSW, Roll 2, NA. On the Holland Land Company and the impact of "preemption" on Seneca landownership, see Dennis, *Seneca Possessed*, 180–82, and generally, Banner, *How the Indians Lost Their Land*.

47. The commission's report inquiring into Seneca resistance to Ogden and removal, with numerous accompanying documents, is contained in Morris I. Miller to John C. Calhoun, Secretary of War, Utica, NY, July 25, 1819, LR, OSW, Roll 2, NA. The federal commissioner, Morris Miller, represented himself as a neutral party and honest broker, but he clearly supported the emerging federal program of concentration and removal. Red Jacket caused some controversy when he accused the president of being "disordered in mind" for advocating Seneca concentration at Allegany or their more distant removal.

48. Quaker Reports, March 29, 1819 and April 15, 1819, in ICR, box 3.

49. Ibid. See Harmon, *Rich Indians*, on the white responses to unexpected Indian affluence—to Native people's (for whites) incongruous and unacceptable wealth. And see more generally Philip J. Deloria, *Indians in Unexpected Places* (Lawrence: University of Kansas Press, 2004), on the ironies and implications of Native people who have defied white stereotypical expectations, often for being more modern than white mythic construction of "the Indian" allowed.

50. Morton J. Horwitz, *The Transformation of the American Law, 1780–1860* (Cambridge: Harvard University Press, 1977), 31. The legal and environmental transformation of New England as it began to industrialize in the nineteenth century is authoritatively treated by Theodore Steinberg, *Nature Incorporated: Industrialization and the Waters of New England* (Cambridge, UK: Cambridge University Press, 1991).

51. Steinberg, *Nature Incorporated*, 142, 31–32; Blackstone is quoted at 14.

52. Ibid. See also Gary Kulik, "Dams, Fish, and Farmers: Defense of Public Rights in Eighteenth-Century Rhode Island," in *The Countryside in the Age of Capitalist Transformation: Essays in the Social History of Rural America*, ed. Steven Hahn and Jonathan Prude (Chapel Hill: University of North Carolina Press, 1985). And for a variation on these themes set in the upper South, where the consolidation of economic and political power by a slave-holding elite had similar impact, see Harry L. Watson, "'The Common Rights of Mankind': Subsistence, Shad, and Commerce in the Early Republican South," *Journal of American History* 83, no. 1 (1996): 13–43, <https://doi.org/10.2307/2945473>.

53. Steinberg, *Nature Incorporated*, 145–47. The concept first emerged in the opinion of New Hampshire Chief Justice William M. Richardson, in *Gilman v. Tilton*, 5 N.H. (1830). Justice Bellows quoted at 147, from his opinion in *Hayes v. Waldron*, 44 N.H. (1863). In the Massachusetts case, *Commonwealth v. Essex Co.* (1859), the court affirmed the legislature's authority to determine public rights and public good—which was increasingly defined in terms of development and industrialization (184).

54. To anticipate the later Conservationist discourse of the Progressive Era, one might say that Ogden favored the "wise use" of resources—here, development of resources (ideally on a sustainable basis) was the ultimately purpose of their "conservation"; on the other hand, "preservation," which "locked up" resources and proscribed their exploitation, could be construed by some conservationists as anathema to the social and economic goals of Conservation. In Ogden's connection of conservation of resources with development, then, we might see the roots of later Conservationist ideas and

policies, despite the different motives of these actors. Ogden's wise use might be construed even more negatively, anticipating later "wise use" doctrines of modern anti-environmentalists who seek to benefit from obstructing regulation and appropriating public resources (in this case, the [anticipated] public lands that continued to be controlled by Native people).

55. A double standard—or unresolved contradiction perhaps—had long resided in the dual, conflicting claims that Senecas, on the one hand, had failed to develop or improve their lands, and, on the other hand, that they were exploiting or ruining their land (via a timber economy that in itself constituted development).

56. During these years, in particular in the decades leading up to the systematic Jacksonian policy of Indian Removal, the relationship between removal and the so-called Indian civilization policy was fraught and complicated, with benevolent missionaries such as the Quakers supporting "civilization" and seeing removal itself as a threat to Indian transformation and progress (as they defined it). Boasts of systematic cultural and economic change in Indian communities—including adoption of Christianity, new gender and family arrangements, and new land ownership and work patterns—as well as the transformation ("improvement") of native landscapes, often militated against efforts to push Indians west. Moreover, Quakers and others argued that removal threatens themselves undermined white missionaries' ability to convince Native people to accept and carry out their prescriptions. The response of Ogden and others who coveted Native land and resources, including their proto-conservationist rhetoric—arguing that Indians wasted their land—sought to disarm missionaries' claims and their *in situ* assimilationist strategy. Pursuing these themes and their place in the larger historical problem of Indian Removal in the early national and antebellum periods is beyond the scope of this essay. But, like the role of incipient conservationism and its potential to create a greenish colonialism or imperialism, such matters deserve further study.

57. Most notoriously, the Senecas lost some 10,000 acres of land (land guaranteed to them under the Treaty of Canandaigua) through eminent domain, when in 1960 the Army Corps of Engineers began to construct the Kinzua Dam on the Allegheny River. See generally Laurence Hauptman, *In the Shadow of Kinzua: The Seneca Nation of Indians since World War II* (Syracuse: Syracuse University Press, 2014).

58. Bernhard E. Fernow, *Economics of Forestry; A Reference Book for Students of Political Economy and Professional and Lay Students of Forestry*, 5th ed. (New York: Crowell, 1902), 1. Fernow preceded Gifford Pinchot as the third chief of the US Department of Agriculture's Division of Forestry from 1886 to 1898. Here, Fernow echoes the classic indictment of the pioneering environmental writer George P. Marsh, *Man and Nature; Or, Physical Geography as Modified by Human Action* (New York: Charles Scribner, 1864). As Marsh wrote, "Man has too long forgotten that the earth was given to him for usufruct alone, not for consumption, still less for profligate use. . . . [M]an is everywhere a disturbing agent. Wherever he plants his foot, the harmonies of nature are turned to discords" (35–36). For Marsh, destructiveness was essentially a consequence—a definition—of civilization; in contrast, he argued, "purely untutored humanity . . . interferes comparatively little with the arrangements of nature, and the destructive agency of man becomes more and more energetic and unsparing as he advances in civilization, until the impoverishment, with which his exhaustion of the natural resources of the soil is threatening him, at last awakens him to the necessity of preserving what is left, if not of restoring what has been wantonly wasted" (39–40). Marsh placed American Indians in this untutored category and largely held them blameless—a well-meant but ethnocentric characterization, which absolved them of guilt in the larger exhaustion of American resources and degradation of the American landscape while misrepresenting their environmental practice, denigrating them as "savages" largely incapable of large scale environmental alteration (even if this had been their goal). "The wandering savage grows no cultivated vegetable, fells no forest, and extirpates no useful plant, no noxious weed" (41). In fact, those Native groups referenced by Marsh, like the Senecas, were

horticultural people. The Senecas, of course, had in addition developed a forest products business, which challenged white expectations of them as savages, whether noble or ignoble.

59. Fernow, *Economics of Forestry*, 4.

60. Theodore Roosevelt, "Conservation as a National Duty," May 13, 1908, *Proceedings of a Conference of Governors in the White House, May 13–15, 1908* (Washington, DC: US Government Printing Office, 1909). Note that the Senecas, deeply imbued with a communal spirit, of course do not fit Roosevelt's indictment for "unrestricted individualism."

61. See, for example, Mark David Spence, *Dispossessing the Wilderness: Indian Removal and the Making of the National Parks* (New York: Oxford University Press, 2000); Rebecca Solnit, *Savage Dreams: A Journey into the Hidden Wars of the American West*, 20th ed. (Berkeley: University of California Press, 2017 [1994]); Karl Jacoby, *Crimes Against Nature: Squatters, Poachers, Thieves, and the Hidden History of American Conservation* (Berkeley: University of California Press, 2003); Louis S. Warren, *The Hunter's Game: Poachers and Conservationists in Twentieth-Century America* (New Haven: Yale University Press, 1997); Charles Wilkinson, *Blood Struggle: The Rise of the Modern Indian Nations* (New York: W. W. Norton, 2005); Charles Wilkinson, Diane Sylvain, and Hank Adams, *Messages from Frank's Landing* (Seattle: University of Washington Press, 2006); Charles Wilkerson, *The People Are Dancing Again: The History of the Siletz Tribe of Western Oregon* (Seattle: University of Washington Press, 2010); Andrew H. Fisher, "The 1932 Handshake Agreement: Yakama Indian Treaty Rights and Forest Service Policy in the Pacific Northwest," *Western Historical Quarterly* 28, no. 2 (1997): 186–217, <https://doi.org/10.2307/970893>; White, *The Roots of Dependency*; Marsha Weisiger, *Dreaming of Sheep in Navajo Country* (Seattle: University of Washington Press, 2009); Daniel McCool, *Native Waters: Contemporary Indian Water Settlements and the Second Treaty Era* (Tucson: University of Arizona Press, 2006); John Shurts, *Indian Reserved Water Rights: The Winters Doctrine in Its Social and Legal Context, 1880s–1930s* (Norman: University of Oklahoma Press, 2003); David Rich Lewis, "Native Americans and the Environment: A Survey of Twentieth-Century Issues," *American Indian Quarterly* 19, no. 3 (1995): 423–50. The Dakota Access oil pipeline and efforts to stop its construction, led by the Standing Rock Sioux community, is only the most recent and prominent environmental and social justice threat to Native people.