

2017

Parchment As Power: The Effects of Pre- Revolutionary Treaties on Native Americans from the Colonial Period to Present

Katie Wilkinson

Purdue University, wilkin35@purdue.edu

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Recommended Citation

Wilkinson, Katie. "Parchment As Power: The Effects of Pre-Revolutionary Treaties on Native Americans from the Colonial Period to Present." *The Purdue Historian* 8, 1 (2017). <http://docs.lib.purdue.edu/puhistorian/vol8/iss1/3>

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The times are exceedingly altered, yea the times are turned upside down...

– Two Mohegans petition the Connecticut State Assembly, 1789¹

The Honorable Sir John Berry Knight, Francis Morison, other English commissioners, and representatives from the Pamunkey, Waonoke, Nottoways, and Nancymond Native American tribes gathered on Tuesday, May 29th, 1677 in the court at Middle Plantation to forge a compromise that would plant disagreements including those from the Anglo-Powhatan War firmly in the past. As proceedings came to a close, Cockacoeske, Queen of the Pamunkey, along with at least nine leaders of other tribes signed a sheet of crisp parchment and kneeled before King Charles II's representatives. Each kissed the freshly penned treaty reverently, passing it to the next set of eager hands. To the Englishmen, it was a sign of "joyful acceptance," an embrace of what could be everlasting peace.² The agreement the Natives had signed was officially entitled the Articles of Peace but it was more commonly referred to as the Treaty of Middle Plantation for its birthplace. The treaty marked the tribes as tributaries to the "Great King of England" to whom they now "own all Subjection to" though their annual tributary payments would be given to "His Majesties Governour for the time being."³ Their signatures legally reaffirmed their belief in the King's sovereignty, his power – and sanctioned right – to enforce such authority, and their duty to remain faithfully obedient to him. The treaty did not take into account any Native American conceptions of governance as evidenced by its language. The English chose to structure the negotiations under what was most familiar to them, their motherland's laws, without any consideration to what was accustomed to their Native counterparts.

¹ Colin G. Calloway, *The World Turned Upside Down: Indian Voices from Early America* (Boston: Bedford Books of St. Martin's Press), 1.

² Treaty, Articles of Peace, May 29, 1677, William and Mary Digital Archive, Library of Virginia, http://www.encyclopediavirginia.org/Articles_of_Peace_1677 accessed January 23, 2017.

³ Treaty, Articles of Peace, May 29, 1677, accessed January 23, 2017.

In 1600, approximately 500,000 Native Americans lived to the east of the Allegheny Mountains but over the next three generations that same population would be reduced by 95%, subjected to unfair treaties, and governed under laws imposed on them by a proportionally small group of European settlers.⁴ One of the tribes that comprised this indigenous populous were the Mattaponi. A river still bears their name in southeastern Virginia. Although that water may continue to flow freely, the Mattaponi's rights were restricted by pre-revolutionary treaties made between their leaders and European settlers, agreements that have had lasting consequences. The population disparity of these separate groups cannot be overstated. For comparison, by the late 17th century English settlers in the region that is today Virginia numbered 30,000 already.⁵ Colonial America is one of the few instances in which a minority group had significant control over the majority. From the beginning their world views were at odds and although European settlers attempted to mitigate their cultural differences with ink-soaked quills and parchment, the Native Americans would bear the enduring consequences – positive or negative – of pre-revolutionary treaties not only from their genesis but also for centuries.

More than people were meeting for the first time in the late 16th and early 17th century; cultures and belief systems collided on the eastern shores of America. Native American and European cultural foundations were vastly different. Many, though not all, Europeans saw the world through a legal lens constructed by the English Constitution and English common law while Native Americans relied on practices of consent, custom, and kinship.⁶ Native Americans' spiritual beliefs often carried over into their definitions of power, a trait that is only slightly comparable to

⁴ Adam F. Kinney, "The Tribe, The Empire, and The Nation: Enforceability of Pre-Revolutionary Treaties with Native American Tribes," *Case Western Reserve Journal of International Law* 39 (2008): 899, accessed January 23, 2017. <http://scholarlycommons.law.case.edu/jil/vol39/iss3/10>.

⁵ "The Tribe, The Empire, and The Nation," 899.

⁶ Ethan A. Schmidt, "Cockacoeske, Weroansqua of the Pamunkeys, and Indian Resistance in Seventeenth-Century Virginia," *American Indian Quarterly* 36 (2012): 297.

the European mandate of the “divine right of kings.” Despite some similarities, Europeans struggled to understand Native cultural practices. Something as simple as an individual’s name had to be explained to either side. Roger Williams wrote a language guide for his fellow Englishmen, knowing it would be essential for them to not only understand Native Americans but also spread the gospel. He explained that Natives did not have “any Names to difference themselves from strangers, for they knew none,” but that they did make use of “particular names” belonging to nations or tribes and to the individual.⁷ Since even a topic as quotidian as one’s name had to be made clear, it is easy to imagine the breadth of cultural clarification that had to occur – but in some cases did not. When these two groups came into contact, questions of tribal rights and sovereignty were commonplace even in their initial encounters throughout the 16th and 17th centuries.⁸

In this cultural milieu, there were individuals who willingly embraced the viewpoints of their new neighbors. Some Native Americans saw European practices as answers to the new problems they were facing. As the quick onset of lethal western diseases claimed lives and smallpox, alcohol, and violence caused the loss of others, European traditions seemed as if they might offer hope.⁹ Some Native Americans adopted Christianity, even finding it more fulfilling than their previous beliefs. Mittark, the first Christian Native American from Gay Head at Martha’s Vineyard, found solace in his new religion. Speaking of the comfort it would provide him in the afterlife, he recounted on his deathbed in 1683, “Here I’m in pain, there I shall be freed from all Pain, and enjoy the Rest that never endeth.”¹⁰ Samson Occom of the Mohegan Indians of

⁷ Rogers William, *A Key into the Language of America: or An help to the Language of the Natives in that part of America, called New-England* (London: Gregory Dexter, 1643), A4. <https://archive.org/details/keyintolanguage>.

⁸ “The Tribe, The Empire, and The Nation,” 898-899.

⁹ Colin G. Calloway, *The World Turned Upside Down*, 43.

¹⁰ Experience Mayhew, *Indian Converts: Or, Some Account of the Lives and Dying Speeches of a considerable Number of the Christianized Indians of Martha’s Vineyard* (London, 1727), 22.

Connecticut, also converted to Christianity but for a different underlying reason. His tribe had lost substantial portions of their land to English encroachment. His people were no longer able to practice their traditional methods of subsistence including hunting, fishing, and gathering.¹¹ In his autobiography published in 1768 Samson narrates his conversion, “I was Born a Heathen and Brought up In Heathenism, till I was between 16 and 17 years of age...And when I was 17 years of age, I had, as I trust, a Discovery of the way of Salvation through Jesus Christ and was enabl’d to put my trust in him alone for Life and Salvation.”¹² Samson eventually became a reverend and schoolteacher after studying with Reverend Eleazar Wheelock in the 1740s.¹³ Christianity was an escape for Samson, a pathway to a new life free of the troubles his people could not evade. It is not to say that all Native Americans who accepted Christianity did so as a last resort but it is important to note that for many it was a logical next step to combat the issues they were struggling with at the time. Similarly, some Europeans embraced Native practices, choosing to live in Native communities where they could enjoy everything from Native dress and speech to their style of hunting and farming.¹⁴ The story of Mary Jemison is a rare example of a European’s integration into a Native community. She was captured and adopted by the Senecas at roughly 15 years of age in 1758 but Mary built a life as a Seneca. Although she was European, she lived a fully Native life. At the time of her death, she had been married twice, borne eight children, and had 39 grandchildren. As the American Revolution drew to a close, she was given the opportunity to return to white society but declined.¹⁵ In 1824, Mary dictated her experiences and they were published. She recounted of her introduction into Native society, “One thing only marred my

¹¹ *The World Turned Upside Down*, 54.

¹² Samson Occum, *A Short Narrative of My Life*, 1768, Typescript in Baker Library Special Collections, Dartmouth College, Hanover, New Hampshire.

¹³ *The World Turned Upside Down*, 54.

¹⁴ *The World Turned Upside Down*, 44.

¹⁵ *The World Turned Upside Down*, 71-72.

happiness, while I lived with them on the Ohio; and that was the recollection that I had one had tender parents...Aside from that consideration...I should have been contented in my situation...It is a fact that they are naturally kind, tender, and peaceable towards their friends.”¹⁶ It is not surprising that regardless of these cultural exchanges of information and customs, Europeans still strove to achieve dominance through their way of life and religion as well as military, political, and economic authority in the “New World.”

Over time however, the European perspective began to reign supreme as witnessed through the records of pre-revolutionary treaties drafted between the domestic and nonnative groups. It is true that some Europeans lived with Native Americans or elected to follow their way of living but this was not the predominant choice. As years passed, there was a growing demand for space and land, more specifically Native American land. Colonists wanted more room to plant crops, raise animals, and maintain communities. In their eyes, Native land was essential to this end. Treaties were one of the many mechanisms colonists used to pry land from various tribes but most importantly it became the one with the greatest lasting significance. Other tactics employed by the newcomers included conducting formal talks or encouraging Native individuals to run up substantial trade debts and then demanding land as repayment.¹⁷ This maneuver on the European’s part was clever. They were exchanging renewable capital for a nonreplenishable resource while generating dependence from the Natives on their supplies. Skiagunsta, head warrior of the Lower Cherokees acknowledged the toll European goods were taking on his people, “My people cannot live independent of the English...The clothes we wear we cannot make ourselves. They are made

¹⁶ James E. Seaver, *A Narrative of the Life of Mrs. Mary Jemison* (New York: Corinth Books, 1961).

¹⁷ *The World Turned Upside Down*, 78.

for us. We use their ammunition with which to kill deer. We cannot make our guns. Every necessary of life we must have from the white people.”¹⁸

BACKGROUND: NATIVE AMERICAN CUSTOMS AND EUROPEAN PREDISPOSITIONS

Since that you are here strangers and come into our Countrey, you should rather confine yourselves to the Customes of our Countrey, than impose yours upon us.

– Wicomesse to the governor of Maryland, 1633¹⁹

Customs, leadership styles, and tribal organization varied from tribe to tribe but in general Native American rulers exerted authority through spiritual connections, a concept Europeans would have had a hard time understanding. Powhatan, leader of a large Algonquian-speaking chiefdom in the Virginia region during the early 1600s, illustrates fundamental differences that existed between the two parties. Powhatan exercised great control over his chiefdom in many ways and for a considerable period of time. The underpinnings of his power lay in his ability to weave the success or failure of his larger chiefdom into the fate of his young male subjects. He instilled in each the belief that their fruitful efforts in hunting, labor, and military ventures were vital to community prosperity. Through such cultivation at the individual level, he garnered personal loyalties as well as strengthened his power.²⁰ To an onlooking Englishman, Spaniard, or Frenchman this explanation of his power was sufficient but they failed to see the full picture. Native Americans’ spiritual beliefs often carried over into their definitions of power; Powhatan was no different. He maintained his power through extensive and strong connections with various spirits. Those around him recognized these connections through his success in the physical world;

¹⁸ David H. Corkran, *The Cherokee Frontier: Conflict and Survival* (Normal: University of Oklahoma Press, 1962), 14.

¹⁹ Clayton Coleman Hall, ed., *Narratives of Early Maryland* (New York: Scribner’s, 1910), 89-90.

²⁰ “Cockacoeske, Weroansqua of the Pamunkeys,” 297-298.

the gods must have been linked to him for they would not deliver such status to him otherwise.²¹ This important facet of Powhatan's influence was lost on Europeans. John Smith's recollections of an encounter with Powhatan and his kinsmen is proof of this point, "What he commandeth they dare not disobey in the least thing. It is strange to see with that great fear and adoration all these people do obey this *Powhatan*. For at his feet they present whatsoever he commandeth, and at the least frown of his brow, their greatest spirits will tremble with fear."²² The closest comparison in European culture would be the "divine right of kings," but Powhatan's rule was not absolutist. It had spiritual and physical checks and balances unlike those of European kings. This tendency of Europeans to clarify Native practices through comparison and subsequent redefinition on their terms was common and likely caused frustration on both sides. Finally, it is crucial to note that Europeans believed power was represented through documents or written agreements. Their societies were often based on the written word, a stark contrast to Native life. This cultural polarity would have serious consequences for the Native Americans as they began to forge agreements and treaties with the new kids on the block without realizing how the scraps of parchment would be used against them in the coming decades.

In some instances, Native Americans established chiefdoms to strengthen the reach of their power, protect their kin, freely reap the benefits of other tribes' labor and eventually, gain protection from the Europeans. The earliest settlers, including the English at Jamestown, likely interacted with one of three chiefdoms that existed along the eastern coast of North America: the Powhatan, the Piscataway, and the Nanticoke. A chiefdom was led by a "central chief," generally a man, who passed their role onto the next generation. The central chief tended to live in a more

²¹ "Cockacoeske, Weroansqua of the Pamunkeys," 297-298

²² John Smith, *Captain John Smith: Travels, History of Virginia*, ed. E. A. Benians (Cambridge: Cambridge University Press, 1908), 123.

densely populated area so that he could not only offer guidance to the network of weroances, regional commanders who could be men or women, but also have easy access to advice from the council of elders. Holy men of the community also gave assistance and influenced the central chief's decisions.²³ Cockacoeske, weroansqua of the Pamunkeys, was an exception. She became the central chief of the remnants of the Powhatan Confederacy and led her people through a rough transition as colonists intruded on their territory and interfered with their way of life.²⁴ Although Europeans rightfully drew connections between chiefdoms and their overseas kingdoms, they were dissimilar on a few counts. First, chiefdoms were not absolutist since the central chief's actions were monitored by the elder council and holy men. Second, the central chief was not considered exempt from labor like monarchs.²⁵ Lastly, chiefdoms offered a degree of autonomy for tribes whereas kingdoms exacted rigid control over their subjects. The variances in social organization and resulting misconceptions could have affected how the Europeans negotiated with the Native Americans.

Despite venturing into an entirely new hemisphere, most Europeans were unwilling to even temporarily subdue their customs or belief systems. Many found it difficult to situate themselves in this new world, instead choosing to use "Old World" classification systems to understand what was in front of them. Roger Williams decided that the Natives must have descended from the Jewish people of Europe. His evidence included their tendency to "constantly annoint their heads as the Jewes did" as well as the fact that they gave "Dowries for their wives."²⁶ Williams' need to place the Native Americans within a familiar framework speaks to the feelings many colonists

²³ Gabrielle Tayac, Edwin Schupman, and Genevieve Simermeyer, "Chesapeake natives: Three major chiefdoms," *National Museum of the American Indian*, accessed April 10, 2017, <http://www.learnnc.org/lp/editions/native-chesapeake/1803>.

²⁴ "Cockacoeske, Weroansqua of the Pamunkeys," 288.

²⁵ Chesapeake natives," accessed April 10, 2017, <http://www.learnnc.org/lp/editions/native-chesapeake/1803>.

²⁶ *A Key into the Language of America*, 10.

likely had; feelings of discomfort, confusion and fright. Like Williams, many colonists were driven to convert the “pagans.” While it is highly probable that this effort was rooted in a sincere aspiration to save the Natives from eternal damnation, the benefits of Native conversion for Europeans cannot be left unaddressed. By sharing their religion, Europeans asserted control and power over the Native Americans while cementing their superiority. Within the Christian perspective, certain “unacceptable” behaviors such as multiple sexual partners or polygamy could be curtailed with the spread of European religion. Thus, the Europeans had the ability to manage Natives in direct and indirect ways. Most Europeans failed to acknowledge, let alone respect, that Native Americans had their own belief systems which guided their lives. Many tribes had creation stories that explained how they came into being. Furthermore, Natives made use of dreams much like Europeans looked to the Bible for spiritual direction.²⁷ In one instance a young Micmac woman foresaw the coming of Europeans in a dream. The account relayed by a Micmac man named Josiah Jeremy in 1869 captures this dream, “When there were no people in this country but Indians, and before any others were known, a young woman had a singular dream. She dreamed that a small island came floating in towards the land, with tall trees on it and living beings... Getting up in the morning, a singular little island...had drifted near to the land and become stationary there!”²⁸

In spite of their fundamental differences, Native Americans were an important part of many Europeans’ daily lives – in some cases they were crucial to the newcomers’ survival. Many colonists were unprepared for the realities of life within the American continent. The English at Jamestown relied on the Powhatans throughout their first winter in 1607. The Powhatan tribe not

²⁷ *The World Turned Upside Down*, 21, 33.

²⁸ Silas Rand, *Legends of the Micmacs*, (New York: Longmans, Green, 1894).

only gave them the food they needed to outlast the cold but also assistance.²⁹ Even after this display of mercy, tensions festered between the two communities and eventually boiled over in 1609. The Natives of the area were keenly aware that the English could not endure the oncoming winter without portions of their corn harvest. In reference to this predicament, John Smith recorded an outburst from Powhatan, the leader of the tribe, which underlines the role of the Native Americans in the English's subsistence, "What will it avail you to take by force you may quickly have by love, or to destroy them that provide you food."³⁰ Powhatan's words suggest that the English had a tendency of stealing Native property for their own gain as well as their dependency on Native labor. This phenomenon was not exclusive to the English. Chrestien LeClerq was a French missionary to the Micmacs in the Quebec region of Canada.³¹ He made note of a speech given by an elder who recognized French settlers' reliance on his people, "We see also that all your people live, as a rule, only upon cod which you catch among us. It is everlastingly nothing but cod...always cod, until things come to such a pass that if you wish some good morsels, it is at our expense; and you are obliged to have recourse to the Indians who you despise so much."³² Interestingly enough, Native Americans were willing and ready to bridge the gap between themselves and the colonists, offering to collaborate in mutually beneficial ways. In the same address of 1609 documented by Smith, Powhatan ends his speech on a hopeful note, "Let this therefore assure you of our loves, and every year our friendly trade shall furnish you with Corne; and now also, if you would come in friendly manner to see us, and not thus with your guns and swords as to invade your foes."³³

²⁹ *The World Turned Upside Down*, 38.

³⁰ Philip L. Barbour, ed., *The Complete Works of Captain John Smith* (Chapel Hill: University of North Carolina Press, 1986), 1:247.

³¹ *The World Turned Upside Down*, 49.

³² William F. Ganong, trans. and ed., *New Relation of Gaspesia, with the Customs and Religion of the Gaspesian Indians*, by Chrestien LeClerq (Toronto: Champlain Society, 1910), 104 – 106.

³³ *Complete Works of Captain John Smith*, 1:247.

The Europeans' desires to preserve familiar comforts of the "Old World" and to create a semblance of stability in alien surroundings came at the expense of Native Americans. Along with diseases, Europeans brought a variety of trade goods and alcohol with them when they landed on the beaches of North America. In their eyes these items served two purposes. Primarily both would equate to currency in the distant land. With supplies for themselves tucked away, they were free to trade their excess wares to obtain objects of greater value such as food, land, or other material goods like furs. Secondly, the small mementos from home may have offered them fond memories and hope in the rough periods. Unfortunately, these commodities morphed into many Native Americans' Achilles' heels. Native Americans became partial to and ultimately dependent on European products, particularly alcohol. Historian Colin Calloway argues that Native consumption of alcohol "contributed to the destabilization of Indian societies."³⁴ Within this tumultuous environment and under the influence of a foreign substance, some Natives found it harder to prevent European intrusion on their homelands.³⁵ Moreover, the dependency that grew out of Native consumption of European products was another form of control. In 1753, Scarouady, an Oneida sachem, explained to Pennsylvania treaty commissioners the breadth of the issue, "These wicked Whiskey Sellers, when they have once got the Indians in Liquor, make them sell the very Clothes from their Backs. In short, if this Practice be continued, we must be inevitably ruined."³⁶

PUSH AND SHOVE: HOW NATIVE LIVES WERE ALTERED BY TREATIES

³⁴ *The World Turned Upside Down*, 79.

³⁵ *The World Turned Upside Down*, 79.

³⁶ Donald H. Kent, ed. *Pennsylvania Indian Treaties, 1737 – 1756*, in Alden T. Vaughan, gen. ed., *Early American Indian Documents: Treaties and Laws, 1607 – 1789*, (Frederick, Md.: University Publications of America, 1984) 2:291.

We know our Lands are now become more valuable. The white People think we do not know their Value; but we are sensible that the Land is everlasting, and the few Goods we receive for it are soon worn out and Gone.

– Canastego to the governor of Pennsylvania, 1742³⁷

First, it is important to note the variable circumstances under which treaties and agreements were predicated. Sometimes, though not always, Native Americans were tricked into land cessions. Europeans made use of alcohol, heavy legal terminology, and threats of violence to gain Native land. In other cases, Europeans negotiated agreements that appeared honest on the surface only to turn out dubious. The Dutch made use of such deceitful practices in their interactions with Natives. The Reverend John Heckewelder, a missionary among Delawares and Mahicans in the Ohio Valley, captured a land transaction between Natives and the Dutch in which the foreigners were misleading. The Dutch began, “asking them only for so much land as the hide of a bullock would cover...They [Natives] readily granted this request; whereupon the whites took a knife, and beginning at one place on this hide, cut it up into a rope not thicker than the finger of a little child...it encompassed a large piece of ground.”³⁸ However, a more menacing cultural difference bubbled underneath the surface of land negotiations between the opposing sides. Native Americans viewed land as a resource to be shared between everyone rather than the European conception of land as property, a commodity to be bought and sold. To make matters worse, Natives were frequently under the impression that they were offering only the rights to inhabit the land not sole

³⁷ *Pennsylvania Colonial Records*, 4:559 – 586.

³⁸ John Heckewelder, *The Arrival of the Dutch*, New York Historical Society Collections, 2nd ser., 1:71 – 74.

propriatorship.³⁹ Regardless of the conditions under which Natives and foreigners came to accords, Natives' lives were changed in both constructive and detrimental fashions.

Due to misinterpretations, mistranslations, and intentional deceptions, the final text of a treaty or any legal document did not always reflect the conversations and concluding consensus between the two parties. The Casco Bay Treaty of 1727 between the English and several groups of the Abenaki provides a perfect example of how finalized treaties differed from spoken negotiations. The language of the Treaty implies that the Abenaki and other tribes, referred to as the "Eastern Indians," were the sole source of violence within the community. In addition, it insinuates that the Natives were begging to be ruled by the English crown.⁴⁰ Later that year, group of delegates who were present at the Casco Bay Treaty gathered again to discuss the discrepancies between their conversations and the written document. Penobscot narrates his recollection of the events, "I did not say to him [the English], I acknowledge myself the cause of it [violence], nor I condemn myself for having made war on him...Much less, I repeat, did I, become his subject or give him my land, or acknowledge my King for thy King...God hath willed that I have no King, and that I be master of my lands in common."⁴¹

As a result of treaties, Natives' interactions in society followed predefined, regulated sets of rules as opposed to being free or spontaneous. The Treaty between the Abenaki Indians and the English at Casco Bay in 1727 generated guidelines for the Natives to follow. They had to "Cease and Forbear all Acts of Hostility," "maintain a firm and constant Amity and Friendship with all the English," and trade with the English under the "Management and Regulation as the

³⁹ *The World Turned Upside Down*, 83.

⁴⁰ "Indian Treaties," *Collections of the Main Historical Society* (1856), 4:118 – 84.

⁴¹ E.B. O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New York*, 15 vols. (Albany: Weed, Parsons 1855), 9:966 – 67.

Government of the Massachusetts Province.”⁴² The reasoning behind these regulations is simple. First, it ensured the Europeans received all the materials they needed from the Native Americans. Relationships could falter at any time but by cementing them in writing, the colonists could be sure their needs would be taken care of. Second, it was yet another type of control. Although the English may have obtained authority over large portions of land at Casco Bay, it is likely that they still feared their neighbors.

Just as companies institute codes of conduct to outline an employee’s responsibilities towards the firm’s goals, pre-revolutionary treaties specified Natives’ newfound social duties in order to secure the community’s welfare. Prior to treaty obligations, Native Americans offered food, materials, and goods to the newcomers as an extension of friendship. In some cases, as their social relationships developed and eventually eroded, Native Americans were less likely to share their resources. For that reason, writers of treaties felt it necessary to require Natives to provide for their people. Antoine Simon Le Page du Pratz, a French traveler who lived with the Natchez for five years, documented the additional roles the Natchez had to take on. He recounted, “We deprive ourselves of a part of our corn, our game, and fish to give a part to them [The French].”⁴³ It is likely for some tribes that this duty became a significant, frustrating burden particularly as they lost more and more tracts of their land.

Besides their social autonomy, Native Americans relinquished their rights to self-govern, almost always promising allegiance to a foreign king. In both the Casco Bay Treaty and the Treaty of Middle Plantation, Native Americans pledged allegiance to a distant ruler, one whom they would never meet.⁴⁴ Not all Natives were opposed to surrendering to a foreign ruler. Many

⁴² “Indian Treaties,” 4:118 – 84.

⁴³ Antoine Le Page du Pratz, *The History of Louisiana*, trans. from the French (London, 1774), 41.

⁴⁴ Kinney, 901; “Indian Treaties,” 4:118 – 84.

believed that the almighty king would provide as much assistance to them as he did to his own subjects. This is evidenced by the outcome of the American Revolutionary War. After the redcoats' defeat, some Natives wanted to return with the soldiers to Britain. They knew that further encroachment on their land was bound to come at the war's close and the British crown may have seemed like a potential escape route.⁴⁵

Pre-revolutionary treaties divided Native Americans by forcing them to take up arms against neighboring clans in a time when it would have been best for them to band together to prevent further damages to their nations. The Casco Bay Treaty barred its Native signatories from assisting tribes around them. Moreover, they were expected to "joine their Young Men with the English in reducing" any individuals who refused to ratify the treaty.⁴⁶ By encouraging and reinforcing loyalty to the crown, the English were making moves in their favor. In some circumstances, the faithfulness cultivated from these paternal yet unequal relationships would play out in their favor decades later during the American Revolutionary War.

One of the most palpable ramifications of pre-revolutionary treaties were the immediate cessions of Native American lands, oftentimes unbeknownst to the signatories. As previously discussed, the reasons for the confusion – intentional or not – were numerous. Many tribes experienced the significance of the loss of lands due to pre-revolutionary treaties. The Treaty of Lancaster is one of the examples of how easily Native lands were stolen via documents and complicated wording. The Treaty of Lancaster was forged between the Iroquois and the people of Lancaster Pennsylvania in 1744. On July 4th the orator and a representative of the tribes involved

⁴⁵ *The World Turned Upside Down*, 170.

⁴⁶ "Indian Treaties," 4:118 – 84

in the negotiations expressed his feelings in a speech to the assembly.⁴⁷ There he explained how his people's lands were confiscated over a long period of time without their knowledge:

“Our Brother Onas, a great while ago, came to Albany to buy the Sasquahannah Lands of us, but our Brother, the Governor of New York, who, as we suppose, had not a good Understanding with our Brother Onas, advised us not to sell him any Land, for he would make an ill Use of it; and, pretending to be our good Friend, he advised us, in order to prevent Onas's, or any other Person's imposing upon us, and that we might always have our Land when we should want it, to put it into his Hands; and told us, he would keep it for our Use, and never open his Hands, but keep them close shut and not part with any of it, but at our Request. Accordingly we trusted him, and put our Land into his Hands and charged him to keep it safe for our Use; but some Time after he went to England and carried our Land with him, and there sold it...”⁴⁸

The Iroquois' lands were never formally relinquished but when the colonists came together to write the Treaty of Lancaster with the Native Americans, they worked under the assumption that they were already colonial property. Despite the efforts made by the Iroquois at the talks to rectify the misunderstanding, they were unsuccessful.

Native Americans are frequently portrayed as feeble, bumbling victims of colonization, especially where land cessions are concerned, but many contemporaries endeavored to regain possession of their territories. The strategies tribes used to strengthen their forces often involved working together and making pledges towards a hopeful future. An agreement of the Gay Head Native Americans not to sell their lands includes both of these tactics and quite early at that in

⁴⁷ *The World Turned Upside Down*, 99 – 100.

⁴⁸ *Pennsylvania Colonial Records*, 4:698 – 734.

1681. The Gay Head Native Americans were ahead of the curve in preserving their lands. Mittark, the sachem of this tribe wrote this agreement calling his kinsmen to make a promise to their posterity. He implores his people to resist selling their land or else they will “fall forever.”⁴⁹ Other tribes such as the Mashpee took a more direct approach in their attempts to reclaim their property. The Mashpee resided in Massachusetts and were governed by a guardian system. This system, instituted in 1746, appointed individual guardians to each Native settlement. These guardians were given the authority to confiscate Native lands, allot them to other Natives as they saw appropriate, and lease any remaining lands to settlers. The income from these leases was intended to go towards supporting Native needs but it did not always make its way into the hands of those who needed it. More generally, the system experienced abuses. Consequently, the Mashpee had to begin advocating for themselves, so they chose to take their grievances to the Massachusetts General Court.⁵⁰ On June 11, 1752 the Mashpee petitioned the court, fighting for their rights,

“We shall not give it [land] away, nor shall it be sold, nor shall it be lent, but we shall always use it as long as we live, we together with all our children, and our children’s children, and our descendants, and together with all their descendants... We shall use it forever and ever. Unless we all peacefully agree to give it away or to sell it. But as of now not one of all of us Indians has yet agreed to give away or sell, or lend this Indian land, or marsh, or wood... Against our will these Englishmen take away from us what was our land. They parcel it out to each other, and the marsh along with it, against our will.”⁵¹

⁴⁹ Ives Goddard and Kathleen J. Bragdon, eds., *Native Writings in Massachusetts*, 2 vols. (Philadelphia: American Philosophical Society, 1988), 1:96 – 97.

⁵⁰ *The World Turned Upside Down*, 104 – 105.

⁵¹ Ives Goddard and Kathleen J. Bragdon, 373.

The Gay Head Native Americans and the Mashpee are only a few examples of Native individuals who sought to recover their possessions in face of the dangers that could have come their way.

For all they were surrendering, from land to self-governance rights, Native Americans obtained few benefits from their cosignatories in return. To their credit, Native Americans quickly learned from their interactions with land-greedy colonists and managed to generally secure rights to the usage of forfeited areas, expanding the narrow range of benefits they reaped from treaties. In deeds with individuals as well as treaties, Native Americans were often able to retain hunting, fishing, or planting rights. Even though they were losing their homelands, at least they were able to conserve aspects of their former lifestyle.⁵² Under other treaties, Natives were guaranteed royal protection but this promise was empty at best. Lacking soldiers and suffering from the disadvantage of racial bias, the Native Americans were unlikely to benefit from the assurance of foreign defense.

Moreover, some Native Americans such as Cockacoeske of the Pamunkeys used treaties as tools to obtain more power within their communities. In August of 1676, the colony of Virginia was experiencing great strife. Its inhabitants were caught up in the fiery words of Nathaniel Bacon as he and his followers unleashed a rebellion in an effort to “ruin and extirpate all Indians in general.”⁵³ The Pamunkeys, led by Cockacoeske, were one of the few remaining tribes in the region. As Bacon and his men pursued her people, she instructed them to avoid becoming the aggressors. They still had treaty obligations to abide by, obligations Cockacoeske and the Pamunkeys had upheld for 30 years. Even with her wise warning, Bacon was able to detain roughly

⁵² *York Deeds* (Portland, Maine, 1887), vol. 2, fols. 13, 113 – 14.

⁵³ Nathaniel Bacon, “Manifesto Concerning the Present Troubles in Virginia,” *Virginia Magazine of History and Biography* 1 (1894): 55 – 58.

45 Pamunkeys, killing eight.⁵⁴ After the Virginian's tirade came to an end, the "Queen of the Pamunkeys" knew she needed to see to it that Bacon's Rebellion was the final instance of a Pamunkey dying at the hands of the colonists. The Treaty of Middle Plantation, was the perfect opportunity for Cockacoeske to accomplish this aim while also advancing her position in her society. Cockacoeske held many goals dear, but one superseded all: "the reconstruction of the paramount chiefdom and the Pamunkey role in its leadership structure."⁵⁵ Whereas other chiefs before her had simply been interested in pleasing the English at all costs, Cockacoeske was interested in placing her people's needs first. To this end, she had strived to be well connected with the English elite. For example, her son was fathered by Colonel John West, a wealthy tobacco planter and grandson of Sir Thomas West, the governor of Virginia from 1610 – 1618.⁵⁶ In addition, the governor of Virginia, Sir William Berkeley, called for her support during Bacon's Rebellion.⁵⁷ She used these social alliances, her son's position as a literal cultural go-between, and her position as a spokeswoman for the Virginia tributary tribes to negotiate her rightful role as leader of all tributary groups under the Treaty of Middle Plantation in 1677.⁵⁸ When the agreement was signed, Cockacoeske did not have to exert any force to reestablish the paramount chiefdom nor her function as its leader. Article XII of the treaty stated plainly:

"That each Indian King and Queen have equal power to govern their own people, except the Queen of the Pamunkey to whom several scattered Indians do now again own their ancient Subjection and are agreed to come in and plant themselves under power and government who with her are also hereby included in this present League and treaty of

⁵⁴ "Cockacoeske, Weroansqua of the Pamunkeys," 288 – 89.

⁵⁵ "Cockacoeske, Weroansqua of the Pamunkeys," 309.

⁵⁶ "Cockacoeske, Weroansqua of the Pamunkeys," 306.

⁵⁷ "Cockacoeske, Weroansqua of the Pamunkeys," 308.

⁵⁸ "Cockacoeske, Weroansqua of the Pamunkeys," 309.

peace and are to keep and observe the same towards the said Queen in all things as her subjects as well as towards the English.”⁵⁹

Cockacoeske had used a traditionally European practice to recreate a customarily Native social organization. Furthermore, the treaty would serve as a formal tool of enforcement for her new leadership position should any of the tributary tribes attempt to revolt.

LASTING SIGNIFICANCE

We mean in the acknowledgement you have now made, that the King of England never did nor never had a right, to give you our Country, by the Treaty of Peace, and you want to make this act of Common Justice, a part of your concessions, and seem to expect that because you have at last acknowledged our independence, we should for such a favor surrender to you our Country.

– General Council of several tribes to American commissioners, 1793⁶⁰

Patriots of the newly minted nation were still celebrating their momentous victory as Native Americans feared what the triumph meant for their futures. For Natives, the young nation represented instability not only in its unestablished legal practices but also in its inability to meet the needs of the people. When Natives turned to the Americans for supplies and trade goods, they were frequently short.⁶¹ There was also an aura of violence taking root in the country’s foundation. To the Natives, the prideful warriors had just fiercely defied their father. The colonial rebels had a propensity for aggression and it is not a stretch of the imagination to assume that they may have worried that this tendency would soon be directed at them. For example, the man they knew as “Town Destroyer” became the first President of the country in which they now found themselves

⁵⁹ Treaty, Articles of Peace, May 29, 1677, accessed January 23, 2017.

⁶⁰ E. A. Cruikshank, ed., *The Correspondence of Lieut. Governor John Graves Simcoe*, 5 vols. (Toronto: Ontario Historical Society, 1923 – 31) 2:17 – 19.

⁶¹ *The World Turned Upside Down*, 146.

residing. General Washington ordered the invasion of Iroquois country in 1779 in hopes of thwarting any war efforts. When the troops stormed in, they “destroyed forty towns, burned countless crops, and cut down orchards.”⁶² Many Iroquois were left homeless and hungry. History can prove that subsequent presidents were no better towards the Native American population than Washington was during the war. In other words, the Natives’ concerns were grounded in their experience. A compounding factor increasing the pressure Natives felt was the renewed competition for land. Now that the Revolutionary War was won, the American government and its citizens believed they were entitled to any land their eyes could see, including Native settlements. Initially, the United States took the formal stance that it had acquired Native land previously held by Britain through conquest. Under this dictate, American commissioners drew up treaties that ordered the cession of Native land without any compensation – it was the price for peace.⁶³

Many Native Americans had sided with the British during the Revolution for a variety of reasons, their tendency to restrain encroachment on their lands among them. In 1763, some tribes experienced the political maneuverings of the British and their gesture, albeit a calculated one, may have remained at the forefront of Natives’ minds and influenced their decision to align with the British. The French had just lost the Seven Years War (1756 – 1763) to the British and the victors had begun to occupy previously French areas, forts in particular.⁶⁴ With the tension of change hanging low in the air, Native Americans in the Ohio Valley and of the Great Lakes chose to revolt against the switch. The Natives involved were specifically addressing their frustration with the presence of the British soldiers and more broadly, the in creep of European culture. The uprising was eventually christened “Pontiac’s War” after the Ottawa chief Pontiac, the most

⁶² *The World Turned Upside Down*, 147.

⁶³ *The World Turned Upside Down*, 170.

⁶⁴ *The World Turned Upside Down*, 116, 136.

notable leader. Although Pontiac's War failed, it did have a significant benefit for the Natives: the British government issued the Royal Proclamation of 1763. The decree cited the Appalachian Mountains as the limit for colonial westward expansion.⁶⁵ The government's firm action was appreciated and showed the Native Americans that they could bend the crown to their will if they struck at the appropriate times. Other rationales for siding with the British included the reliability of their trade goods and the presence of a Native American department. Native Americans had become reliant on some European goods and the British experienced fewer shortages than the Americans and offered a wider range of the products they used. The Native American department consisted of experienced, professional, and well-acquainted individuals who worked with tribes on the ground in service of the crown.⁶⁶

In general, the new government refused to acknowledge – let alone abide by – the parameters of pre-revolutionary treaties, preferring instead to enact new policies that would profit only themselves. As the nation entered the nineteenth century, its leaders were eager to flex their muscles and obtain more Native land. The territories could pay off war debt, encompass more citizens, and form the basis of the Republic's future sources of wealth.⁶⁷ When meeting with various tribes, it was not uncommon for a commissioner to merely pronounce the terms of during a treaty negotiation as opposed to hosting a conversation where both parties were treated respectfully.⁶⁸ Another strategy employed by the American government was the rule of conquest to which Natives responded vehemently. Alexander McGillivray in his 1785 letter to Governor

⁶⁵ *The World Turned Upside Down*, 137.

⁶⁶ *The World Turned Upside Down*, 146.

⁶⁷ *The World Turned Upside Down*, 170.

⁶⁸ *The World Turned Upside Down*, 126.

Arturo O'Neill embodies the sentiments of Natives towards this practice and invalidates American claims to Native property.

“We Cheifs and Warriors of the Creek Chickesaw and Cherokee Nations, do hereby in the most solemn manner protest against any title claim or demand the American Congress may set up for or against our lands, Settlements, and hunting Grounds in Consequence of the Said treaty of peace...⁶⁹as we were not partys, so we are determined to pay no attention to the manner in which the British Negotiators has drown out the Lines of the Lands in question Ceded to the States of America – it being a Notorious fact known to the Americans, known to every person who is in any ways conversant in, or acquainted with American affairs, that his Brittannick Majesty was never possessed either by session purchase or by right of Conquest of our Territorys and which the Said treaty gives away.”⁷⁰

McGillivray, the product of a Scottish and a Creek-French union, had an English education as well as extensive knowledge of his cultural heritage.⁷¹ His unique position gave him the skillset to appeal to both sides of the fence through this letter. Despite his advantage as a cultural intermediary, McGillivray's efforts did not alleviate American influx. He acknowledges that while he has received “friendly talks and replys” when addressing American officials, they continue to strip his people of their “natural rights by depriving us of that inheritance which belonged to our ancestors and hath descended from them to us Since the beginning of time.”⁷²

Native Americans longed to return to “better,” more peaceful times, exhorting state legislatures to restore the land they had held prior to the Revolution under previous treaties. It is

⁶⁹ The said treaty is the Treaty of Paris ending the Revolutionary War.

⁷⁰ John Walton Caughey, ed., *McGillivray of the Creeks* (Norman: University of Oklahoma Press, 1938), 90 – 93.

⁷¹ *The World Turned Upside Down*, 171.

⁷² John Walton Caughey, 90 – 93.

not apparent whether pre-revolutionary times were necessarily better. Land struggles were an unchanging matter from contact onwards but there was a power imbalance near the end of the colonial period.⁷³ In the first treaties and negotiations, settlers and Natives were on a more level playing field. Natives were much more likely to operate via *quid pro quo*. If the Europeans were unwavering on a disagreement, the Natives would retaliate by holding steadfast on another point as evidenced in Atiwaneto's 1752 speech. Antiwaneto, an Abenaki, emboldened others to resist English colonial expansion by negotiating terms that retained as much control in European interactions for Natives as possible, "We expressly forbid you to kill a single beaver, or to take a single stick of timber on the lands we inhabit. If you want timber, we'll sell you some, but you shall not take it without our permission."⁷⁴ This trend tapered as the Europeans multiplied and their power became tied to the goods they offered as well as their means to successfully procure Native land.⁷⁵ As a whole, the Native Americans were waxing nostalgia. Although some periods consisted of less violence or concessions, their footing as the authority figure was always hedged in quick sand, at least in the minds of Europeans.

Other tribes came together to form councils hoping that their collective voices would be more clearly heard and that treaties would be enforced. In the late 1780s, a pattern was emerging. Yet again, Native lands were making their way into American hands piecemeal. In 1786, northern tribes identified the shift and decided to combat it by coming together. A united front would send a clearer message to the Americans and give the tribes more leverage in negotiations. The Five Nations, Hurons, Ottawas, Twichtwees, Shawanese, Chippewas, Cherokees, Delawares, Powtewatimies, and the Wabash Confederates held a Confederated Council Fire in late 1786 to

⁷³ *The World Turned Upside Down*, 126.

⁷⁴ E.B. O'Callaghan, 10:252 – 54.

⁷⁵ *The World Turned Upside Down*, 127.

draft an address to Congress in which they explained the new procedures and policies their nations would be adopting henceforth to determine any interactions with the United States government, including land sales.⁷⁶ “Brothers...the first step towards which should, in our opinion, be, that all treaties carried on with the United States, on our parts, should be with the general voice of the whole confederacy, and carried on in the most open manner, without any restraint on either side...any cession of our lands should be made in the most public manner, and by the united voice of the confederacy; holding all partial treaties as void and of no effect.”⁷⁷ Through this assertion, the nations tried to divest the United States government of its manipulative land acquisition practices. Coming from a place of strength and unification, the nations observed a brief respite as they were able to prevent further expansion past the Ohio River for nearly 10 years.⁷⁸

Unfortunately, their efforts to continue living within the rights guaranteed to them under pre-revolutionary treaties were largely unsuccessful. In 1791, there was a moment in which a group of tribes might have felt there was hope on the horizon. Little Turtle, the Miami war chief, and Shawnee Blue Jacket commanded a band of warriors belonging to the northwestern Indian confederacy. They were able to devastate an American army headed by General Arthur St. Clair. As a direct reaction to the defeat, the government sent commissioners to convene with the Natives and construct an agreement. The Natives requested that the Ohio River exist as the partition between Native and American country. The commissioners would not acquiesce and instead held a general council two years later in 1793. Delegates from over 15 tribes were present. The discussions included a survey of how previous and existing treaties were not aiding in curbing or eliminating the loss of their lands to white settlers.⁷⁹ At the talks, the delegates put forward what

⁷⁶ *The World Turned Upside Down*, 174.

⁷⁷ *American State Papers, Class II: Indian Affairs* (Washington, 1832), 1:8 – 9.

⁷⁸ *The World Turned Upside Down*, 174.

⁷⁹ *The World Turned Upside Down*, 181.

likely would have been a radical solution to American ears. “Brothers – Money, to us, is of no value...Brothers – We know that these settlers are poor, or they would never have ventured to live in a country which have been in continual trouble ever since they crossed the Ohio; divide therefore this large sum of money which you have offered to us, among these people...and we are persuaded they would most readily accept of it in lieu of the lands you sold to them.”⁸⁰ As the present can attest, such an agreement was not reached for the United States’ appetite for land west of the Ohio held too much value, mystery, and potential for future dominance to be dismissed so easily.

CONCLUSION

We love you more than you love us...

– Delaware Indians to Moravian ambassador Christian Frederick Post, 1758⁸¹

The Delaware were not wrong when they said that the colonists cared less for them; the colonists’ attempts to assuage their differences with Native Americans in the only way they knew how – the written word – ultimately did more harm than good as Native lives were changed forever. Such is the case for the Mattaponi. Although treaties like the Treaty of Middle Plantation seem benign in today’s terms, they still have the potential to wreak considerable harmful effects on many Native Americans. As recently as 2008, guarantees under the Treaty of Middle Plantation were brought to the Supreme Court. The Mattaponi Indian Tribe took the Commonwealth of Virginia to court because the government was interested in building a reservoir. The decision was not made flippantly; due to population growth, the state alleges that the construction had become a

⁸⁰ E. A. Cruikshank, 2:17 – 19.

⁸¹ Christian Frederick Post, *Two Journals of Western Tours...one to the neighborhood of Fort Duquesne (July – September, 1758); the other, to the Ohio (October 1758 – January 1759)*, in Reuben G. Thwaites, ed. *Early Western Travels* (Cleveland: Arthur H. Clark, 1904), vol. 1, 213 – 216.

necessity.⁸² The Mattaponi countered that the installation “may detrimentally affect the...shad hatcheries on the banks of the Mattaponi River,” endangering the tribe’s “traditional method of sustaining itself.”⁸³ The Mattaponi argue that under the Treaty of Middle Plantation, they are allowed to “enjoy their wonted conveniences of Oystering, Fishing, and gathering Tuchiahoe, Curtenemons, Wild Oats, Rushes, Puckoone, or any thing else (for their natural support).”⁸⁴ The tribe has been fighting the potentially destructive plan for over two decades and continues the battle still today. Judges at both the state and federal level are at odds for how to address the issue as it will set a precedent for future cases.

Stories like those of the Mattaponi raise questions about the role and responsibility of the federal government in enforcing pre-revolutionary treaties. It is arguable that it would be unfeasible to honor all pre-revolutionary treaties because of the progress that has been made since the documents were signed. For example, it would be difficult to adhere to the clause of the Casco Bay Treaty between the Abenaki and the English that states that they wish to have the benefits of those ruled by His Majesty. However, other portions of the Casco Bay Treaty could be upheld, such as the agreement to enjoy all the rights of the land and “be in no ways Molested, Interrupted, or Disturbed therein.”⁸⁵ Portions of treaties that relate to a tribe’s way of life or rituals should be observed not just because it is reasonable and realistic, but because it is the appropriate course of action. The list of grievances Native Americans could bring against the United States solely for the time period immediately following our assertion and then the acquirement of independence is long. It is impossible to augment the past but upholding pre-revolutionary treaties in as many

⁸² “The Tribe, The Empire, and The Nation,” 897.

⁸³ “The Tribe, The Empire, and The Nation,” 902.

⁸⁴ Treaty, Articles of Peace, May 29, 1677, accessed January 23, 2017.

⁸⁵ “Indian Treaties,” 4:118 – 84.

circumstances that allow for Native Americans to return to their ancestry and preserve their heritage as possible, the United States government can right its colonial wrongs. The federal government may not have formally signed treaties with Native Americans prior to 1775, but it is their duty to ensure that pre-revolutionary treaties and agreements are sustained for the sake of the Native American people today and moving forward. The signatories of the Treaty of Middle Plantation, including the Mattaponi, did not have a choice in deciding the laws that went on to rule their lives in 1677 for better or worse. Today, the Mattaponi are optimistic that these centuries old dictates will resolve injustices through the Supreme Court and Constitutional Law. They are dependent on articles that severely constricted their rights at inception to be their saving grace at present. While such aspirations are overtly ambitious, one hopes they are attained as a first step towards washing away the stains of colonial America and returning to a positive, balanced relationship.

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