Buffalo Law Review

Volume 46
Number 3 *Symposium on Law, Sovereignty and Tribal Governance: The Iroquois Confederacy*
Article 9

10-1-1998

The Oneida Land Claim: Yesterday and Today

John Tahsuda
Cornell Law School

ESSAY

The Oneida Land Claim: Yesterday and Today

JOHN TAHSUDA†

The history of the Oneida people is in many ways a microcosm of the history of indigenous peoples around the world. Originally a flourishing society, the Oneidas have traveled the road to near extinction and back. Ultimately, they evolved into a positive political and economic force. The last few years of this century have seen a resurgence of the Oneida Indian Nation which will help secure its existence well into the next millennium.[1]

I. ONEIDA HISTORY

The Oneida are one of the original five nations to comprise the Haudenosaunee (Iroquois) Confederacy. The Confederacy was founded before the arrival of non-Indians on North America. At the time of the American Revolution, the Confederacy held the balance of military and economic power in North America. The Confederacy achieved this position

† Acting General Counsel, Oneida Indian Nation; Adjunct Professor of Law, Cornell Law School. B.S., 1990, Oklahoma State University; J.D., 1993, Cornell Law School; Member, Kiowa Tribe of Oklahoma. This Essay is based on a speech delivered on March 21, 1998 at the *Buffalo Law Review* Symposium on Law Sovereignty and Tribal Governance: The Iroquois Confederacy.

1. For a brief discussion of Oneida history, culture and philosophy as seen through their eyes, see generally Ray Halbritter & Steven Paul McSloy, *Empowerment or Independence? The Practical Value and Meaning of Native American Sovereignty*, 26 N.Y.U. J. INT'L L. & POL. 531 (1994).

through shrewd diplomacy, military might and a strategic geographic location, which controlled all the major trade routes in the northern half of the continent.[2] The true power of the Confederacy, however, was based upon the strength of its political system. This system was admired by men as disparate as the Founding Fathers, Thomas Jefferson and Benjamin Franklin, and Communist Manifesto authors, Karl Marx and Frederick Engels.[3]

The American Revolution proved to be a time of great political crisis in the Haudenosaunee Confederacy. Nineteenth century scholar Lewis Henry Morgan's classic work discussed this political crisis:

> At the beginning of the American Revolution, the Iroquois could not agree in counsel to make war as a Confederacy upon our Confederacy [the Colonies]. A number of Oneida sachems [Chiefs] primarily resisted the assumption of hostilities, and thus defeated the measure as an act of the League [Confederacy], for the want of unanimity. Some of the Nations, however, especially the Mohawks [under the leadership of the notorious Joseph Brant], were so interlinked with the British, that neutrality was impossible. Under this pressure of circumstances, it was resolved in council to suspend the rule, and leave each nation to engage in the war upon its own responsibility.[4]

Based on the belief that colonists sought the same freedom and liberty exercised in Oneida society, the Oneidas allied with the colonists and fought alongside them in a number of critical battles.[5] As a result of this alliance, the

---

2. The only good east-west water-level route in the northern half of North America lay directly through Oneida territory. For that reason it was the only logical route for the beginning of the Erie Canal, the first major railways and later the New York Thruway. In effect, the Oneidas held the key to western expansion by the United States. *See* Paul McSloy, *Border Wars: Haudenosaunee Lands and Federalism*, 46 BUFF. L. REV. 1041 (1998).

3. *See* Robert Miller, *American Indian Influence on the United States Constitution and its Framers*, 18 AM. L. REV. 133, 141 n.59 (1993) (listing those in admiration of the political system).

4. Halbritter & McSloy, *supra* note 1, at n.52.

5. *See* David M. Ellis, *Military Developments During Colonial and Revolutionary Era*, 1 STUDY OF THE ONEIDA INDIAN LAND CLAIMS: ONEIDA INDIANS: A COMPILATION OF HISTORICAL READINGS ON THE ONEIDAS 310, 314 (Ames Brown ed., n.d.) (arguing the Oneida Nation's greatest contribution to the colonist's cause was their help in the decisive Battle of Oriskany, "often described as the bloodiest battle of the Revolution"). At Oriskany, the Oneidas and the colonial militia, under the leadership of General Herkimer, were able to stop the eastward march from the Great Lakes of a British expeditionary force under

Oneidas entered into treaties with the United States that gave special protection to their lands, superior to that given to the other nations of the Confederacy.[6]

The end of the Revolutionary War was the high water mark of the relationship between the United States and the Oneidas. No sooner had the ink dried on the first treaty between the Oneidas and the United States[7] than the State of New York began engaging in a series of illegal "state treaties" to acquire Oneida lands.[8] By the 1840s,[9] the original six million acre ancestral homeland of the Oneidas was reduced to a mere thirty-two acres.[10]

II. THE LAND CLAIMS

The United States Supreme Court's 1974 and 1985 opinions in the Oneida land claim case were pivotal in the development of Federal Indian law in general, and in the eastern land claims in particular. Notably, the Oneidas were the first Indian nation to win a lawsuit under the federal Trade and Intercourse Act[11] in 1922, sixty-three years before their landmark 1974 Supreme Court case. In 1906, a non-Indian, Julia Boylan, sought to foreclose on a mortgage that she claimed was secured by the remaining thirty-two acres belonging to the Oneidas.[12] The action was

---

General St. Leger and Mohawk leader Joseph Brant. Had St. Leger been able to move east and link with General Burgoyne, who was marching south from Canada, the British would have established a line across New York from east to west and then down the Hudson to New York City, effectively dividing the colonies in half and isolating Boston from Philadelphia and Virginia. Burgoyne lost the Battle of Saratoga shortly after St. Leger's retreat, a decisive loss which convinced France to back the American cause. *Id. See also* BARBARA GRAYMONT, THE IROQUOIS IN THE AMERICAN REVOLUTION (1972).

6. *See* Treaty with the Six Nations (Treaty of Canandaigua), Nov. 11, 1794, 7 Stat. 44; Treaty of Fort Harmar, Jan. 9, 1789, 7 Stat. 33; Treaty of Fort Stanwix, Oct. 22, 1784, 7 Stat. 15.

7. *See* Treaty of Canandaigua, *supra* note 6.

8. New York would eventually execute over 25 "treaties" dealing with Oneida lands.

9. In the 1830s, a large number of individual Oneidas purported to sell Oneida land and relocated to Wisconsin or Ontario, Canada. *See* Jack Campisi, *Oneida, in* 4 HANDBOOK OF NORTH AMERICAN INDIANS 485 (William C. Sturdevant ed., 1978).

10. *See* Halbritter & McSloy, *supra* note 1, at 551.

11. *See* 25 U.S.C. § 177 (1994) (codifying the Trade and Intercourse Acts first enacted as Act of July 22, 1790, ch. 33, § 4, 1 Stat. 137).

12. *See* Boylan v. George, 117 N.Y.S. 573 (N.Y. App. Div. 1909).

brought in a New York State court for ejection and removal of the Oneidas from the land. The trial court ruled in favor of Julia Boylan that the mortgage was enforceable. On appeal, the trial court's decision of removal was upheld. On November 20, 1909, the sheriff of Madison County forcibly removed the Oneida people from their ancestral home.[13]

From the very beginning of their dispossession in the nineteenth century, the Oneidas unsuccessfully sought federal intervention to recover lands illegally taken by the State of New York.[14] The federal government finally responded after the Oneida's ejection from their last remaining lands. The *Boylan* case became the first action by the federal government to assist the Oneidas with the return of their lands. After preliminary investigation, the Assistant Secretary of the Interior asked the Attorney General's Office to take on the cause of the Oneidas. Thereupon, the United States Attorney's Office for the Northern District of New York initiated an action in federal district court on behalf of the Oneidas for restoration of the thirty-two acres.[15] The district court reasoned that the Oneidas were an existing Indian nation, living on lands since time immemorial and maintaining an ongoing relationship with the federal government. Most importantly, the court found the federal government had never authorized the sale of Oneida lands. Therefore, the court held that New York lacked jurisdiction to enforce its state laws of foreclosure and ejectment under the Trade and Intercourse Act with regard to the Oneida's thirty-two acres.[16] The Second Circuit upheld the trial judge's decision and went further when it implied in dicta that any Indian land transferred in violation of the Trade and Intercourse Act might be subject to restoration to the Indians.[17]

---

13. *See* Papers of Chief William Honyost Rockwell (unpublished on file with the Oneida Nation's History Department) (providing a vivid firsthand account of the excessive force used to literally throw the Oneidas out of their homes and onto the road).

14. *See generally* Philip O. Geier III, A Peculiar Status: A History of Oneida Indian Treaties and Claims: Jurisdictional Conflict Within the American Government, 1775-1920 (1980) (unpublished Ph.D. dissertation, Syracuse University) (on file with the UMI Dissertation Services).

15. *See* U.S. v. Boylan, 256 F. 468 (N.D.N.Y. 1919), *aff'd*, 265 F. 165 (2d Cir. 1920), *appeal dismissed*, 257 U.S. 614 (1921).

16. *Id.*

17. "We do not think that the State of New York could extinguish the right of occupancy which belongs to the Indians." *Boylan*, 265 F. at 174.

At the time, the importance of the *Boylan* decision was overlooked because of the insignificant amount of land and the small number of Indians involved.[18] As a result, the deadline for appealing the Second Circuit decision to the Supreme Court passed without a timely filing of a petition for certiorari. When the district attorney in Madison County, where the thirty-two acres were located, finally grasped the implications of the *Boylan* case, he was too late in his desperate attempts to reopen it. Despite his pleas, the Supreme Court dismissed his appeal for failure to timely apply for a writ of certiorari. Unfortunately, despite that significant legal victory, the Oneida people were unable to reoccupy the land due to extreme local prejudice.[19] Sixty-three years would pass before the Oneidas would achieve another victory in pursuit of their land claim.

After the *Boylan* case, the United States government reverted to form and refused to assist the Oneidas in pursuit of their claims to their original reservation. Today, Indian nations are quick to file their own claims without relying on the assistance of the federal government, but such a suit was not possible until the 1970s when the Second Circuit decided *Deere v. St. Lawrence Power Co.*[20] In *Deere,* a number of Mohawks brought suit to recover possession of land that had been in non-Indian hands for nearly a century, citing federal treaties guaranteeing to the Mohawks the continued possession of their lands. The case was dismissed based upon the "well pleaded complaint" rule.[21] The Second Circuit held that the suit for recovery of possession of land was essentially one for ejectment, a state law claim. Thus, the court held that federal jurisdiction was lacking. The *Deere* case became the rock upon which all suits to recover possession of Indian land instituted by Indian nations were shattered. Courts used *Deere* as a basis to develop several doctrines that collectively

18. Interestingly, this first "land claim" was prosecuted at the same time that much of the Indian land base in the United States was being devoured by the General Allotment (Dawes) Act. *See* General Allotment Act of 1887, ch. 119, 24 Stat. 388 (1887) (codified as amended at 25 U.S.C. §§ 331-34, 339, 341, 342, 348, 349, 354, 381 (1994)).

19. *See supra* note 13.

20. 32 F. 55 (2d Cir. 1929).

21. *See* Louisville & Nashville R.R. v. Mottley, 211 U.S. 149 (1908). *Mottley* held that it must be clear from the plaintiff's complaint that there is a federal question, and, in particular, that federal court jurisdiction could not be based on a federal law defense or on the plaintiff's anticipation of a federal law defense. *Id.*

denied Indians a forum in which to pursue land claims. State courts denied jurisdiction, claiming that the federal government had jurisdiction over Indian affairs. Federal courts denied jurisdiction, citing exclusive state jurisdiction over actions for possession of real property.[22] Unless the United States intervened on behalf of Indian nations, the Indian nations essentially had no forum in which to seek the redress of their wrongs.

This position was fully supported by the United States. The Solicitor General's brief opposing the Oneida land claim case before the Supreme Court in 1974 stated:

> In so far as ordinary claims are concerned, it is long and well established that the "well pleaded complaint" rule is applicable in determining the existence of a federal question under the general federal question statute, 28 U.S.C. 1331. Thus it is established that a complaint in an action basically an ejectment presents no federal question even though a plaintiff's claim or right of title is founded on a federal statute, patent or treaty. . . . The petition for a writ of certiorari should be denied.[23]

By the late 1960s, the Oneidas decided they could not wait any longer for the federal government to intervene on their behalf. They instituted a test case in the Northern District of New York to collect rent on lands occupied by two county governments in the territory of their aboriginal homeland. Based on the *Deere* case, the district court and the Second Circuit dismissed the Oneida's case on the strength of the "well pleaded complaint" rule. In *Oneida Indian Nation v. County of Oneida* (often referred to as *Oneida I*),[24] the United States Supreme Court overruled the Second Circuit and

---

22. After 1948, Indians could pursue money judgments before the Indians Claims Commission, but the Commission had no power to return land. It was for this reason that the Oneidas withdrew their complaint before the Indian Claims Commission, with prejudice, even after having litigated it for over 30 years. *See* Oneida Indian Nation of N.Y. v. United States, 20 Ind. Cl. Comm'n 337 (1969), *further proceeding*, 26 Ind. Cl. Comm'n 583 (1971), *further proceeding*, 37 Ind. Cl. Comm'n 522 (1976), *aff'd*, 576 F.2d 870 (1978) (addressing pre-1790 claims); 26 Ind. Cl. Comm'n 138 (1971), *aff'd in part, remanded in part*, 477 F.2d 939 (1973), *on remand*, 43 Ind. Cl. Comm'n 373 (1978) (addressing post-1790 claims).

23. GEORGE SHATTUCK, THE ONEIDA LAND CLAIMS (1991) (citing Amicus Brief of the United States, Oneida Indian Nation v. County of Oneida, N.Y., 414 U.S. 661 (1974)).

24. 414 U.S. 661 (1974). Madison and Oneida counties are located in the heart of the Oneida homeland.

struck down the "well pleaded complaint" rule as it was used to bar Indian land claims. The Court emphatically stated Indian nations have a federal common law right to possession of their lands and that the Oneidas could maintain a cause of action in federal court pursuant to the Trade and Intercourse Act to recover lands acquired without federal consent.[25]

Following *Oneida I*, the case proceeded to trial on the merits, the substance of which dealt with the 1795 "treaty" between the State of New York and the Oneida Indian Nation.[26] The record developed at trial established a number of key facts that not only demonstrated the Oneidas had winning legal arguments, but illuminated the duplicity and fraud perpetrated by the State of New York. First, the Oneidas established that in 1795 the United States government informed New York that any "treaties" in which it obtained lands from Indian nations would be in contravention of the Trade and Intercourse Act and that New York deliberately ignored these instructions.[27] Second, the Oneidas established that the 1795 treaty was originally rejected by the Oneida sachems, the traditional leaders, who met in council with New York State negotiators at Oneida Castle in August of that year.[28] The Oneidas established the treaty signed in Albany in September of 1795 was signed, not by the Oneida sachems, but by individual Oneidas who were not authorized to deal with the state.[29] Indeed, the sachems did not put their marks on either the treaty or the deed which purported to transfer the land to the State of New York.[30] Finally, the Oneidas presented a mountain of evidence documenting over one hundred years of effort on the part of the Oneidas seeking restitution of their lands by petitioning the State of New York, the Bureau of Indian Affairs and even the President of the United States. This evidence directly refuted the contention presented by the defendant counties that the Oneidas had "slept on their rights."[31] Furthermore, the defendant counties did not present any evidence to rebut any of the factual claims presented by the Oneidas. Rather, their defense relied on

25. *Id.*
26. *See* 434 F. Supp. 527 (N.D.N.Y. 1977).
27. *See id.* at 534.
28. *See id.* at 535.
29. *See id.*
30. *See id.*
31. *Id.* at 536-37. *See also* Geier, *supra* note 14.

technical legal arguments such as laches and abandonment.

After the trial on the merits, the action again moved up to the Supreme Court. The opinion issued by the court in *County of Oneida v. Oneida Indian Nation of New York* (also known as *Oneida II*)[32] held that the Oneidas' land had been illegally taken in the 1795 treaty. It also reaffirmed several key legal principles regarding the sovereign status of Indian nations and their relationships with the states and the federal government.

The Oneidas have steadfastly maintained that the first two state "treaties" in 1785 and 1788, covering five and one-half million acres, the vast majority of their aboriginal territory, were intended to merely lease the land to New York. Following *Oneida I,* the Oneidas filed suit directly against New York to regain possession of those lands in *Oneida Indian Nation of New York v. New York* (referred to as *Oneida III).*[33] These "treaties" were concluded prior to the 1790 Trade and Intercourse Act and the 1789 adoption of the Constitution and the Indian Commerce Clause and thus were governed by the Articles of Confederation. This proved a critical distinction as the Second Circuit dismissed this five and one-half million acre claim based on an apparent ambiguity in the Articles of Confederation which arguably left the states with the authority to deal with Indians located within their borders. In 1989, the Supreme Court denied the Oneidas' application for writ of certiorari.

After all the cases had proceeded to final review, the Oneidas were left with their claim, based on *Oneida II,* to over three hundred thousand square acres of land, having lost their larger, five and one-half million acre claim.[34]

III. THE AFTERMATH

Prior to *Oneida II,* the State of New York officially disclaimed any liability for its actions in taking Oneida lands. Following *Oneida II,* however, The defendant counties exerted extreme pressure over new York State. Fearing a direct lawsuit, New York became very interested in pursuing a negotiated settlement. The Nation, having won on the merits the test case, was also interested in a settlement with

32. 470 U.S. 226 (1985).
33. 860 F.2d 1145 (2d Cir. 1988).
34. 493 U.S. 871 (1989).

the state. At long last the true malfeasor in the saga came to the table.

Once discussion of a final settlement began, however, some obstacles to a quick resolution surfaced. The state parties, consisting of Oneida County and Madison County and the State of New York, have common interests which include the protection of private landowners from loss of land, the clearing of all titles to land within the disputed area and the negotiation of a resolution which will not have a serious adverse effect on the economic and political structure of the affected areas. However, the State of New York has not appeared to be in any hurry to reach a settlement agreeable to all.

From time to time, the federal government has attempted to facilitate a settlement. The federal government is an important party because any final resolution will require an act of Congress.[35] In addition, the United States has fiduciary obligations to the New York and Wisconsin Oneidas, and it must be certain that any final settlement is consistent with its trust responsibilities. Keeping these considerations in mind, the federal government has attempted to act as a broker in the negotiations.

Despite the delays, the Oneida people have not lost their resolve. They remain committed to repossession of their ancestral homelands, redress for their wrongs over the past two hundred years and continued recognition of their status as a sovereign Indian nation. They can afford to be patient, as they have lived on their homelands for over five hundred years, and expect to remain five hundred years hence.

35. Any disposition of Indian land is still governed by the Trade and Intercourse Act. *See* 25 U.S.C. § 177 (1994).