

THE ONEIDA TREATY PERIOD, 1783-1838

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The peace treaty between the United States and England was silent as to the status of those tribes that had supported the crown during the American Revolution. The Continental Congress sought to remedy this by appointing commissioners to hold treaty councils with the hostile tribes in New York and the Ohio Valley. These councils had two principal objectives: to end the war and to secure the title to the land in the Northwest Territory. This land had been ceded to the United States by the landed states, and it was crucial to the solvency of the new nation that the land be pacified in expectation of its sale.

To carry out national Indian policy the Continental Congress appointed three commissioners who met first with the four hostile Iroquois tribes, and the Oneidas and Tuscaroras at Fort Stanwix in the fall of 1784. They dictated a series of harsh terms including the turning over of hostages to insure that all American prisoners would be returned, and the surrender of most of Seneca land in New York to the national government. As for the Oneidas, they were treated as allies, their right to undisturbed use their land guaranteed. Referring to the Oneidas, the commissioners told the Onondaga, Cayuga, Seneca, and Mohawk, "It does not become the United States to forget those nations who preserved their faith to them, and adhered to their cause, those, therefore must be secured in the full and free enjoyment of those possessions" (Craig 1848).

In the same year commissioners appointed by New York State met with the Oneidas, ostensibly to reaffirm the friendship between the two. Secretly, they sought to exchange with the Oneidas their land for land Seneca land. In the end all they received was a description of the Oneida territory (Hough 1861 1: 46-48).

New York's motives were different, however, from those of the national commissioners. New York was interested in forcing all of the Iroquois tribes out of the state so that it could seize the land. This policy was in direct contradiction of that enunciated by the Continental Congress, which sought to pacify the Indians in order to prevent them from joining the British in Canada (JCC 25: 682). The conflict between New York and the nation became so intense that the United States commissions felt compelled to warn the tribes and the state that no sale of land to the state could be valid without the approval of the Continental Congress. For his part, Governor George Clinton of New York appointed an agent to attend the national treaty and to use his "... best Endeavours to counteract and frustrate it" (Hough 1861 1: 63).

The Oneidas were aware of New York's ambitions, but they had every reason to believe that the guarantees given to them by the Continental Congress and the United States commissioners would be enough to preserve their land base. Given this, how was it possible that the Oneidas could lose an estate covering more than five million acres in less than sixty years?

Three factors contributed to the dramatic land loss. They are: 1. the greed and cupidity of the state of New York; 2. the

failure of the United States to honor its obligations to the Oneidas, and later, to enforce its laws; and 3. the factionalism within the Oneida tribe.

NEW YORK LAND POLICY

New York was in no way covered by the pronouncements of the United States commissioners, the sentiments of the delegates to the Continental Congress, or the weakness of its claim to the Iroquois land. It followed an old legal precept that says "If you don't have the law, pound the facts, and if you don't have the facts, pound the law. If you have neither, pound the table." Both fact and law were against New York with respect to its land claim. It claimed the land in question on the basis of two treaties made in 1701 and 1726 between the crown and the Iroquois by which the tribes placed themselves under the protection of the King of England (NYCD 4:908-911; NYCD 5:800-801). Since the treaties were negotiated by the royal governor on behalf of the crown, New York chose to interpret this as proof of the validity of its claim. However, Massachusetts claimed the same land by virtue of a royal charter. New York's only recourse was to take action to assure her ownership.

In 1785 New York forced the Oneidas to sell three counties along the Pennsylvania border. The governor told the Oneidas that since the land was proximate to that of white settlers it would soon have little value for hunting. The Oneidas refused to sell, and offered, instead, to lease some land to the state. Governor Clinton responded with indignation, saying that if the

Oneida had no intention of selling land they should not have said so and spared the state needless expense. As to the offer to lease land, he told them this was unacceptable because it "... would make the Government of the State tributary to you..." (Hough 1861 1: 97). He warned the Oneidas that the state would not be responsible for any incursions by whites and would hold the Oneidas accountable. Faced with this threat the Oneidas agreed to sell the state in excess of 100 square miles for \$11,500 in goods and cash (Ibid). When the governor complained that he could not pay the full amount he had with him because he had received much less land than he desired, the Oneidas told him that the price did not matter; they sold the land only to maintain peace. They closed the session by expressing the hope that this would be the last application by the state for land, an assurance the governor was quick to give.

When Massachusetts discovered the state's action it moved quickly to negate it. It brought suit under the Articles of Confederation arguing that the pre-emption right belonged to Massachusetts and not New York. However, the Congress had difficulty in finding a judge to hear the complaint, and in the interim, the two states negotiated a compromise that assured New York the right of pre-emption over the land belonging to the Oneida, Onondaga, and Cayuga, and political control over the Seneca land once that tribe's title had been extinguished (New York Legislature. Assembly 1889: 105-112). New York's aggressiveness paid off; she gained pre-emption to a vast area to which she had the most tenuous claim.

The New York State Legislature did not wait long to press the

Oneidas for more land. In January, 1788, a group of speculators led by John Livingston, calling themselves the New York Genesee Company, concluded an agreement with some individual Oneidas whereby he leased all of the Oneida land for 999 years for an annual rental of \$1,000 (Hough 1861 I: 121-123). Livingston and the other investors applied to the legislature for recognition of these leases, which promptly rejected the request and empowered the governor to use force to prevent the lessees or buyers from settling on the land. The legislature then directed the governor to negotiate with the Oneida, Cayuga, and Onondaga for the purchase of their land.

The Oneida leaders were unaware of the Livingston lease and its rejection by the legislature. As far as the chiefs were concerned there had been no lease because there had been no exchange of money or goods. The matter became more confused as the governor and Livingston each informed the Oneida that the other was not to be trusted. Livingston warned them that the governor would arrive with money to buy their land "... and, if he cannot get you to sell he will endeavour to lease your Lands and promise to pay you some time hence, and after he has got it he will settle it and drive you off" (Ibid: 147).

The warning was most prophetic. At the first meeting with the Oneidas the governor described his negotiations with the Onondagas a few days before whereby they had ceded their entire holdings to New York, reserving only a small parcel for their own use. The governor suggested that the Oneidas enter into a similar arrangement. The Oneidas thanked the governor for his concern, but reminded him that he had promised just three years

before never to seek any more land from them. The governor replied, four days later, that the Oneidas misunderstood him; he did not wish to buy land. "We have already more Lands than we have People to settle on ..." (Ibid: 224). His motive, he said, was to protect the Oneidas from whites who would cheat them. This could best be accomplished by their leasing all their land to the state, for which they would receive an annual rent.

Good Peter, an Oneida chief replied, expressing satisfaction that the governor did not seek land and recognized that the Oneidas were subject to fraud by whites. But, he pointed out, the state had to bear some of the responsibility for these "cunning and intriguing men." The state had the power to punish them (Ibid: 226-229).

Others rose to speak of the guarantees given by the governor to protect their land, of the generosity and sacrifice of the Oneida, of their disappointment at the constant torment occasioned by the avarice of their white neighbors, and finally, of the land to be reserved for their exclusive use. After some deliberation the Oneidas agreed to all the commissioners' proposals. They were to receive \$2,000 in cash, \$2,000 in clothing and another \$1,000 in provisions. However, they asked that the annual rent be raised from \$600 to \$1,000. The governor refused saying they could not agree to any increase, but the state would contribute \$500 toward the construction of a grist mill and sawmill (Ibid: 234). The treaty divided the land into three parts: the largest share was leased to the state, but the Oneidas were free to hunt and fish the entire area, a second part was set aside for the Oneidas to lease if they so chose, while

the third part was set aside for the sole use of the Oneidas. In addition, the treaty provided that 1/2 mile squares would be set aside every six miles along the northern shore of Lake Oneida for the tribe's use (Ibid:238).

On the 22nd of September, 1788, the "instrument of cession" was signed. Before the signing of the agreement, Good Peter addressed the commissioners. Convinced that their land had been returned to them and would now be safe from speculators, he said:

We now return you our Thanks, Brother Chief, that you have brought to a happy close the Business of this Treaty. My Nation are now restored to a Possession of their Property which they were in danger of having lost. Had not my Father the French Gentleman discovered it we should have drowned; had it not come to your Ears, we with all our Property would have been buried very deep in Ruin; therefore we do heartily congratulate you this Day upon having accomplished the Treaty and thereby secured to us so much of our Property which would otherwise have been lost (Ibid: 235).

After the signing Governor Clinton made a few closing remarks, stating that the agreement resulted from the parties' mutual candor and the clarity of understanding that came from the open council. There was not the least hint from the governor or the other commissioners that the Oneidas' understanding that their land had been returned to them was wrong, or that the state officials did not concur with that understanding. The deception was complete, accomplished with such consummate skill that the Oneidas thanked the governor and commissioners for seeming to restore that which they had never lost. In reality, the state gained control of a vast territory for less than half the amount of the discredited Livingston lease.

Based on the official record of the negotiation, it is difficult to understand how the Oneidas could have been duped

into believing that New York was returning to them their land. To understand this we must look to another source, the papers of Timothy Pickering. Good Peter, in his lengthy statement to Pickering in 1792, presented the Oneidas' understanding of what transpired at the 1788 treaty. After reviewing the Livingston lease he described the despair, and then joy, of the Oneidas at the expectation that their land would be returned to them. But it was not to be. In the words of Good Peter "... in the end, the Governor took fasthold of our land," and the Oneidas had nothing to say. It was the governor and commissioners who determined to lease the Oneida land. It was they who held from the Oneidas the information that the legislature had voided the Livingston lease. For the Oneidas this deception was crucial. Good Peter described to Pickering how the Oneidas were told they had lost their land to Livingston. "After this transaction," Good Peter reported, "the voice of the birds from every quarter, cried out you have lost your country - you have lost your country! You have acted unwisely - and done wrong. And what increased the alarm was - that the birds who made this cry, were White Birds" (MHS 1792 Vol. 60).

At this juncture the governor contacted the Oneidas, and told them that they had lost their land, but that he was "... able to recover your lost country, & to raise it out of the water" (Ibid). When the Oneidas met with the governor, he told them:

It is my mind to recover your lost territory, and take the management of it into my own hands. I think that I can raise it from its present drowned condition: and if you do not agree to this - I shall do nothing - but let it go.— -Upon this declaration of the Governor's, I saw that difficulties and embarrassments were going to spring up. We had expected from the Governor's love to us, his intention was to recover

out lost and drowned country, and restore it to us - saying - "Here, Brothers, take your lost country, and repossess it (Ibid).

At the conference's end, Good Peter reported that the governor told the Oneidas, "You have now leased to me all your territory, exclusive of the reservation, as long as the grass shall grow & the rivers run. He did not say 'I buy your country.' Nor did we say - 'We sell it to you' (Ibid). To further indicate that he had leased the land the governor told the Oneidas that they would meet again in twenty-one years, the standard time limit on leases, to "again converse on this subject" (Ibid).

These treaties illustrate the two principal devices used by the state to extinguish Oneida title - the use of deception and coercion. In later negotiations the state introduced a third technique. When it could not get the tribal leaders to agree to sell or lease land it granted power of attorney to a small segment of the tribe, and then signed the agreement with these in the name of all the Oneidas. Such was the case in the treaty of 1795 to be discussed later.

NATIONAL INDIAN POLICY AND THE ONEIDAS

Although the Article of Confederation made the Continental Congress paramount in Indian affairs it was not a position either well understood or accepted by the states and its citizens, particularly in New York, Georgia and North Carolina. Throughout the 1780's the Congress made repeated efforts to implement its sovereignty, but these were generally ignored by the states

(Prucha 1962: 31-37). While the Congress was resolute in its assertion of its right to control Indian matters, as a practical matter it did nothing to protect the Oneidas from the state or to honor its commitment given at Fort Stanwix.

By the end of the confederal period, leaders like Washington and Knox were convinced that a new policy to protect the Indian tribes and quiet the border areas was in order. As part of the policy Secretary at War recommended that the Congress shift from taking land as a prize of war to purchasing it (Ibid: 40).

The United States Constitution removed the ambiguities of the Articles of Confederation concerning national control over Indian policy. In 1790 Congress enacted legislation to prevent the unauthorized taking of land by individuals and states. In 1793 the Congress renewed the legislation regulating Indian affairs, adding a number of parts including one that established a procedure whereby states could exercise their right of pre-emption only at a treaty held by the United States (1 Stat.: 329-332).

This legislation was not enough for the New York Iroquois tribes, and so the tribes insisted that language be included in the federal treaty of Canandaigua acknowledging the lands of the Oneida, Onondaga, and Cayuga to be theirs and guaranteeing never to disturb them "... in the free use and enjoyment thereof" (ASP 1832 IV: 545). While the main purpose of this treaty, which was written in 1794, was to settle the differences between the United States of the Seneca tribe resulting from the Treaty of Fort Stanwix a decade before, the federal government's negotiator, Timothy Pickering, willingly added the clause to the agreement.

He understood very well the attitude of the state regarding the tribes.

In 1795 the Oneidas had an occasion to test the will of the United States. In that year Governor Clinton called the Oneida, Onondaga, and Cayuga to meet with him and the New York commissioners to conclude more treaties. Israel Chapin, Jr., the United States agent for the Six Nations informed Secretary of War Pickering of the state's intentions. Before responding to Chapin Pickering contacted United States Attorney General William Bradford for an opinion as to whether the state's intention violated the Indian Trade and Intercourse Act. Bradford's answer was unequivocal; the state could not extinguish Indian title outside a federally held treaty. Pickering informed Chapin that the proposed treaty was illegal, and directed him to so inform the tribes, and above all, "... give no aid or countenance to the measure, as it is repugnant to the law of the United States ..." (NYHS June 29, 1795 Vol. 11). Pickering then informed Governor Clinton of the Attorney General's ruling.

The New York commissioners proceeded with their plans, completing treaties with the Onondagas and Cayugas by the end of July, 1795. They moved on to Oneida where Chapin intercepted them, and with the New York commissioners present, told the Oneidas that their negotiations were in violation of federal law. Although divided on the issue, the Oneidas refused to sell any land (Campisi 1976: 78).

However, New York did not give up. The commissioners induced a group of Oneidas to go to Albany where, armed with a state provided power of attorney, they sold more than 100,000 acres of

land for an annual payment of \$2,952 (New York Legislature. Assembly 1889: 244-249). Chapin informed Pickering in October, 1795, that the state had made the purchase. Pickering let the matter drop, saying that the federal government had done all it could short of taking up arms. From this point on there was little reason for the state to concern itself over the federal statute, and less expectation that the United States would take any action to protect the Oneidas.

ONEIDA FACTIONALISM

The third factor that exposed the Oneida tribe to the avarice of the state was the endemic nature of factionalism within the Oneida community. By the middle of the eighteenth century the Oneida tribe was divided into two factions, one consisting largely of the warriors and the other the sachems. During the Revolutionary War the warriors, representing a majority of the Oneida and supported by the Reverend Samuel Kirkland, joined the colonial cause, while the sachems remained neutral. Following the war the two split establishing separate communities, with the warrior or Chrisitan Party led by Chief Shenandoah at Kanowa?alohale?, and the sachems, who were by then called the Pagan Party at Oriske (Campisi 1979: 43). These divisions never healed and they provided the fertile ground for the exploitation of the tribe.

The division within the Oneida tribe found articulation in religious arguments. It pitted Protestant against Catholic, Christian against Pagan, and Calvinist against Anglican as the

factions sought ideological justification for their opposition. This process made it easy for individuals and groups to maximize their political opportunities; it led to a bewildering succession of shifts in alliances, group membership, and sectarian allegiances. And it made easy the separation on the Oneida from their land. Ultimately, the Oneida resolved the political controversies by moving apart (Campisi 1974).

In 1805 the state capitalized on the factionalism within the Oneida community, and negotiated a treaty that divided the reservation between the Christian and Pagan parties. Two years later the state bought two large tracts from the Christian Party for \$600; in 1809 at separate treaties, it bought another tract from the Christian Party and one from the Pagan Party (New York Legislature. Assembly 1889: 259-273).

The pressure on the Oneida tribe increased after the War of 1812. In 1816-1817 an Episcopalian missionary, Eleazar Williams, visited the Oneida who received him enthusiastically. Williams was part Mohawk, a fluent speaker with a talent for preaching. He quickly converted the few Oneidas who belonged to the First Christian Party. Next he turned his attention to the Pagan Party, and by 1818 had converted a part of them (Bloomfield 1907: 145-148). Supported by Dr. Jedidiah Morse, a congressman and minister, and by Thomas Ogden, the holder of the pre-emption rights to the Seneca land, he proposed to move all of the Iroquois people to land in the west where he would build an Iroquois ecclesiastical empire with himself as its leader.—With the assistance of powerful friends in Washington Williams got permission to negotiate with the Menominee and Winnebago for

land. After a protracted set of negotiations the Oneida, Stockbridge, and later Brotherton tribes, purchased land in Wisconsin (Campisi 1974: 106-110).

.The Oneidas were now under an inexorable pressure to move. There was no way to stem the tide or prevent the state from forcing sale upon sale on the remaining tribal members until, in 1839, there were but 578 Oneidas left in the state, holding collectively some 4509 acres. In 1840, 400 of these decided to sell their interests and move out of the state; the remaining 178, calling themselves the Home Party, determined to stay and were given 1388 acres as their share. Within a few years many of these elected to sell out so that by 1843 the remaining Oneidas had but two parcels left, one of 190.70 acres at Orchard Park in Oneida County, and the other of 742.66 acres at Marble Hill, in Madison County. As if to finish matters off the New York State Legislature passed an act in 1843 that permitted the land to be divided in severalty. By 1890 their land holdings had been reduced to 350 acres, and by 1920, the time of the Boylan case, the New York Oneidas were down to 32 acres of common ownership (Ibid: 405-407).

CONCLUSION

To complete this segment of Oneida history it is necessary to mention two final actions of the United States and New York. In 1838 the United States negotiated a treaty with the New York tribes whereby they were to exchange their claims in Wisconsin for land in the Kansas Territory. One of the

objectives of the treaty was to remove the Iroquois tribes from New York, but the treaty did not force the tribes to sell their lands; it merely provided lands for them should they sell. The impact of the treaty was greatest upon the Seneca, who lost considerable land. The treaty was so rife with fraud that the United States Senate refused to ratify it until it was presented along with changes made by the Senate, to the tribes for their approval (New York State Legislature. Assembly 1889: 24-28).

In the course of its negotiations with the Oneidas the state had established a series of annuity payments. In 1838, for example, the state paid the Oneidas in Wisconsin and New York \$6679.51 (New York State Assembly Document No. 4 1839: 15). In 1839 the state legislature decided to end these annuities by paying the tribes the principal amount due (Laws of New York 1839, Chapter 50). This was accomplished by the payment of the sum of \$92,489.72 to the Oneidas in Wisconsin and New York (New York Senate State Document No. 14 1841: 3). Thus New York wiped out its obligation to the tribes with a unilateral act.

All of this would be of academic interest were it not for the fact that the three Oneida tribes are today involved in a complex litigation that has resulted in two favorable United States Supreme Court decisions regarding the lands discussed in this paper. The tribes are now entering what is likely to be a protracted negotiation to settle those claims with the same parties, the United States and the State of New York. It would be an egregious error to assume that these parties are any more hospitable to Oneida interests and concerns than they have been over the course of the intervening 200 years since the first land

loss. To my knowledge New York has never acknowledged the existence, let alone extent of the fraud committed by its leaders on the Oneidas, nor have the federal administrations considered it their responsibility to protect the interests of the Oneidas. At least at the level of public policy, the state has not even recognized that the Oneidas have won a possessory claim to a part of the Oneida lands, and that they have the responsibility to reach a prompt and equitable settlement.

But it would be well for the Oneidas to bear in mind the third factor that contributed to the loss, the divisions within their community. There are now three Oneida tribes party to the negotiation. If the Oneidas are not to become victims of their own making it will be necessary not only for the three tribes to work together, but also for the tribes to maintain the internal solidarity that will allow the complicated negotiations to proceed without undo disruption from within. This may be the most difficult challenge of the entire process.

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