

THE ONEIDA LAND CLAIM

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The Oneida Land Claim began in the Spring of 1965 when Jake Thompson, the President of the Oneida Nation of New York, and his wife Geralda met with a lawyer named George Shattuck. They were seeking a settlement of the land claim issue because they felt that the Oneidas still owned a large portion of New York State. Initially Madison and Oneida counties were sued for the rental value of approximately 100,000 acres of land for the years of 1968 and 1969. This evolved into a lawsuit filed against private property owners living in the disputed area, which has since been dismissed. The Oneida Nation claims on their website that this lawsuit was filed because, “fourteen years went by, and New York State refused to take settlement negotiations seriously.”¹ The land claim was based on violation of the 1790 Indian Trade and Intercourse Act, which stated that only the federal government could purchase land from Indian tribes. As the group Upstate Citizens for Equality note on their website, “of particular interest is the fact that while New York was signing these illegal treaties with the Oneidas, the federal government was not only fully aware of the transactions, but did absolutely nothing to stop them.”² It does appear that the Oneida Indians were dealt with unfairly and that much of their land was taken in violation of federal legislation, but a solution is necessary to this land claim which is fair and equitable to both the Oneida Indians and the citizens and businesses that own property in the contested area.

The Oneida Nation originally consisted of approximately 5.5 million acres of land in what is now central New York State. This was a land of vast forests, plentiful fish and game and good farmland. In the 18th century, waterways were important means of transportation due to poor road conditions. The Oneida territory provided a passageway to Lake Ontario and then on to the Great Lakes in the west and the Hudson River which led to the Atlantic Ocean in the east. “This land was literally a gateway to the American west.”³

The Oneida people were influenced by French traders who had settled in the area and married Indian woman. They were also influenced by men such as Reverend Samuel Kirkland, the founder of Hamilton College and Philip Schuyler, father in law of Alexander Hamilton, then Secretary of War. Schuyler also purchased much of the Oneida land mainly for the purpose of increasing transportation. “Those Oneidas more associated with white man had clear economic advantages.”⁴ Due to these outside influences, there was a split among the Oneida people, basically among the sachems, or chiefs, of whom many had converted to Christianity and the warriors, who became known as the “Pagan Party” and adhered to the traditional Iroquois religion. Each group, the sachems and the Pagan Party, wanted to appear to maintain control of the Oneida land and this division within the tribe was used to take land from the Oneidas. “Playing on the growth of divisions within the Oneida world, especially their religious splits, New York State officials... basically used a divide and conquer strategy that chipped away at the tribal base.”⁵

¹ Oneida Indian Nation, “Land Claim Information,” available from <http://www.oneidaindiannation.com/>; Internet; accessed 10 December 2005.

² Upstate Citizens for Equality, Inc. “Federal Indian Policy and the Oneida Land Claim,” available from <http://www.upstate-citizens.org>. Internet; accessed 9 December, 2001.

³ George C. Shattuck, *The Oneida Land Claims- A Legal History* (Syracuse, New York, Syracuse University Press, 1991) 66.

⁴ Lawrence M. Hauptman, *Conspiracy of Interests- Iroquois Dispossession and the Rise of New York State*. (Syracuse, New York, Syracuse University Press, 1999) 44.

⁵ Hauptman 1999, 67.

There were 27 land transactions between New York State and the Oneidas between 1785 and 1842. In March 1783, the New York State Legislature took over the lands of all of the Iroquois tribes that had sided with the British in the Revolutionary War. This did not include the Oneidas and the Tuscaroras, who had sided with the Americans. The Treaty of Fort Stanwix (1784) guaranteed the Oneidas that they would keep their land. “The Oneida and Tuscarora nations shall be secured in the possession of the lands on which they are settled.”⁶ But despite this assurance, in 1788 a land agreement was signed in which the Oneidas thought they were saving their land from speculators by leasing it to the state of New York. “Instead state officials soon claimed that this agreement was an Oneida cession of much of their land.”⁷ The 1788 treaty was signed after New York State had ratified the United States Constitution, which did not allow states to make treaties with the Indians without federal approval. The Treaty of Canandaigua (1794) confirmed that roughly 270,000 acres of land was reserved for the Oneidas. Then in 1795, the state attempted to negotiate a treaty with the Oneida sachems, whom were authorized to sign treaties for the tribe with the consensus of the tribe members’ approval, but the treaty was rejected. Even though the state was notified that the treaty did not have federal approval, they brought random Oneida tribe members to Albany and the treaty was signed. “Documentary evidence that there were communications between the State of New York and the federal government, particularly Mr. Pickering, who was the Secretary of War, under whose jurisdiction [was] Indian Affairs... that New York was advised that to proceed in this matter would contradict federal law.”⁸ Therefore the State of New York did not deal fairly or in accordance with federal laws with the Oneida Nation.

One argument that was used against the Oneida’s right to make their land claim was the idea of laches, which is a legal term that means in this case that the Oneida had waited too long to file their claim. This is not true. The Treaty of Canandaigua resulted from an Oneida leader requesting federal assistance regarding the loss of their land. “The Oneidas have been diligent in the pursuit of their land. As soon as the Oneidas realized what was happening to them in the late 18th century, the Oneidas called upon the federal government for its oft-promised protection.”⁹ It appears that this was not the only time that the Oneidas attempted to pursue legal action against New York State in regard to the land claim. “There is evidence that the Oneidas consulted a lawyer in 1874 on the claims.”¹⁰ The Oneida were also misled by the Bureau of Indian Affairs and told that they were not a federally recognized tribe and that only federally recognized tribes could file a lawsuit. The Oneida were able to prove that they had not allowed too much time to pass because the Supreme Court decision of 1985, “effectively nullified the counties’ contention that the Indians had not made a timely effort to sue, thus had forfeited their legal rights.”¹¹

“Oneida Nation vs. County of Oneida was the first of the modern day claim cases filed in federal court.”¹² The initial goal was for the “United States to fulfill its treaty and legal obligations and help force the state to make a fair settlement.”¹³ Getting the case heard at the federal level was the hard part. They needed to prove a “federal question,” which is something that is not covered under state law. That is why this land claim requested rent for only a two year period, not repossession of the land. “This had kept many Native American land claims out of the federal courts because an action to recover land, an “ejectment” action, may be covered in state courts.”¹⁴

Another problem for the Oneidas was that they already had a similar claim in the Indian Claims Commission. Previously the Oneida claim had been dismissed by the federal courts because it was being handled in the Indian Claims Commission (ICC). The ICC claim “was limited to the value of the land at the time of the illegal taking without interest,”¹⁵ which was approximately \$3 million. The Oneidas dropped this claim when they began to make headway with the land claim in the federal courts. Now the Oneida had the attention of both the counties and the State of New York. Before the Supreme Court agreed to hear the Oneida land claim it appeared that, “Bureaucrats at the state and federal levels did not take the Oneida claim seriously because they did not believe the Oneidas could effectively pursue the claim themselves.”¹⁶

Although it is apparent that the Oneida have a right to file their land claim, its existence does create many problems for not only the state and counties involved, but the people that live on the disputed land. If the 1788 treaty

⁶ Arlinda F. Locklear, “The Oneida Land Claim,” in *Iroquois Land Claims*. eds. Christopher Vecsey and William A. Starna. (Syracuse, New York, Syracuse University Press, 1988) 146.

⁷ Hauptman 1999, 67.

⁸ Shattuck 1991, 49.

⁹ Locklear 1988, 149.

¹⁰ Locklear 1988, 150.

¹¹ Shattuck 1991, xix.

¹² Locklear 1988, 144.

¹³ Shattuck 1991, 13.

¹⁴ Shattuck 1991, 21.

¹⁵ Shattuck 1991, 10.

¹⁶ Shattuck 1991, 19.

was recognized as a lease, the Oneidas still owned most of their land in 1790 when the Intercourse Act was signed and this would increase the claim territory from 260,000 acres to over 5 million acres. There also is the question of the value of the land. How can a fair value be calculated for land that was wilderness and now has homes, roadways and modern conveniences, such as electricity, running water and sewers? "What was vacant and unimproved land when the Indians 'owned' it is now enormously valuable property."¹⁷

The Oneida have also begun purchasing land and since 1998 have purchased over 4,000 acres in Madison County. Is this land also part of the sovereign nation and thus exempt from property and school taxes? According to Madison County, the Oneida, "continue to avoid a fair contribution to the costs of the services and infrastructure that they and their businesses enjoy daily."¹⁸ In the year 2000, Madison County had to increase taxes by almost 6% to compensate for land that had been taken off the tax rolls. The Oneida Nation has now requested to have 17,310 acres placed in a federal trust. This land includes the Turning Stone Casino and Resort. "Trust land is owned by the federal government but set aside for exclusive use of an Indian tribe. The land is permanently free from all local taxes and laws."¹⁹

One solution to the lost tax revenue created by the Oneida Nation buying property is referred to as the "Silver Covenant Chain Grant Program." This is a voluntary program and the Oneida Nation decides where the money is paid and the amount of the payment. This creates a problem for the recipients, as the Oneidas have admitted that payments made through the Silver Covenant Chain Grant Program are temporary and voluntary. "This means the monies can not be considered either reliable or enforceable."²⁰ Proof of this statement is the case of the Stockbridge Valley School District, which had its payment withheld because the Oneida Nation wanted a specific teacher fired before they would make payment to the district. The school district did not fire the teacher, but did have to make budget cuts in January 2005. "Stockbridge Valley cut Spring sports, business courses, and some music programs to compensate for losing \$120,000 grant from the Oneida Indian Nation."²¹

In conclusion, the treaties that were signed by the Oneida Indians and New York State after 1790 violated the Indian Trade and Intercourse Act, which required approval by the federal government. New York State delivers a bolt of cloth to the Oneidas every year in honor of the federal treaty of 1794, but the state has neglected to honor "another provision of that same treaty [which] promised to keep the Oneidas secure in their reservation land."²² The state should not be held solely responsible though, as the federal government knew of these transactions at the time that the treaties were being signed and neglected to act then. As stated in the legal argument used by the Oneida Nation in their Supreme Court case in 1973, "The overriding legal premise for jurisdiction is that the United States Government, no less than any individual citizen, must obey its own treaties, laws and promises."²³

It does seem hard to believe that even after the Supreme Court decided in favor of the Oneida land claims that the state would not negotiate with Oneidas. Some type of compensation should be made to the Oneidas, whether it be monetary or land settlements granting sections of land to the tribe to be part of the sovereign nation and therefore not subject to taxes. Although both of these solutions may create more problems, as in the case of the Pequot tribe in Connecticut in 1983, "some 1,200 acres were given to the tribe as a reservation along with \$900,000 and a 'settlement area' that the tribe could purchase and add to their reservation."²⁴ The Pequots then built a casino which was very successful and ten years later attempted to buy 17,000 acres and annex it into their reservation. Since the Oneida already have a casino that is successful, the Pequot situation could be repeated in upstate New York. Although it can be argued that it is already

¹⁷ Allan Van Gestel, "New York Indian Land Claims," *Iroquois Land Claims*, eds. Christopher Vescey and William A. Starna. (Syracuse, New York, Syracuse Press, 1988) 124.

¹⁸ County of Madison. "Press Release May 1, 2000." Available from: <http://www.madisoncounty.org/motf/OINTrustMain.html> Internet; accessed 8 December 2005.

¹⁹ Glenn Coin, "Consultant hired to fight Oneida's land trust," *The Syracuse Post Standard*. 7 December, 2005.

²⁰ Madison County, Office of the County Executive. Press Release, "Silver Covenant Chain Program, Not an Adequate Solution." Available from <http://www.madisoncounty.org/motf/MadCoSJCoin.htm>. Internet; accessed 8 December 2005.

²¹ Glenn Coin, "Stockbridge Valley School District Budget Cuts," *The Syracuse Post Standard*. 30 December 2004.

²² Shattuck 1991, 7.

²³ Shattuck 1991, 32.

²⁴ Upstate Citizens for Equality. "Federal Indian Policy and the Oneida Land Claim. Available from <http://www.upstatecitizens.org>. Internet; accessed 9 December 2005.

occurring, as the Oneida Nation is buying up land in the land claim territory and then refusing to pay taxes on the property. The one thing that should not be allowed to happen is for homeowners and private businesses to lose their property to the Oneida Nation land claim. Even though the Oneida Indians were not dealt with fairly in the treaties of the past, the past wrongs cannot be made right by bad decisions now.

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