"To sin by silence when they should protest makes cowards of men."

...Abraham Lincoln

FEDERAL INDIAN POLICY AND THE ONEIDA LAND CLAIM

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December 9, 2001

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I - INTRODUCTION

The demand for ethnic sovereignty by American Indian tribes is beginning to be heard and felt by more and more Americans throughout the United States. There are currently some 558 federally recognized tribes with over 200 more groups of "Indians" in the process of applying for federal recognition. Recognition means special rights, special privileges, and a key to the U.S. Treasury. The tribes claim to be "sovereign nations," some even claiming sovereignty equal to that of Canada or Mexico. Members of the Iroquois tribes of New York State claim not to be American citizens and some have even manufactured their own passports. In truth, tribes are quasi-sovereign communities whose level of sovereignty is completely determined by Congress, but Congress has become too generous with its "sovereignty" handouts, and has stepped beyond the bounds of our constitution.

An entire body of law peculiar to Indians has been gradually erected by Congress and the judiciary that is now trampling the constitutional rights of both Indian and non-Indian alike. Special judicial rules of construction provide tribes with legal advantages that are unavailable to all other races within our nation, resulting in everything from casino monopolies to land claims based on events that occurred over 200 years ago. Recently the 2nd Circuit Court of Appeals decided a case (*Bassett v. Mashantucket Pequot Tribe*, February 28, 2000) that dismissed a copyright claim against the tribe, citing the tribe's "sovereign immunity" to such suits since Congress had not explicitly abrogated tribal sovereign immunity with regard to the Copyright Act. While the tribe itself seeks and receives copyright protection by copyrighting its own original work, it may disregard the copyright protection of others because of seriously flawed federal Indian policy.

The Indian Gaming Regulatory Act (IGRA) of 1988 has resulted in the creation of casino monopolies in many states whose constitutions clearly forbid commercialized casino gambling. Unconstitutional federal edict has forced states to enter into gaming compacts with tribal governments whether the states like it or not. The IGRA states, "Class III gaming activities shall be lawful on Indian lands only if such activities are located in a state **that permits such gaming for any purpose by any person, organization, or entity**."(emphasis added) This wording allows the Act to equate full blown commercial Indian casinos with Fire Department and church "Casino Nights," and results in the violation of the constitutions of states in which commercialized gambling is prohibited. Profits from Indian casino monopolies rarely do what they were designed to do, enhance the lives of their poorest tribal members, but have certainly enhanced tribal influence over many of our elected officials. That influence is used to obtain more and more "self-determination" in order to supposedly preserve the tribes' unique cultures.

Severely flawed federal Indian policy has resulted in ancient land claim lawsuits brought forward by Indian tribes with the assistance of our own U.S. Department of Justice that seek the eviction of totally innocent landowners from their homes. Thanks to federal Indian policy, we have a casino in our community without our consent that provides huge profits that enable the tribe to purchase real estate within the land claim boundaries on which the tribe then refuses to pay property taxes, resulting in the destruction of our tax base. Casino revenues also provide the seed money to start new tax evading tribal enterprises anywhere the tribe desires within the land claim area, destroying free enterprise within our communities. Although the law states that the tribal businesses are supposed to collect sales tax from non-Indian and non-member customers, the tribes refuse to collect those taxes

and Governor Pataki refuses to enforce the legislatively mandated tax laws of the state, laws that the U.S. Supreme Court has ruled, do apply to Indian tribes and may be enforced by states that have such laws.

II - INDIAN TRIBAL SOVEREIGNTY

Indian tribes in the United States are not fully sovereign nations; they are quasi-sovereign rather than sovereign, domestic rather than foreign, and dependent rather than independent nations within our nation. Theirs is a very limited sovereignty that exists solely at the complete discretion and pleasure of the United States Congress. Indian tribes are wards of the federal government since the federal government has taken on the responsibility of "protecting" the tribes from the states. This responsibility is often referred to as the federal government's "fiduciary duty" or "trust responsibility" to the tribes. The tribes are said to have certain inherent governmental powers over their internal affairs free from state interference, but Congress has plenary or complete power to limit tribal sovereignty.

What does it mean to be sovereign?

A sovereign nation has independent supreme authority over its affairs without foreign dictation. An entity is said to be quasi-sovereign when in any respects, it is liable to be controlled or regulated by a paramount government.

Just how sovereign are the Indian tribes?

1. Virtually all Indians pay federal income tax, and most pay state income and property taxes because they do not live on reservations.
2. All Indians born within the borders of the United States are American citizens and can vote in elections. Foreigners cannot vote in our elections.
3. State and federal courts have criminal jurisdiction over Indians, but Indian tribal courts do not have such jurisdiction over non-Indians.
4. Indian tribes are unable to dispose of their lands as they see fit and may not enter into treaties with foreign nations.
5. Indian tribes are legally able to donate to the campaign funds of U.S. politicians, foreigners are not.
6. Indians can and do hold political offices in federal and state governments of the United States, foreigners cannot.
7. Tribes are not able to sell liquor on or off the reservation without a state liquor license.
8. Indians are subject to United States conscription (the draft).
9. Congress and the courts decide which federal and state laws apply to Indian tribes.

What do the Indian tribes claim and is it true?

An increasing number of American Indian tribes claim international sovereignty, the sovereignty of nations. Some tribes even claim "foreign nation" status. In a spirit that seems to be "humoring" the tribes, the federal government still refers to tribes as "sovereign nations." They are neither sovereign in the international sense of the term, nor are they nations.

The 1901 U.S. Supreme Court decision *Montoya v. United States* 180 U.S.261, a decision that is frequently referred to by courts when seeking a legal definition of the term "tribe," had this to say about tribes as nations:

> The North American Indians do not, and never have, constituted "nations" as that word is used by writers upon international law, although in a great number of treaties they are designated as "nations" as well as tribes. …the word "nation" as applied to the uncivilized Indians is so much of a misnomer as to be little more than a compliment.

Tribes frequently claim that the United States Constitution and the Indian treaties recognize, grant, or support Indian tribal sovereignty, none of which is true. In the U.S. Supreme Court decision*, U.S. v Kagama*, (1886) the Court stated, "But these Indians are within the geographical limits of the United States. The soil and the people within these limits are under the political control of the government of the United States, or of the states of the Union. **There exists within the broad domain of sovereignty but these two.**"(emphasis added) Indians are mentioned only twice within the Constitution and neither instance even mentions sovereignty. Article 1, section 2, clause 3 mentions "Indians not taxed" with reference to the apportionment of representatives and direct taxes. The particular sentence referring to "Indians not taxed" was superseded by Amendment XIV, section 2. The other instance that mentions Indians is the Commerce clause, Article 1, section 8, clause 3 that states that the Congress shall have the power to regulate commerce with foreign nations, and among the several states, and with the Indian tribes. Indeed, it is the Commerce clause that is purportedly the constitutional source of congressional power over the Indian tribes.

No treaty between the United States and an Indian tribe recognizes, grants, or supports tribal sovereignty. Justice Johnson, concurring in the *Cherokee Nation v. Georgia* decision of 1831, had this to say, "It cannot be questioned that the right of sovereignty, as well as soil, was notoriously asserted and exercised by the European discoverers. From that source we derive our rights, **and there is not an instance of a cession of land from an Indian nation, in which the right of sovereignty is mentioned as a part of the matter ceded."**(emphasis added) Clearly treaties (cessions of land from Indian nations) with the Indian tribes were neither contracts between equals nor contracts granting or recognizing the sovereignty of tribes.

III - WHO IS AN INDIAN?

According to the American Civil Liberties Union Handbook "The Rights of Indians and Tribes" (by Stephen L. Pevar), There is no universally accepted definition of the term "Indian." While ethnologists would classify a person as being Indian only if that person had more than 50% Indian blood, the federal government uses many different legal definitions. Different laws require different levels of "blood quantum" for the purposes of those laws. Most federal laws require at least 25% Indian blood to qualify as an Indian. Courts have used a two part test to determine who is an Indian; the person must have some Indian blood and must be recognized as an Indian by an Indian community. The Census Bureau lists every person as an Indian who claims to be one. The absurdity of classifying people by percentages of ancestral blood becomes abundantly clear when looking at the various definitions of the term "Indian," but absurdity is the norm when dealing with federal Indian policy.

IV - WHAT IS A TRIBE?

The 1901 U.S. Supreme Court decision *Montoya v. United States* 180 U.S. 261, a decision that is

frequently referred to by courts when seeking a legal definition of the term "tribe," defined a tribe thus: "By a 'tribe' we understand a body of Indians of the same or a similar race, united in a community under one leadership or government, and inhabiting a particular though sometimes ill-defined territory."

William C. Canby Jr., in his book *"American Indian Law"* states, "The Indian tribe is the fundamental unit of Indian Law; in its absence there is no occasion for the law to operate. Yet there is no all-purpose definition of an Indian tribe. A group of Indians may qualify as a tribe for the purpose of one statute or federal program, but fail to qualify for others."

Tribal enrollment requirements vary from tribe to tribe and may differ from the view held by the federal government. While an individual may not be federally recognized as an Indian tribal member, the tribe may recognize that individual for tribal purposes. The Mashantucket Pequots of Connecticut recently removed their "blood quantum" requirement, and may now claim anyone they wish to be a tribal member.

V - TAXABLE STATUS OF INDIANS & TRIBES

FEDERAL INCOME TAX

All members of Indian tribes within the United States are American citizens and virtually all pay federal income tax like any other citizen whether they live on reservations or not. Even income earned on reservations is taxable by the federal government. As William C. Canby Jr. states in his book "*American Indian Law*," "The federal taxing power does not depend on geography, and it is fully effective in Indian country with regard to both Indians and non-Indians. Contrary to a common misconception, Indians are not exempt from federal income tax by reason of being Indians or because their income is earned in Indian country." It should always be remembered that taxable status of the individual tribal member is different from that of the tribe as an organization. While tribes may be exempt from state and federal taxes, individual tribal members may not be exempt.

STATE INCOME TAX

All Indians living off the reservation are residents of the state and subject to state income tax even if their income is earned on a reservation. Indians living on reservations are exempt from paying state income tax.

COLLECTING SALES TAX

The U.S. Supreme Court has ruled on at least 5 occasions that states have the right to require Indian merchants on reservation lands to collect sales tax from non-Indian and non-member customers. The Court ruled that they may even be required to keep detailed records of taxes collected, and that states have the right to seize shipments of goods going to Indian businesses if those businesses refuse to collect the state's sales taxes. It's the law and Governor Pataki is ignoring the law, the courts, his oath of office, and the Constitution of the State of New York.

PAYING SALES TAX

The tax exempt cards carried and presented to local businesses by tribal members are manufactured by the tribe and have no legal validity whatsoever. In order for an Indian in the State of New York to get an exemption from sales taxes on goods that he purchases off the reservation, he must maintain a

permanent residence on a qualified reservation and the purchased goods must be delivered to that reservation as described by Certificate of Individual Indian Exemption from State Taxes on Property or Services Delivered on a Reservation, form DTF-801. The form must be filled out by the Indian and filed by each vendor that he patronizes. In New York, tribes as organizations may obtain an exemption from sales tax by applying for an ST-119.1, "Exempt Organization Certificate."

VI - THE CONSTITUTIONALITY OF FEDERAL INDIAN POLICY

The U.S. Constitution prohibits race based discrimination. How then is it possible for Congress and the courts to erect an entire body of law, juridical constructions, and a governmental bureau that gives Indian tribes special treatment? The reason provided by the courts and the government is that Indian tribes are not only a racial group, but also a political group. Furthermore, it is claimed that the Commerce and Treaties clauses of the Constitution authorize Congress to not only view tribes as "political groups," but also exercise plenary power over the tribes while claiming a "trust responsibility" to the tribes. As stated in the U.S. Supreme Court decision *United States v. Antelope* (1977), "classifications expressly singling out Indian tribes as subjects of legislation are expressly provided for in the Constitution and supported by the ensuing history of the Federal Government's relations with Indians."

This "trust responsibility" and "ward status" has no constitutional basis whatsoever and after passing the Indian Citizenship Act on June 2, 1924, declaring all Indians born within the United States to be citizens of the United States, the entire edifice of federal Indian law should have come tumbling down. However, even before the passage of the Indian Citizenship Act, in the U.S. Supreme Court decision *U.S. v. Nice* (1916), the Court stated:

> Of course, when the Indians are prepared to exercise the privileges and bear the burdens of one sui juris, the tribal relation may be dissolved and the national guardianship brought to an end; but it rests with Congress to determine when and how this shall be done, and whether the emancipation shall at first be complete or only partial. Citizenship is not incompatible with tribal existence or continued guardianship, and so may be conferred without completely emancipating the Indians, or placing them beyond the reach of congressional regulations adopted for their protection.

Even as citizens, American Indian tribes are considered "wards" of the federal government and this "ward" status appears to be unending. The historical record however, does not support this view. Ward status, reservations, and tribal governments were viewed as temporary measures toward integrating the tribes into American society. Justice McClean concurring in the U.S. Supreme Court decision of *Worcester v. Georgia* (1832) stated that, "The exercise of the power of self-government by the Indians, within a state, is undoubtedly contemplated to be temporary."

VII - COMMERCE AND THE COMMERCE CLAUSE

The Commerce clause states that Congress shall have the power "To regulate commerce with foreign nations and among the several States, and with the Indian tribes."

What does commerce mean?

In his famous work, "The Constitution of the United States, A Critical Discussion of its Genesis, Development, and Interpretation," John Randolph Tucker defines "commerce" thus:

(a) What does commerce mean? It is derived from *com* and *merces*, traffic in things. In the great case *Gibbons v. Ogden*, this precise meaning is given to the words.
(b) It means the incidents and media to traffic and exchange; that is, transportation, navigation, ships, etc., by land and sea.
(c) Does it include intercourse of persons in travel? Yes. The word "intercourse" had been added as included within the regulations of commerce. This *transitus* of persons may be either of such as are connected with commerce and things, or of persons traveling with no relation to commerce and things. As to the first, there could be no reason for not including them within the term "commerce."

Randolph concludes, "In regulating commerce, therefore, Congress regulates traffic in things, vehicles of transport and things in transitu, **but not the things themselves**" and **"where they are in the same State the power of Congress to regulate them does not attach.**"(emphasis added) Additionally, Randolph claims that, "Commercial power, to be necessary and proper while regulating commerce in its normal condition, **must so regulate as not to destroy the essential reserved rights of the States.**"(emphasis added) This being the case, where does Congress get its "plenary" power over American citizens of Indian ancestry? Congress acquires no plenary powers from the Commerce clause over other citizens, states, or foreign nations, so how does it acquire plenary powers over Indian tribes?

VIII - THE LAW REGARDS MAN AS MAN

United States Supreme Court Justice Harlan in his solitary dissent of the *Plessy v. Ferguson* (separate but equal) decision of 1896 stated, "Our constitution is color-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guarantied by the supreme law of the land are involved." Federal Indian Law and Indian treaties must bow to the "supreme law of the land," the U.S. Constitution. Neither federal Indian laws nor Indian treaty provisions may alter or violate the U.S. Constitution. If citizenship is not inconsistent with tribal existence, tribal existence is not inconsistent with the equal rights, equal opportunities, and equal responsibilities of citizenship in our indivisible nation; tribal sovereignty should be abolished. Federal Indian policy is based upon antiquated court decisions and a misguided interpretation of the Commerce clause of the U.S. Constitution. Federal Indian policy is wrong, degrading, unnecessary, and totally unconstitutional.

IX - INTRODUCTION TO THE ONEIDA LAND CLAIM

In 1970 the first of what would come to be known as the "Eastern Indian land claims" was filed by the Oneida Indian Nation of New York. The tribe claimed that a 1795 treaty with the State of New York in which the Oneidas sold some 100,000 acres of land, violated the 1793 federal statute known as the "Trade & Intercourse Act" since the treaty was never approved by the federal government as required by the Act. The Oneidas sued the counties of Oneida and Madison for two years of rent (1967 & 1968) on some 870 acres of county land within the 100,000 acre area. Their "test case"

reached the U.S. Supreme Court in 1974 and again in 1985 resulting in a victory that the three tribes of Oneidas now seek to apply to the entire 250,000 acre reservation that was sold by the tribe to the state through some 26 treaties during a 51 year period (1795-1846).

Negotiations between the tribes and the state have been ongoing and fruitless since 1985. On December 5, 1998 the tribes, joined by the U.S. Department of Justice, filed an amended complaint seeking to add several defendants to their suit, among which, were the 20,000 landowners occupying the 250,000 acre claim area. For 18 months, a court appointed mediator, Mr. Ronald Riccio, mediated negotiations between the tribes, the federal government, the state, and the counties with little results until an impasse was declared. As of this writing, the case is headed back to the federal district court presided over by Judge Neil P. McCurn.

A controversy over the applicability of the Trade & Intercourse Acts within the original thirteen colonies or states arose during land claim cases and while several court decisions over the years have ruled that the Acts did indeed apply within the original thirteen states, the historical evidence supporting such a claim is not convincing.

As the Oneida Indian land claim lawsuit heads back to court, issues such as the doctrine of laches, the continuous existence of the Oneida tribe of New York over time, and the actions and inaction of the federal government in regard to the so-called invalid treaties, are likely to play a significant role in the ultimate outcome of the claim.

X - THE ONEIDA LAND CLAIM

Some 26 treaties were executed between the state of New York and the Oneida Indians during the years of 1795 through 1846, resulting in the purchasing of approximately 250,000 acres of land from the Oneidas. All but 2 of the treaties were ruled invalid since only 2 had the participation of the federal government. For each time that the state executed a treaty with the Oneidas without federal presence or approval, the state of New York presumably violated federal statutes known as the "Trade & Intercourse Acts," sometimes referred to as the "Nonintercourse Acts." Beginning in 1790, the Acts were renewed and revised over the years, and a Trade & Intercourse Act is to this very day alive and well as Title 25, section 177 of the United States Code. The intent of the Acts was to prevent the exploitation of Indian tribes by states and unscrupulous settlers and traders in Indian country.

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. At the time, the Secretary of War, Timothy Pickering wrote to then New York Governor, John Jay detailing the Nonintercourse Act of 1793. Superintendent of the Affairs of the Six Nations, Israel Chapin also informed the Oneidas of the illegality of entering into any land deals with the state of New York without federal approval.

In June of 1795, Secretary of War Timothy Pickering wrote to then Attorney General William Bradford asking for his opinion as to whether or not the State of New York had the right to purchase lands from the Six Nations without the intervention of the general government. In Oneida land claim court decisions an excerpt from Bradford's opinion to Pickering is quoted in which Bradford writes, "The language of this act (referring to the Trade & Intercourse Act) is too express to admit of any doubt upon the question," but omits the continuation of the sentence that reads, "unless there be something in the circumstances of the case under consideration to take it out of the general prohibition of the law." Two such circumstances did exist in the form of geographic limitations included in the versions of the Act passed after the original 1790 version: a) nothing in the acts was intended to prevent *any* trade or intercourse with Indians "surrounded by settlements of citizens of the United States," and b) the acts were directed toward trade activities in so-called "Indian country."

Interestingly, the 1793 Act excluded the portion of section 4 of the 1790 Act that forbid the sale of Indian lands "to any state."

Before the 1974 U.S. Supreme Court decision, *Oneida Indian Nation v. County of Oneida* 414 U.S. 661, it was generally believed that the Trade & Intercourse Acts did not apply to purchases of land from Indian tribes by a state that had been one of the original thirteen colonies. This belief was held by both the U.S. Departments of Justice and the Interior. Indeed, judicial precedent can be found in such cases as: *United States v. Franklin County*, 50 F. Supp. 152 N.D.N.Y. (1943) and *Seneca Nation v. Christy*, 126 N.Y. 122, 27 N.E. 275 (1891).

Both the 1974 & 1985 Supreme Court cases dealing with the Oneida land claim were examples of using late 1900's law to interpret late 1700's events. Federal Indian policy did not just spring into existence after the adoption of the U.S. Constitution, it was developed over many years and indeed, continues to develop. The "rudimentary propositions" of Indian title as a matter of federal law, upon which the Court based its 1974 decision that the Trade & Intercourse Acts applied to the original 13 colonies, were not firmly established until Supreme Court decisions of the 1830's. By that time, there had been five successive Trade & Intercourse Acts. Moreover, the decision did not address any possible exceptions or limitations of the Acts.

For 51 years the federal government ignored "state" treaty after "state" treaty until all of the Oneidas' lands had been sold. It should be noted that the price paid per acre of land in the illegal treaties was comparable to that paid in the legal treaties. Moreover, the price paid per acre by New York during the so-called illegal "state" treaties was far higher than that paid by the federal government to the Menominee Indians of Wisconsin when acquiring lands from them onto which the New York Oneidas were to be moved. The question, "Where then are the damages?" is not without merit. The federal government knew all about the "state" treaties. They participated in and benefited by those transactions, and ultimately helped remove the tribes from the state of New York. There is every indication that had the federal government acted upon the "state" treaties, they would have approved them.

In 1970, the Oneidas filed a "test" case in federal court, suing Oneida and Madison counties for 2 years rent (1968-69) on county owned acreage amounting to $16,694. The U.S. District Court for the Northern District of New York dismissed the action and the Oneidas appealed. On July 12, 1972 the U.S. Court of Appeals for the 2nd Circuit (case 464 F.2d 916) affirmed the District Court's decision and the case then went to the U.S. Supreme Court. In Oneida Indian Nation v. County of Oneida, 414 U.S. 661 (1974) the Court decided in favor of the Oneidas. The case then went back to the U.S. District Court with Judge Edmund Port presiding and on July 12, 1977 the Court decided in favor of the Oneidas again. The counties then appealed and lost in the Court of Appeals for the 2nd Circuit, 719 F.2d 525 (1983) and the case again went to the U.S. Supreme Court. County of Oneida v. Oneida Indian Nation, 470 U.S. 226 (1985) was decided in favor of the Oneidas on March 4, 1985. In a close 5 to 4 decision, the Court ruled that the Oneidas had a common law right to sue in federal courts and that such claims were justiciable in federal courts. Furthermore, the Court ruled that there was no state or federal statute of limitations which would bar such claims. The five justices in the majority added this curious footnote to their opinion:

> The question whether equitable considerations should limit the relief available to the present day Oneida Indians was not addressed by the Court of Appeals or presented to this Court by petitioners. Accordingly, we express no opinion as to whether other considerations may be relevant to the final disposition of this case should Congress not exercise its authority to resolve these far-reaching Indian claims.

In his dissent, Justice Stevens, wrote:

> This decision upsets long-settled expectations in the ownership of real property in the Counties of Oneida and Madison, New York, and the disruption it is sure to cause will confirm the common law wisdom that ancient claims are best left in repose. The Court, no doubt, believes that it is undoing a grave historical injustice, but in so doing it has caused another, **which only Congress may now rectify**.(emphasis added)

Since the 11th Amendment to the Constitution bars federal court jurisdiction on suits against a state for damages, the Indians had to sue the counties instead of the state and the counties were unable to sue the actual wrongdoer, the State of New York. So, the counties were sued for an illegal act that took place before they even existed, and because of the federal funding of the Native American Rights Fund, the organization that provided the Oneidas' legal counsel, the taxpaying residents of the counties actually paid the Indians to sue them.

During the 13 years since the Oneidas' victory in the Supreme Court, negotiations to "clear" or "uncloud" the title to the 250,000 acres of land have been ongoing with no progress. In March of 1998 the federal government decided to intervene, apparently to speed the negotiations to a settlement.

XI - THE ONEIDA LAND CLAIM AND THE INDIAN CLAIMS COMMISSION

In 1946 the Indian Claims Commission Act established the Indian Claims Commission to hear suits brought by Indian tribes against the United States. The United States waived its sovereign immunity and required that all cases be filed with the ICC by August 31, 1951. Some 852 claims were filed by tribes, establishing some 370 cases. The ICC's original 5 year life span was extended by Congress until 1978 when it was then terminated and all pending cases were transferred to the Court of Claims.

In 1951 the Oneida Indian Nations of New York and Wisconsin instituted proceedings against the United States before the ICC which included the same land and treaties that are now involved in their claim against Madison and Oneida counties. The Oneidas claimed that the United States had breached its trust responsibility to the tribes by allowing sales of their lands to the state of New York for grossly inadequate sums of money in direct violation of the Trade and Intercourse Act of 1793. The commission determined that the United States had knowledge of the 24 "state" treaties, and was guilty of violating its trust or fiduciary responsibility to the tribes. Ironically, in their defense of the case against the United States, federal attorneys claimed that the Trade & Intercourse Acts did not apply to the State of New York. The United States appealed the ICC's decision.

On September 30, 1978 the commission was terminated and the Oneidas' case was transferred to the Court of Claims. By this time, the Oneida's suit with Madison and Oneida Counties was well on its way to victory and since cases filed with the ICC would only pay damages in **"at the-time-of-transfer" market values, without interest, and "NO LAND,"** the Oneidas pursued their more lucrative case against the counties. The very pertinent questioned should be asked: **If these damages were considered to be adequate by the federal government, why should the State of New York or the counties be held liable to pay damages that are vastly greater?**

Further incriminatory behavior by the federal government, is its role in helping the state of New York to remove the Oneidas to Wisconsin in the 1820's and 30's. It should also be noted that during those years the feds were also allowing if not encouraging the state of Georgia to violate the Trade and Intercourse Acts by letting the state annex lands of the 5 civilized tribes and helping to remove the tribes to Oklahoma.

XII - ONEIDA PROPAGANDA

Myths Surrounding the Oneida Land Claims:

Myth: The land that the Oneidas purchase within the land claim area becomes "reservation land" upon purchase, and is exempt from property taxes.

Fact: According to the Bureau of Indian Affairs and the Solicitor's Office of the Department of the Interior, the only reservation land in New York State belonging to the Oneidas is the 32 acres on route 46, south of the City of Oneida. None of the land that the Oneidas have purchased has been taken into trust by the federal government, including that upon which, the Turning Stone Casino sits. The true taxable status of the lands being acquired by the Oneidas within the land claim area will be established only after the land claim has been settled. Until that time, all properties purchased by the tribe are taxable.

Myth: The Oneidas "Silver Covenant Chain Grants" are of greater monetary value than the actual taxes that would be due if the Oneidas elected to pay them.

Fact: We need look no further than a loan of $70 million by Key Bank to the Oneida Indian Nation of New York, Inc. to prove this wrong. Key bank assessed some 540 acres of Oneida real estate in Verona at being worth over $100 million. The tribe was offering the town of Verona about $55,000 in lieu of taxes. The mortgage tax on the 540 acres amounted to a sum of $525,000. The Oneidas choose to assess their lands without improvements made to those lands. Their casino complex is listed on the Verona tax rolls as a "dairy farm."

Was the assistance of the Oneida Indians instrumental in providing the American victory in the Revolutionary War?

The Oneidas continuously proclaim that their joining the colonists in their struggle for independence from Great Britain was instrumental in the American victory in the Revolutionary War. The facts prove otherwise.

Having been decimated by smallpox, diphtheria, tuberculosis, yellow fever, plague, measles, and influenza, a decimation brought to the tribes by Europeans and referred to by historian Colin G. Calloway as "one of human history's greatest biological catastrophes," the Indian tribes, the Oneidas included, had neither the numbers nor the means to significantly sway the fortunes of war to either side.

At the Battle of Oriskany in August of 1777, General Herkimer's 800 militiamen were accompanied by less than 60 Indians, not all of which were Oneidas. Similarly, General Horatio Gates commanding some 12,000 troops at the battle of Saratoga, the battle considered to be the turning point in the revolution in favor of the Americans, had at his disposal a scant 150 Indians composed of Oneidas and Tuscaroras.

Further dilution of their potential to help the Americans, was the fact that the Oneidas, as a whole, were in favor of neither the British nor the Americans, but were split into Whig and Tory factions.

Also of exaggerated importance is the act of a handful of Oneidas taking corn overland in the winter of 1777-1778 to General Washington's 10,000 troops encamped at Valley Forge. While commendable, the act was certainly not decisive in determining the outcome of the American Revolution. Furthermore, the story relating the Oneidas' need to instruct the soldiers to cook the corn before they ate it, is highly questionable. Most of the troops were either farmers or settlers and had at

one time or another grown and prepared their own foods, and would certainly have been intelligent enough to cook corn.

Do treaties with the Oneidas confer sovereignty and tax exemption upon the tribes?

The Oneida Nation claims that it is a fully sovereign nation equal in legal status with foreign nations because of its treaties with the United States, and that this complete sovereignty confers upon it exemption from either the paying or collecting of state and federal taxes. It is evident that the Oneidas claims are based not on facts, but on an erroneous interpretation of their treaties and the intent of the United States government in entering into these treaties. The Oneidas have either not understood the message of the treaties or have chosen to ignore it.

Francis Paul Prucha Professor Emeritus of History at Marquette University, in his book, "American Indian Treaties," states the confusion about initial dealings between Congress and the tribes, "arises from reading back into the past our modern understanding of the word *treaty*." Prucha continues, "But in the colonial and early national periods of United States history the term also had an alternate meaning, now considered rare or obsolete, that was widely used; a 'treaty' in that sense was the 'act of negotiating,' the discussion aimed at adjustment of difference or the reaching of an agreement, and by extension the meeting itself at which such negotiations took place." Indian treaties **DO NOT** confirm or sanction tribal sovereignty.

Of paramount importance in interpreting the treaties is the acquiring of an accurate picture of how the United States viewed the status of the Indian tribes in relation to the federal government at the time that the treaties were held. To put it simply, the tribes were viewed as dependent upon the federal government and that Indian affairs were a domestic as opposed to a foreign issue for the United States. "This was evident from the start, as Indian affairs were made the responsibility of the War Department (and later the Interior Department) rather than the State Department," writes Prucha. Even before the constitutional convention, the provision in Article IX of the Articles of Confederation proclaiming the sole and exclusive right and power of Congress to regulate trade and manage all affairs with the Indians was in Prucha's words "tucked away in a list of exclusive powers that included regulating the value of coins, fixing weights and measures, establishing post offices, and appointing officers of the army and navy---domestic questions all." General Washington had expressed himself in his writings of September 1783 as agreeable to regarding the territory held by Indians as "conquered provinces."

Other legislation such as the Nonintercourse Acts of 1790 and 1793 reveal Congress' clear view and acceptance of the role of "protector" of the Indian tribes. Clearly, it was not the intent of Congress to bestow full sovereignty upon any of the tribes of the six nations when signing the Treaty of Canandaigua in 1794. Indeed the words "sovereignty" and "sovereign," exist nowhere in the text of the treaty. Similarly the taxable status of the tribes is neither mentioned nor alluded to.

Treaties do not bestow sovereignty on Indian tribes nor do they confer any tax exempt status without explicitly stating the terms or conditions of a tax exemption, if one exists. What the United States offered the tribes of the six nations was peace, friendship, and protection with the option of selling their lands only to the people of the United States.

XIII - THE INDIAN REORGANIZATION

ACT OF 1934 & H.R. 1168

Will annexation come to Madison and Oneida Counties?

The people of Ledyard, Connecticut had seen their Indian land claim with the Mashantucket Pequot tribe settled back in 1983. Some 1,200 acres were given to the tribe as a reservation along with $900,000 and a 1,000 acre "settlement area" that the tribe could purchase and add to their reservation. In return the tribe promised to drop all claims to any other land. Since this settlement, much has happened. The Pequots now own what is arguably the largest casino in the world. In 1993 the tribe offered 15 million dollars to the surrounding towns of Ledyard, Preston, and North Stonington if the towns would not interfere with their plans to buy some 17,000 acres of land and have it annexed to their reservation. Local citizens were so alarmed at this prospect that they formed citizen groups called RAA's, Residents Against Annexation. The situation is still ongoing and reached a federal court in Hartford, Connecticut in November of 1997. In that court, the judge asked the Interior Department when it would stop approving the Pequots' requests for annexation. The federal lawyer replied, **"Prior to the acquisition of the entire eastern part of Connecticut."** Connecticut Senator Joseph Lieberman has referred to this annexation process as **"welfare for the rich,"** and stated, **"Tribes like the Pequots have reached the point where land annexation is not about preserving a culture or achieving self-sufficiency. It is about expansion of an already successful business in a way that harms their neighbors."** Interested readers will find this story in the September 1998 issue of the "Yankee" magazine. The towns of Ledyard, North Stonington, and Preston won their case against further annexation, but the decision has been appealed by the Department of the Interior and is now in the 2nd Circuit Court of Appeals.

This annexation is made possible by the 1934 Indian Reorganization Act, also known as the Wheeler-Howard Act, that permits the Secretary of the Interior, who oversees the Bureau of Indian Affairs, to purchase virtually any land and place it in trust for an Indian tribe. This unconstrained delegation of authority is so extreme that in 1995 in the case of the State of South Dakota v. U.S. Department of the Interior, the 8th Circuit Court of Appeals declared sections of the act unconstitutional. In its decision, regarding the Act, the court stated:

> By its literal terms, the statute permits the Secretary to purchase a factory, an office building, a residential subdivision, or a golf course in trust for an Indian tribe, thereby removing these properties from state and local tax rolls. Indeed, it would permit the Secretary to purchase the Empire State Building in trust for a tribal chieftain as a wedding present. There are no perceptible "boundaries," no "intelligible principles," within the four corners of the statutory language that constrain this delegated authority—except that the acquisition must be "for Indians." It delegates unrestricted power to acquire land from private citizens for the private use and benefit of Indian tribes or individual Indians.

The U.S. Supreme Court however, has not addressed the issue.

On March 20, 1997 a bill known as HR 1168 was introduced by Congressmen Ernest Istook and Peter Visclosky. This bill would require a written agreement regarding the payment of State and local taxes between Indian tribes and the State and local officials of the jurisdiction in which the land is to be taken. The bill's summary is, "To encourage competition and tax fairness and to protect the tax base of State and local governments." Congressman Sherwood Boehlert opposes HR 1168. Our question to all of you taxpayers is, "Who does this guy work for and why should we re-elect him!?"

XIV - ECONOMIC IMPACT OF THE ONEIDA NATION'S ACTIVITIES UPON THE COUNTIES OF MADISON AND ONEIDA

Governor Mario Cuomo, in his infinite wisdom, signed a gaming compact with the Oneidas without the approval of the state legislature. It is a compact that appears to be perpetual, never to be renegotiated or renewed. The state received little from this agreement; not even decent parking was guaranteed for the vehicles of our State Troopers.

Gaming compacts between the governor of New Mexico and 11 Indian tribes of New Mexico were deemed invalid by the State Supreme Court of New Mexico as well as federal courts because the state legislature had not ratified the agreements. A similar situation also occurred in Kansas and recently in Michigan. When Pete Wilson was governor of California, he signed a gaming compact with the Pala Band of Mission Indians that other tribes of California disliked and declared invalid because of its lack of legislative approval. There is no doubt that the gaming compact between the Oneidas and Governor Mario Cuomo should be renegotiated to obtain the necessary legislative approval. When Governor Cuomo signed the gaming compact with the Oneidas he exceeded his authority and circumvented the legitimate source of law, the state legislature.

The Oneida Nation's monopoly on casino gambling has provided them with the wealth needed to start up diverse tax evading businesses at any time and any place within the land claim area that they choose. Now that's economic impact! The Nation has placed free enterprise in the coffin and Governor Pataki has nailed it shut by refusing to enforce the law that gives the state the authority to force Indian businesses to collect sales tax from non-Indian customers. This situation encourages non-Indian tax collecting businesses to leave the region, and discourages new businesses from entering the region.

As so eloquently written in an editorial of the Syracuse Herald American newspaper, "Casinos bleed the surrounding businesses dry. Money lost at the tables is never spent on a new car or on a dinner out at a local eatery. Money slipped into a slot machine does not go for a child's needed shoes or a new bike. Gamblers don't come to do anything else. Casinos set themselves up as one-stop entertainment centers. All gambling tourists do is drive past the rest of businesses in a casino town." In our particular case, the money lost at the tables in the Turning Stone Casino goes in two very destructive directions: new purchases of land that erode our tax base, and start-up money for new and diverse tax evading businesses. That's a WIN-WIN situation, but for who?

Our Congressman Sherwood Boehlert calls the Oneidas "the engine of economic development in Central New York." It is an engine that is destroying our tax base and running right over non-Indian business and free enterprise. If allowed to continue, it will create an atmosphere of Indian exclusivity within the counties that will progressively drive a wedge between Indians and non-Indians to the detriment of all.

XV - THE UCE POSITION ON THE LAND CLAIM

In *Virginia v. Tennessee,* 148 U.S. 504 (1893), the Supreme Court held that a boundary line between Virginia and Tennessee established in an agreement entered into by the two states some 90 years earlier was not invalid, even though Congress never formally consented to or approved the agreement as required by the Constitution. Holding that Congress had approved the agreement by implication, the Supreme Court stated:

> The approval by congress of the compact entered into between the states upon their ratification of the action of their commissioners is fairly implied from its subsequent legislation and proceedings. The line established was treated by that body as the true boundary between the states in the assignment of territory north of it as a portion of districts set apart for judicial and revenue purposes in Virginia, and as included in territory in which federal elections were to be held, and for which appointments were to be made by federal authority in that state, and in the assignment of territory south of it as a portion of districts set apart for judicial and revenue purposes in Tennessee, and as included in territory in which federal elections were to be held, and for which federal appointments were to be made for that state. Such use of the territory on different sides of the boundary designated in a single instance would not, perhaps, be considered as absolute proof of the assent or approval of congress to the boundary line; but the exercise of jurisdiction by congress over the country as a part of Tennessee on one side, and as a part of Virginia on the other, for a long succession of years, without question or dispute from any quarter, furnishes as conclusive proof of assent to it by that body as can usually be obtained from its most formal proceedings.

The Court also stated, "There are also moral considerations which should prevent any disturbance of long recognized boundary lines,-considerations springing from regard to the natural sentiments and affections which grow up for places on which persons have long resided; the attachments to country, to home, and to family, on which is based all that is dearest and most valuable in life."

By its actions and inaction, the federal government has de facto ratified the "state" treaties with the Oneidas just as it ratified the boundary between Virginia and Tennessee. Congressional legislation recognizing this fact is essential to the resolution of the Indian land claims in the State of New York.

In 1982 an attempt was made to legislate a resolution to Indian land claims based on violations of the Trade & Intercourse Acts. The bill was called the "Ancient Indian Land Claims Bill," and was sponsored by Congressman Gary Lee, and Senators Alfonse D'Amato and Strom Thurmond. The bill called for a federal monetary formula to pay tribes with valid claims and the extinguishment of all Indian land claims after 6 months after its passage. It was a good piece of legislation, but died in committee. In a Response to Indian Counsel Memorandum Regarding the Alleged Constitutional Infirmities of The Ancient Indian Land Claims Settlement Act of 1982, (Referring to land claim areas) the memorandum states:

> "…the land has been occupied and developed by non-Indian landowners for nearly two centuries since the original transfers. During that time congressional electoral and judicial districts have included the lands now claimed by Indian tribes, federal post offices and other facilities have been constructed on the land, federal agencies have made or have guaranteed mortgagee loans on property now subject to claims, and both Congress and the executive agencies of the federal government have in a myriad of ways treated the land as if the Indian title had been terminated on the date of the original transfer. Given the long history of the federal government's dealings with the land in a manner inconsistent with the Indian tribes' claimed interest, it is unrealistic to believe that the courts would disregard the reality of federal governmental actions for almost two centuries."

It continued:

> "There is no reason, however, to believe that sound public policy or any provision of the Constitution requires the bestowal of a windfall of such incredible proportions in order for Congress to validate transactions that de facto have been validated by the countless actions of the federal government for more than a century."

The UCE agrees and reiterates, by its actions and inaction, the federal government has de facto ratified the "state" treaties with the Oneidas just as it ratified the boundary between Virginia and Tennessee. Congressional legislation recognizing this fact is essential to the resolution of the Indian land claims in the State of New York.

RECOMMENDED READING:

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