

2015

## New York Oneida: Land Claims, Federal Policies, State Intervention, and Casino Development

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### Repository Citation

Hanover, L. M. (2015). New York Oneida: Land Claims, Federal Policies, State Intervention, and Casino Development.

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This study examines the federal government's neglect of its trust responsibilities to the Oneida tribe of New York, and focuses on how the Oneida have used gaming enterprises to flex their sovereignty toward acquiring land and resources. The Oneida of New York are the Wolf Clan, one of three distinct Oneida tribes; the others are located in Wisconsin and Canada. The first part of this analysis addresses major time periods representative of federal and state policies toward tribal societies in general, and the Oneida in particular. This section begins with a brief overview of the U.S. Revolution and the changes that it brought to American Indian communities, and then reviews the major federal policies representative of historic time periods: *American Expansion and Removal* (1830s-1850s), *Allotment and Assimilation* (1890-1920), *Indian New Deal* (1920s-1940s), *Termination* (1940s-1960s), and *Self-Determination* (1970s-1980s). The second part of this paper addresses the advent of tribal gaming, the issues the Oneida had developing gambling on their reservation, and the development of their first casino. The third, and last part, examines how the Oneida have flexed their sovereignty to acquire more property and develop future casinos. The Oneida of New York are one of a few tribes that have been able to use their history to their benefit, and their successes in gaming have enabled them to become a dominant political and economic force in New York<sup>1</sup>

## I

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<sup>1</sup> This essay uses American Indian and Native American interchangeably. Contemporary authors and Native Americans have embraced American Indian as an acceptable identifier.

The U.S. Revolution created divisions among eastern tribal societies in a few political stances, often tribes stayed neutral at the onset of the war; then, if the war reached their territories, they found themselves choosing to side with the British or the rebelling colonies. In 1995 Colin G. Calloway explained that the Oneida were divided during and after the Revolution, and that their siding with the U.S. rebels—to retain the integrity of their lands—would end horribly for them.<sup>2</sup> Calloway explained that the Native Americans who sided with the British had a reputation for being tyrannical, but he argued that they were only fighting against what they thought of as the most oppressive faction in the American Revolution—the revolting U.S. rebels.<sup>3</sup> Calloway expanded on this point further by arguing that the Native Americans’ war for Independence had a long history of reoccurring struggles of skirmishes over tribal lands with colonists, British regulars, Spanish, French, and other nationalities, and unlike the Revolution their struggle would not end in 1783.<sup>4</sup> He explained that regardless of the outcome of the Revolution, the U.S. government would omit Native Americans from their newly establish government, and their lands would be staked out and taken by land companies. At the onset of the war, Calloway observed that the Oneidas “split into factions; most supported the Americans, but some joined the British... For the Iroquois, the Revolution was a war in which, in some cases literally, brother killed brother.”<sup>5</sup> He explained that the

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<sup>2</sup> Colin G. Calloway, *The American Revolution in Indian country: Crisis and diversity in Native American communities*, (New York: Cambridge University Press, 1995). For another account of the Oneida experience during the American Revolution, review David Levinson’s article, “An Explanation for the Oneida-Colonist Alliance in the American Revolution,” *Ethnohistory* 23, no. 3 (Summer 1976.)

<sup>3</sup> Calloway, *preface*, xiii.

<sup>4</sup> Calloway, *preface*, xiii.

<sup>5</sup> Calloway, 34.

Revolutionary War intensified political changes in Indian communities.<sup>6</sup> Calloway wrote, “[w]hat Europeans called tribes were often aggregates of communities; many Indian communities were also multiethnic units rather than members of a single tribe.”<sup>7</sup>

Europeans created the ideology of an “Indian race” to homogenize multi-ethnic groups ignoring territory differences in order to score large land settlements. Calloway explained that the Oneida suffered mightily during the Revolution, but had believed that because of their sacrifices for the rebels, the U.S. would respect their treaty obligations to them.<sup>8</sup>

Their sacrifices however did little for them, Calloway wrote, that “the Oneidas fared little better than their New England friends or their Cayuga and Seneca relatives in the postrevolutionary land grabbing conducted by the federal government, New York State, and individual land companies.”<sup>9</sup> He went on to explain that even though in the short term General Philip Schuyler intervened on their behalf, leading to two treaty agreements—the Treaty of Fort Stanwix in 1789 (which the U.S. guaranteed “territorial integrity” of Oneida and Tuscarora allies) and the treaty of Canandaigua in 1794 (that further reinforced their land protection)—but the U.S. defaulted on both of these agreements.<sup>10</sup> He wrote, that in the same year as the Canandaigua treaty of 1794, “the government absolved its obligations to the Oneidas with an award of \$5,000, an annuity of \$4,500... The state of New York meanwhile negotiated a string of treaties, illegal under the Indian Trade and Non-Intercourse Act of 1790, which by 1838 had robbed the

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<sup>6</sup> Calloway, 54.

<sup>7</sup> Calloway, *preface*, xvi.

<sup>8</sup> Calloway, 286.

<sup>9</sup> Calloway, 286.

<sup>10</sup> Calloway, 286.

Oneidas of their entire homeland.”<sup>11</sup> Calloway ended his book by explaining that the national mythology after the Revolution would create an argument for taking Native American lands. U.S. officials argued that Native American actions during the Revolution, such as ravaging colonial lands and atrocities toward non-Indians during the war, justified taking their lands.<sup>12</sup> Calloway wrote, “Americans at different times invented versions of Indian people to suit their particular policies and purposes.”<sup>13</sup> In the U.S. Declaration of Independence itself, Calloway explained that,

“the image of Indians as vicious enemies of liberty became entrenched in the minds of generations of white Americans... the emerging national memory of the Revolution, responsibility for the brutality and destruction of the Revolutionary War on the frontier lay squarely on the shoulders of the Indians and their British backers.”<sup>14</sup>

Thus, Calloway explained that even for the tribes that decided to side with the U.S. rebels, they fared no better than American Indian pro-British counterparts.

Andrew Jackson’s policy of “Indian Removal” during the 1830s relocated eastern tribes into western territories, both for the accumulation of more land for their growing population, and to “develop” what they regarded as “uncivilized land.”<sup>15</sup> This policy forced thousands of eastern tribes into direct confrontation with western tribes—tribes that occupied lands that the U.S. had previously promised to tribes subjected to removal. U.S. soldiers, government agents, and elected officials subverted tribal claims to their lands. They combined racism with armed force, and began to push these tribes onto

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<sup>11</sup> Calloway, 286.

<sup>12</sup> Calloway, 293.

<sup>13</sup> Calloway, 293.

<sup>14</sup> Calloway, 293, 294.

<sup>15</sup> Albert L. Hurtado, editor *et al*, *Major Problems in American Indian History*, (Stamford: Cengage Learning, 2015), 243.

marginal lands, dubbed reservations, to make way for U.S. society. Native Americans responded to these pressures in several ways that depended on independent conditions. Laurence Hauptman explained that federal and state policies broke up the New York Oneida reservation, to both acquire eastern tribal lands, and push them into “Indian territory” (Kansas.)<sup>16</sup> The U.S. enacted the removal of the Iroquois through treaty documents, which theoretically compensated tribes for their eastern lands. The Buffalo Creek Treaty of 1838 affected all six tribes of the Iroquois Confederacy, which stood in the way of New York’s expansion to the southeast, and the treaty allowed for the movement of goods from the Erie Canal throughout New York.<sup>17</sup> Hauptman explained that the Buffalo Creek Treaty was “fraudulently consummated through bribery, forgery, the use of alcohol, and other nefarious methods,” the treaty entailed ceding all remaining Seneca land to the Ogden Land Company for U.S. promises of a 1,824,000-acre reservation in Kansas.<sup>18</sup> This removal resulted in deaths of tribal members because of disease, exposure, and starvation.<sup>19</sup> The Iroquois in New York lost 95 percent of their land from 1784 to 1861, and from 1838 to 1875 had to deal with the “grasping clutches of land speculators, railroad magnates, and state and federal officials intent on obtaining the Indians’ shrinking land base. In effect, during the Civil War the Iroquois fought two wars, one in the South and the other on the home front.”<sup>20</sup> Thus, no matter the outcome of the Civil War, their community would be devastated.

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<sup>16</sup> Laurence M. Hauptman, *The Iroquois and the New Deal*, (New York: Syracuse University Press, 1981), 5.

<sup>17</sup> Laurence M. Hauptman, *The Iroquois In The Civil War: From Battlefield to Reservation*, (New York: Syracuse University Press, 1993), 106.

<sup>18</sup> Hauptman, *Civil War*, 12.

<sup>19</sup> Hauptman, *Civil War*, 110.

<sup>20</sup> Hauptman, *Civil War*, 5.

The Oneida in particular suffered from a court battle in 1876, in which a New York Oneida member, Abraham Elm, attempted to vote for a U.S. congressman, and after his arrest and imprisonment, the U.S. District Court ruled in favor of his citizenship and entitlement to vote.<sup>21</sup> However, the court held that, “after ‘the main body of Oneidas were removed to Wisconsin in the 1820s and 1830s,’” the remaining “‘twenty families constituted the remnant of the Oneidas residing in the vicinity of their original reservations,’” and because the families were surrounded by non-Indian people, the court ruled that they were “no longer set apart by ‘custom, language and color’ . . . . a distinct Oneida community no longer existed in New York.”<sup>22</sup> This ruling deemed the families remaining on the 32 acres as no longer having distinct tribal status.<sup>23</sup>

These examples have explained that New York state chipped away at Oneida and Iroquois lands without repercussions from the federal government: from the 1843 Oneida allotment, the 1845 allowance of highways through reservations, an 1850 leasing of Seneca land for the Erie Railroad, and the illegal leases with Salamancas in the 1860s and 70s. All of these “agreements” subverted treaties signed by the federal government and the Six Nations after the American Revolution.<sup>24</sup> The U.S. government and the state of New York violated the two Nonintercourse Acts of 1790 and 1793, which sought to limit white frontiersmen’s ability of acquiring “Indian” lands through coercion, deceit, or bribery of New York officials; the government required ratification of all land transfers only by federal treaty (1790) and due to the non-adherence to this first act, congress then required a U.S. Indian commissioner to preside over state negotiations for tribal lands

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<sup>21</sup> Hauptman, *Civil War*, 148.

<sup>22</sup> Hauptman, *Civil War*, 148.

<sup>23</sup> Hauptman, *Civil War*, 149.

<sup>24</sup> Hauptman, *Civil War*, 151.

(1793).<sup>25</sup> This unwillingness to abide by these Acts represented the state's failure to abide by federal laws, but also the federal government's unwillingness to enforce its own laws.

The Allotment Era (1890-1920) was representative of restructuring Native American reservation lands, previously held communally, into allotted segments of a once larger territory.<sup>26</sup> The General Allotment Act of 1887, or the Dawes Act, caused drastic changes to tribally held lands. The Dawes Act was one of many attempts to “assimilate” American Indians into the dominant U.S. society; they also utilized boarding schools, and federal and religious figures to acculturate them toward U.S. social morals and traditions.<sup>27</sup> These actions largely instigated strife and ill will toward policies the U.S. tried to instill on tribal communities. The Dawes Act allotted lands back to tribes, which had been reserved to them by the reservation system—land left over from allotment would be sold or given to “non-Indian farmers.”<sup>28</sup> The majority of Iroquois refused allotment because of their distrust of both the federal government as well as state legislators. This is understandable because the Oneida in particular were broken up during the 1820s and 1830s; the majority of Oneidas moved to Wisconsin and Canada due to the pressures of non-Indians to get at their lands, and especially because of the Buffalo Creek Treaty of 1838.<sup>29</sup> After the Buffalo Creek Treaty removed their family and neighbors, the Oneida of New York occupied a 32 acre-tract of land with twenty

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<sup>25</sup> Laurence M. Hauptman, *The Iroquois Struggle for Survival: World War II to Red Power*, (New York: Syracuse University Press, 1986), 180.

<sup>26</sup> Hurtado, 361.

<sup>27</sup> Hurtado, 361.

<sup>28</sup> Hurtado, 361.

<sup>29</sup> Hauptman, *New Deal*, 70.



families.<sup>30</sup> In 1920, there was another attempt to deprive Oneida of their tribal homeland, this time attempting to eliminate the rest of their land holdings. The legal case of *United States V. Boylan* was an attempt to eject the remaining Oneida, and partition the rest of their land to non-Indians. The court found that New York “had no jurisdiction in disposing of Indians’ property without the consent of the United States,” and the Everett Commission, conducted in 1919—to examine tribal cultures and lands within New York—“concluded that the Iroquois as Six Nations were legally entitled to six million acres of New York state, having been illegally dispossessed of their title after the Treaty of Fort Stanwix in 1784.”<sup>31</sup> The Everett commission inspired the Oneida and other Iroquois to re-acquire their lands through legal battles, but the Bureau of Indian Affairs and the state of New York ignored the commission’s findings, telling the Oneida that their lands and culture had no federal recognition.

The Indian New Deal Era of the 1920s through the 1940s, as administered by John Collier, sought to alleviate badly administered federal policies, especially the failed assimilation policies of the allotment era. The Indian Reorganization Act (IRA) drafted by John Collier, attempted to re-instill American Indian cultures, to retain land bases left on reservations not allotted, or add more land to shrinking territories, and to re-instate American Indian organization.<sup>32</sup> As Laurence Hauptman wrote,

“[t]he Indian New Deal formally ended the allotment policies of the past, encouraged Indian arts and the study of Indian cultures and languages, added acreage to some tribes’ land bases, instituted the codification of

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<sup>30</sup> Hauptman, *Civil War*, 148.

<sup>31</sup> Hauptman, *Struggle for Survival*, 184.

<sup>32</sup> Hurtado, 401.

Indian law...and pushed for tribal political reorganization as well as intertribal organization.”<sup>33</sup>

The Iroquois and many east coast tribes distrusted Collier and his Indian New Deal; first, the federal government had failed all previous attempts at “helping” tribal communities, second, Collier’s policies had been drafted for southwestern tribes, and lastly, the Iroquois viewed reorganization as an interference and threat to their sovereignty.<sup>34</sup>

Paradoxically, during Collier’s Indian New Deal, other policies threatened Iroquois sovereignty:

“[a] series of major issues arose from World War I onward to challenge Iroquois self-assertions about tribal and Confedera[te] sovereignty: federal legislation such as the Indian Citizenship Act of 1924, the Seneca Conservation Act of 1927, [and] the Snell Bill of 1930,” all served to promote Iroquois distrust of federal policies.<sup>35</sup>

These acts combined with the previous findings of the Everett Commission’s review of New York tribal government systems and land claims, galvanized Oneida and Iroquois grass roots movements to curb state and federal attempts to subvert tribal land holdings.

The Iroquois and Oneida utilized land-based sovereignty to combat the ever-threatening state and federal land dispossession policies. Hauptman wrote, that the “assertion of sovereignty over land from which they were dispossessed is...another way the Iroquois express their cultural uniqueness.”<sup>36</sup> This land-based sovereignty is emphasized by Minnie Kellogg, a Wisconsin Oneida with the help of her husband, who began collecting support and money from Iroquois communities, seeking to sue New York for illegally acquired lands since the American Revolution. Although they fought to

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<sup>33</sup> Hauptman, *New Deal*, viiii.

<sup>34</sup> Hauptman, *New Deal*, xii.

<sup>35</sup> Hauptman, *New Deal*, 5.

<sup>36</sup> Hauptman, *New Deal*, 11.

try and get their case heard, no court would hear it, and the monies they raised created angst on reservations because those people who contributed to the cause would never see their funds returned. Lulu Stillman, Collier's stenographer, also worked to subvert Collier's plans, claiming, "it was meant for western tribes, not the Iroquois, that it would result in increased governmental regulations and intervention in the Iroquois world and that it was the first step in securing New York jurisdiction over Iroquois affairs in the manner of the Snell Bill of 1930."<sup>37</sup> This argument crippled the Indian New Deal in all but a few Iroquoian communities. The Iroquois ultimately viewed it as a rejection of their sovereignty. They feared "that citizenship, allotment, taxation, and loss of lands were behind everything emanating from Washington as well as Albany...a decade of distrust from the era of the Everett Report to the harsher realities of the Great Depression contributed to the IRA's demise in New York."<sup>38</sup> However, this legal sovereignty movement was subverted by Great Depression of the 1930s, which left tribal communities open to accepting federal assistance, but ultimately rejected anything having to do with Collier's New Deal. The Iroquois land claims movement stagnated during the Great Depression through to the 1950s, as tribal people dealt with more severe social and economic issues than non-Indians.<sup>39</sup>

Termination was the U.S. federal policy immediately after World War II through to the 1960s. This policy was representative of terminating Federal trust responsibilities to tribal reservations, but termination also represented mass movements in which American Indians argued that federal treaty obligations needed to be preserved. World

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<sup>37</sup> Hauptman, *New Deal*, 61.

<sup>38</sup> Hauptman, *New Deal*, 69.

<sup>39</sup> Hauptman, *New Deal*, xii.

War II witnessed a massive war participation by Native Americans across continents as well as at home; according to Ella Deloria, they contributed to the war effort on a few fronts: those who went and served their country, those who stayed home, and those who left reservations to work in U.S. war plants present in cities.<sup>40</sup> World War II ended with the United States facing renewed interest in assimilation policies.<sup>41</sup> Native American presence and contributions to the war convinced the U.S. government that Native Americans could assimilate successfully into U.S. society and culture. Instead of focusing their policies on re-structuring reservations and the funds that went into to it, they attempted to end federal trust, by a policy of termination, and push more tribal people into urban settings.<sup>42</sup> The Indian Freedom Act, better known as termination, stated, “it is the policy of Congress...to make the Indians...subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States.”<sup>43</sup> Peter Iverson explained that the rhetoric did not match its execution. He wrote that, the policy purported “liberating the Indians by reducing governmental interference” but what it actually “resulted in [was] significant hardships for many Indians.”<sup>44</sup> This policy led to an immediate backlash from Natives across the United States. Termination, they explained, would allow the United

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<sup>40</sup> Ella Deloria, “Ella Deloria (Yankton Dakota) on Indian Experiences During World War II, 1944,” in *Major Problems in American Indian History*, ed. et al. Albert L. Hurtado, (Stamford: Cengage Learning, 2015), 449.

<sup>41</sup> Hurtado, 445.

<sup>42</sup> Hurtado, 445.

<sup>43</sup> Deloria, 453, 454.

<sup>44</sup> Peter Iverson, “Building Toward Self-Determination: Plains and Southwestern Indians in the Mid-Twentieth Century,” in *Major Problems in American Indian History*, ed. et al. Albert L. Hurtado, (Stamford: Cengage Learning, 2015), 465.

States to remove all prior treaty arrangements made with tribal nations.<sup>45</sup> When the U.S. faced outright objection from the Iroquois, they attempted to give more responsibilities to New York, thus further subverting Iroquois government-to-government relationships with the federal government. Laurence Hauptman wrote,

“[a]fter World War II, Congress handed over criminal and civil jurisdiction of the Iroquois to New York State, despite strong opposition to the move...[they] have lost significant acreage in the East in the post-war period: a dam at Onondaga, the Kinzua Dam’s flooding of the entire Cornplanter Tract, the New York State Power Authority’s condemnation of the Southwestern corner at Tuscarora, and the St. Lawrence Seaway Project that took Mohawk lands...during the 1950s and 1960s.”<sup>46</sup>

The first part of Hauptman’s quote refers to the transfer of criminal and civil jurisdiction during 1948 and 1950 to the state of New York. This was the precursor to Public Law 280 of 1953, which transferred federal jurisdiction to certain states.<sup>47</sup> The Iroquois had staunchly resisted this, claiming that it violated early treaty agreements between them and the U.S., and argued that it would be yet another attempt at chipping away their sovereignty.<sup>48</sup> This time period also correlated with land issues between the Iroquois and the state of New York. As noted above in Hauptman’s explanation of loss of land as a direct correlation to Public Law 280, that “[every] time there is a land crisis...land pressures intensify,” and the Oneidas in particular re-instate their land battles that have persisted over 200 years.<sup>49</sup>

The state of New York claimed that they have always been open to negotiating with tribes over their land claims, but as William A. Starna, a Senior Fellow of Nelson A.

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<sup>45</sup> Hauptman, *Struggle for Survival*, 49.

<sup>46</sup> Hauptman, *New Deal*, 181.

<sup>47</sup> Laurence Hauptman, *Struggle for Survival*, 48

<sup>48</sup> Laurence M. Hauptman, *Formulating Indian Policy in New York State: 1970-1986*, (New York: State University of New York Press, 1988), 19.

<sup>49</sup> Hauptman, *Formulating Indian Policy*, 21.

Rockefeller Institute of Government, has noted, “interviews clearly point to a conscious decision not to negotiate...although the state asserts its interest in negotiating settlements rather than litigating them...the exact opposite has been true.”<sup>50</sup> In the 1760s and 1770s the Oneida brought forth a legal test-case, which would ultimately allow American Indian land-claims cases to be heard in federal courts. George Shattuck, the Oneida attorney during the 1960s and 70s Supreme Court test-case, noted that New York had repeatedly made claims that they were open to negotiation with the Oneida; for instance, the Assistant Attorney General for New York state, argued that the Oneida did not bring a “timely suit,” and instead had waited 200 years to make their contention.<sup>51</sup> As noted above, the Iroquois, and especially the Oneida, had constantly sought to hear their land cases in court, and have been continuously denied. Shattuck successfully argued through “archaeological, historical, and linguistic expert findings, that the Oneidas...were federally recognized successors in interest to the Oneidas of the 1790s...that federal officials had always responded to the Oneidas by denying the merit of the claims and discouraged legal action,” he further explained that, “[t]hey were wrongly advised after 1920 that they had no federal tribal status...barred from New York state courts...[and] denied a legal forum.”<sup>52</sup> Shattuck argued that the federal government, as “their guardian,” violated the constitution, three treaties, the Non-intercourse Acts, and congressional

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<sup>50</sup> Hauptman, *Formulating Indian Policy*, 21.

<sup>51</sup> Hauptman, *Formulating Indian Policy*, 23. For an in depth description of the 1974 Supreme Court case, New York’s violation of federal policy, and federal/State stonewalling, see George C. Shattuck’s book, *The Oneida Land Claims: A Legal History*, (New York: Syracuse University Press, 1991). Also for an understanding of sovereignty and the history of federal policy, see David E. Wilkins’ and K. Tsianina Lomawaima’s book, *Uneven Ground: American Indian Sovereignty and Federal Law*, (Norman: University of Oklahoma Press, 2001).

<sup>52</sup> Hauptman, *Formulating Indian Policy*, 23.

responsibilities to allow tribes to sue in court.<sup>53</sup> Hauptman explained the impact of the Oneida case, when he wrote, “[t]he landmark United States Supreme Court Oneida decision of 1974 overturned 140 years of American case law; it is also the only case that has been decided favorably on the issue of whether the tribe’s rights to land have been violated.”<sup>54</sup> After securing the monumental decision, the court held that, “the Trade and Intercourse Acts were applicable to the original thirteen states,” the Oneida went on to win another test-case in 1985 directly related to their 1974 test case, involving 900 acres of reservation land that Oneida and Madison counties “[found] liable for damages [and] fair rental value for two years, 1968-1969... for unlawful seizure of Indian ancestral lands.”<sup>55</sup> The Iroquois in general had to deal with New York state agencies, headed by Robert Moses, which sought to attain Iroquois lands for public programs. Hauptman wrote,

“[during the] 1940s, it is clear that he [Moses] defined reservations as ‘sacrifice areas’ for his ideas of progress. In 1945...Moses commissioned a study to evaluate the potential impact of the then proposed Kinzua Dam...[Moses] supported a federal plan to buy the entire Allegany Indian Reservation and remove all Indians in order to promote flood control and develop the valley for recreational purposes.”<sup>56</sup>

The 1950s witnessed Moses combining park interests with “new concerns for power development, seaway transport, and heavy industry,” he did this through the St. Lawrence Seaway as well as the Niagara power project.<sup>57</sup> Moses encroached on tribal territories so that he “would not alienate white voters and their political representatives,” scapegoating tribal lands and demonizing Indian communities, rather than risking the U.S. backlash by

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<sup>53</sup> Hauptman, *Formulating Indian Policy*, 23.

<sup>54</sup> Hauptman, *Struggle for Survival*, 180.

<sup>55</sup> Hauptman, *Formulating Indian Policy*, 24.

<sup>56</sup> Hauptman, *Formulating Indian Policy*, 91.

<sup>57</sup> Hauptman, *Formulating Indian Policy*, 91.

allocating public lands for his projects.<sup>58</sup> It was not only power and water rights that officials sought during the 1950s and 1960s. In fact, they secured highways that traversed Iroquois lands; for example, the New York State Thruway Authority, and the Department of Transportation had highway Routes 81, 90, and 17 going directly through tribal reservations, but individual tribes would often accept the offers due to the impoverished state of their communities.<sup>59</sup>

A border controversy also galvanized tribal movements across the continent during the 1940s through the 1970s. A large part of the Iroquois nation moved to Canada after the American Revolution, as well as during the Buffalo Treaty of 1838, and is one of the two main confederate councils of the Oneidas. Hauptman explained, “[t]oday two Iroquois leagues continue to function, one centered at Onondaga near Syracuse, New York, and the other at Six Nations Reserve near Banford, Ontario,” and despite their distance from one another, they maintained close political and economic ties, especially over the legal battles concerning Iroquois territory.<sup>60</sup> The Jay Treaty between the Iroquois and the U.S. secured “free passage and unrestricted trade to all Iroquois dwelling on both sides of the United States-Canadian border.”<sup>61</sup> In addition to the Jay Treaty, the Treaty of Ghent “restored the rights set forth in the Jay Treaty, which had eroded due to the War of 1812.”<sup>62</sup> A number of acts since then have led to a confusing amalgam of rules and regulations concerning who can cross the borders and what they can bring to and from:

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<sup>58</sup> Hauptman, *Formulating Indian Policy*, 91, 92.

<sup>59</sup> Hauptman, *Formulating Indian Policy*, 96, 97.

<sup>60</sup> Hauptman, *New Deal*, 2.

<sup>61</sup> Hauptman, *New Deal*, 3.

<sup>62</sup> Eileen Luna-Firebaugh, “The Border Crossed Us: Identity and Sovereignty on the Borders of Indian Country,” in *Major Problems in American Indian History*, ed. et al. Albert L. Hurtado, (Stamford: Cengage Learning, 2015), 542.



the 1924 Immigration and Naturalization Act and the Citizenship Act of 1924 seemed to say that “Canadien Indians could no longer cross the U.S. border,” changes to the Immigration and Nationality Act in 1952 “restricted free passage to those Indians who met a 50 percent blood quantum requirement,” then to current times in which the government now allows “free passage to any Indian who possesses a tribal membership identification card;” and even with identification cards, crossing the border often depends on those individuals working border patrol on any given day.<sup>63</sup> Hauptman explained,

“since the New Deal; through sit-down demonstrations and border-crossing celebrations on bridges connecting the United States and Canada; through dramatic appeals made to international organizations such as the League of Nations, the United Nations, or convocations dealing with...human and/or treaty rights; through draft resistance, rejection of legislation emanating from Albany and Washington, assertion of land claims, sending Confederacy delegates to take over of Wounded Knee in 1973, as well as their own forced occupations of contested areas,”<sup>64</sup>

As noted in Hauptman’s quote, the border issue as well as land battles lent the Oneida and Iroquois a forum to press their assertiveness and push for self-determination. To this day, the “Indian Defense League holds its annual celebration of the Jay Treaty every July with a parade across the International Bridge connecting Niagara Falls, Ontario, to Niagara Falls, New York.”<sup>65</sup> American Indian activism during this period paralleled the Civil Rights era, but did not cross over, because of the differing ideologies of the movements, Charles Wilkinson explained, “[t]ribes strove to protect their sovereignty and land bases, matters outside the scope of civil rights...Blacks were determined to eliminate segregation and allow integration; Indians sought to reverse forced assimilation,” thus the Red Power movement primarily centered around remaining

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<sup>63</sup> Luna-Firebaugh, 544, 545.

<sup>64</sup> Hauptman, *New Deal*, 4.

<sup>65</sup> Hauptman, *New Deal*, 17.

sovereign, protecting land, and revolting against federal policies that sought to limit their tribal societies.<sup>66</sup>

## II

The second part of this paper analyzes how the 1970s and 1980s, often referred to as the Self-Determination era, affected the New York Oneida toward the development of their Turning Stone Casino, and how that casino, originally a trailer bingo-hall, has allowed them to acquire land through economic development. This section will assess the major issues regarding their tribal lands up to 2013, focusing on three major court battles, and ending with an agreement between the Oneida of New York and the state of New York, which concluded their 49-year-old court battle over land.

The Oneida reservation was a 32-acre parcel of land, originally part of their 300,000-acre reservation demarcated after the American Revolution. The tribe's gaming history began after a tragedy on June 25<sup>th</sup>, 1976, when a home caught fire and claimed the lives of two of their tribal members.<sup>67</sup> The County of Oneida, in an agreement with the Oneida tribe of New York and as established in Public Law 280, were required to send fire response units to deal with instances of fire on the reservation, but did not:

“Newspaper reports at the time said Herbert D. Brewer, then-mayor of the neighboring town of Oneida, had ordered firefighters not to respond to calls from the Indian reservation without police backup...jurisdictional issues that were the cause of tension...stemmed from a land claim against

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<sup>66</sup> Charles Wilkinson, *Blood Struggle: The Rise of Modern Indian Nations*, (New York: W.W. Norton & Company, 2005), 129.

<sup>67</sup> Matt Connor, “One Good Turn,” *Indian Gaming Business*, Katherine Spilde, Tribal Gaming Research Files, MS-00092, (Special Collections, UNLV Libraries, Las Vegas, Nevada,) Spilde Collection, Box 2, NY Oneida, 1<sup>st</sup> Folder.

two New York state counties for the return of 270,000 acres to the Oneida Nation Reservation.”<sup>68</sup>

This quote highlighted that the County of Oneida’s refusal to respond to the reservation fire, was centered on the 1974 test-case *County of Oneida v Oneida Indian Nation of New York State*. The Oneida Nation responded to this crisis by flexing their own sovereignty; they felt that no agency would protect them from wrong doing in the future. Ray Halbritter, a representative of the New York Oneida and CEO of Oneida Nation Enterprises, explained, “[t]he first issue was fire protection, in the state of New York, there are a lot of volunteer fire departments, that raise funds by having bingo nights. We decided to do a bingo game;” thus, their first attempts at gaming focused on protecting their community from future reliance on outsiders, and providing social mechanisms to benefit the community.<sup>69</sup> Their thinking toward the bingo hall centered on sovereignty, that since they were not under state jurisdiction, they could offer higher prizes than local bingo games licensed by the state of New York.<sup>70</sup> The bingo hall was an instant success, but drew the unwanted attention of local law enforcement. The District Attorney issued warrants for their arrests and closed down the facility.<sup>71</sup> Because of the impoverished state of the Oneida community, the tribe did not have the ability to launch a legal challenge to the closure.<sup>72</sup> “It was, by most accounts, the country’s first Indian gaming facility,” this argument is substantiated by Ray Halbritter, when he went to visit the Seminoles after their historic Supreme Court decision; claiming that “[they] said they got

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<sup>68</sup> Connor, “One Good Turn.”

<sup>69</sup> Connor, “One Good Turn.”

<sup>70</sup> Connor, “One Good Turn.”

<sup>71</sup> Connor, “One Good Turn.”

<sup>72</sup> Connor, “One Good Turn.”

the idea to do gaming from the Oneida Nation bingo hall.”<sup>73</sup> The *Seminole Tribe v. Butterworth* decision in 1981, in which the court ruled that tribal reservations, under the jurisdiction of the federal government, could not be subjected to state interference without federal permission.<sup>74</sup> According to Theodore Gordon, a doctoral candidate at the University of California Riverside, the case stated that, “Florida had criminal but not civil or regulatory jurisdiction...if an activity is totally prohibited by the state, it is illegal on tribal lands, but if the activity is regulated by the state, tribes are free to develop their own regulations.”<sup>75</sup> This case opened up gaming to all reservations within states that allowed some form of gaming, thus the only two excluded states were Hawaii and Utah. The Seminole case and the case of the *Cabazon Tribe vs. the State of California* opened up gaming rights for tribal communities, and weakened states’ arguments about their jurisdictional power over tribal reservations. The Cabazon case, another issue of police shutting down bingo and poker clubs, led to the tribes suing in 1980; and, in 1987 the U.S. Supreme Court “ruled that state and local governments could not regulate high-stakes bingo and other gaming on Indian reservations if state law allowed such forms of gaming.”<sup>76</sup> These were the two main legal cases that led to tribal gaming in the U.S.

The main piece of legislation meant to regulate tribal gaming was the Indian Gaming Regulatory Act of 1988 (IGRA.) According to Donald L. Flixico, this legislation

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<sup>73</sup> Connor, “One Good Turn.”

<sup>74</sup> Dennis McAuliffe Jr. “Casinos Deal Indian Tribes a Winning Economic Hand,” *The Washington Post*, 1966, Tribal Gaming Research Files, MS-00092, (Special Collections, UNLV Libraries, Las Vegas, Nevada,) Spilde Collection, Box 2, NY Oneida, 1<sup>st</sup> Folder.

<sup>75</sup> Theodor Gordon, “Nation, Corporation or Family? Tribal Casino Employment and the Transformation of Tribes,” UNLV Center for Gaming Research’s Occasional Paper Series, 2010, [http://digitalscholarship.unlv.edu/occ\\_papers/17](http://digitalscholarship.unlv.edu/occ_papers/17), 3.

<sup>76</sup> Donald L. Flixico, “Indian Gaming in the West: Indian Entrepreneurship and Modern Political Economy,” in *Indian Resilience and Rebuilding: Indigenous Nations in the Modern American West*, (Tucson: The University of Arizona Press, 2013), 179.

“undermined tribal sovereignty, yet it also established a procedure that protected potential gaming tribes against intermingling from state governments.”<sup>77</sup> Sioux Harvey further explained, that “[t]he two primary purposes of the Indian Gaming Regulatory Act of 1988 were: (1) to help protect Indian gaming from organized crime and (2) to establish a federal regulatory authority for gaming.”<sup>78</sup> In addition to these two main aspects of IGRA, it also established that Native Americans retained an exclusive right of gaming on reservation land, it created three classes of gambling, and it instilled state-compacts. Harvey explained the first aspect, the exclusive right, as, “[tribes retained] tribal authority over non-Indians on reservation lands.”<sup>79</sup> Harvey explained the classes of gaming as, “Class I encompasses social and traditional games; Class II is limited to bingo...Class III includes primarily slot machines, casino banking and percentage games, off-track betting, and lotteries.”<sup>80</sup> The state-compacts meant to end the bickering between tribal casinos and state officials, but this was an affront to tribal sovereignty, “[a] deal was made wherein Indians set aside some of their sovereignty in return for what Congress and the tribes thought would be a ‘rational scheme of management of gaming activities on Indian lands.’”<sup>81</sup> As this relates to Oneida gaming and sovereignty, New York has argued against Oneida sovereignty at every turn. Gaming was just a new issue for their complicated relationship.

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<sup>77</sup> Flixico, 182.

<sup>78</sup> Sioux Harvey, “Winning the Sovereignty Jackpot: The Indian Gaming Regulatory Act and the Struggle for Sovereignty,” in *Indian Gaming Who Wins*, Native American Politics Series Volume 6, edited by Angela Mullis and David Kemper, (Los Angeles: UCLA American Indian Studies Center, 2000), 29.

<sup>79</sup> Harvey, 26.

<sup>80</sup> Harvey, 23.

<sup>81</sup> Harvey, 25.

IGRA required the agreements of state-tribe compacts before casinos could be created. This meant that the Oneida needed to strike an agreement with New York before establishing their casino. In 1993, the Oneida created a compact with New York that would allow class III gaming on their reservation.<sup>82</sup> The compact with Governor Cuomo allowed “the tribe to offer virtually any form of table games,” but “[s]lot machines, video games, off-track betting, poker and lottery games are not permitted.”<sup>83</sup> The Oneida soon drew angst from state legislators because of their initiation of a slot-like machine, a “multi-gaming machine,” that the Oneida developed and own the patent for. This machine has “no lever, do not require players to insert money and do not return money...the terminals don’t seem to fit the legal definition of a slot machine.”<sup>84</sup> Some lawmakers argued that the Oneida violated the spirit of the law, “[t]hey seem to have found a way around every law except the one that exempts them from paying taxes.”<sup>85</sup> The argument on tribal exemptions from paying taxes has been coopted with regard to gaming. Contrary to popular public opinion, “[g]ambling has not improved the lot of most Indian people...[a]most 32 percent of Indians live in poverty, compared with 13 percent of the general U.S. population; nearly 15 percent are unemployed,” and furthermore due to IGRA’s stipulations, profits from casinos were earmarked for “social, welfare and economic-assistance programs historically regarded as Washington’s

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<sup>82</sup> Connor, “One Good Turn.”

<sup>83</sup> “American Casino Guide 1998, New York,” Tribal Gaming Research Files, MS-00092, (Special Collections, UNLV Libraries, Las Vegas, Nevada,) Spilde Collection, Box 2, NY Oneida, 1<sup>st</sup> Folder.

<sup>84</sup> James Dao, “A Tribe’s No-Arm Bandits Draw Fire” *The New York Times*, 03-11-1995, Tribal Gaming Research Files, MS-00092, (Special Collections, UNLV Libraries, Las Vegas, Nevada,) Spilde Collection, Box 2, NY Oneida, 1<sup>st</sup> Folder.

<sup>85</sup> Dao, “A Tribe’s No-Arm Bandits Draw Fire.”

responsibility.”<sup>86</sup> Thus, American Indian gaming is not similar to private gaming in the U.S., because of the fact that corporations are allowed to use their casino profits indiscriminately, while tribal gaming specifies where their profits are to be spent.

The economic prosperity from the Oneida’s Turning Stone Casino has allowed for massive multi-regional development around their reservation. Since their establishment as a doublewide trailer bingo-hall in 1993, their profits have allowed the Oneida many assets since its establishment. In the first weekend of their bingo game, they counted a profit of \$150 dollars.<sup>87</sup> Fast forward to 1995, two years after their casino was established, and an economic study explained that the Oneidas’ had 1,900 employees, 1,500 of which worked at the Turning Stone Casino, they had a payroll of nearly \$1 million, “mak[ing] it one of the largest employers of the region, they generate \$12 million in the local economy, not counting what they receive from the casino, and they bring a “net local tax gain of approximately \$6.6 million” due to the jobs they created within the local economy.<sup>88</sup> In 1997 it was the only casino in New York and was a central destination for tourism and shopping.<sup>89</sup> In a 1997 annual report, the Oneida tribe became the “largest employer in Madison and Oneida counties,” employing “2,850 people, 90 percent of who are non-Indian, earning an average annual salary of nearly \$25,000 in

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<sup>86</sup> McAuliffe Jr., “Casinos Deal Indians a Winning Hand.”

<sup>87</sup> McAuliffe Jr., “Casinos Deal Indians a Winning Hand.”

<sup>88</sup> “Analysis of the Economic Impact of the Oneida Nations’ Presence in Oneida and Madison Counties,” February 1995, i, ii, Tribal Gaming Research Files, MS-00092, (Special Collections, UNLV Libraries, Las Vegas, Nevada,) Spilde Collection, Box 3, Oneida Impact Study 1995/1999 Folder.

<sup>89</sup> “Stephanie Peden, “Casino Profile: Turning Tone Casino,” Tribal Gaming Research Files, MS-00092, (Special Collections, UNLV Libraries, Las Vegas, Nevada,) Spilde Collection, Box 2, NY Oneida, 1<sup>st</sup> Folder.

wages and benefits,” and built a brand new hotel at the casino, which “created 400 jobs for hotel staff, restaurant employees and retail personnel.”<sup>90</sup> They also added an additional 22,000 square foot gaming space, were awarded their patent of the “Instant Multi-Game Technology,” achieved awards for their RV park, added six retail outlets, added another gas station, totaling 3 in all, built a full service car center,” their textile printing enterprise moved to a 25,000 square foot office, added 4 high speed presses, and added another smoke shop, bringing the total to 4.<sup>91</sup> They also added more social services to their community: provided new health insurance coverage, which entailed comprehensive “medical, dental, eye care and prescription coverage,” added ten town-homes, and started construction on the Ray Elm Children and Elders Center, a 34,000 square foot building.<sup>92</sup> In 1998, the Oneida had a 800-seat showroom, an arcade, beauty salon, business center, catering department, conference center/boxing arena, health spa, pool, a ranch, eight restaurants, four golf courses, two marinas, 7 gas stations, two plazas, invested in 10 different social services programs and buildings, spent \$8 million on regulating their casino, and returned \$2.6 million in BIA funding “so that other Indian Nations could use it in their efforts to achieve economic self-sufficiency.”<sup>93</sup> In addition to their properties and services, in 1998 they employed 3,000 people, 2500 in the Turning Stone Casino, of which 10-15% were Oneida nation members.<sup>94</sup> *The Business Journal of*

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<sup>90</sup> “Oneida Indian Nation: 1997 Annual Report,” 2, Tribal Gaming Research Files, MS-00092, (Special Collections, UNLV Libraries, Las Vegas, Nevada,) Spilde Collection, Box 2, NY Oneida, 1<sup>st</sup> Folder.

<sup>91</sup> “1997 Annual Report,” 3, 4.

<sup>92</sup> “1997 Annual Report,” 6,7.

<sup>93</sup> “National Indian Gaming Association: Indian Nation Profile Sheet,” Tribal Gaming Research Files, MS-00092, (Special Collections, UNLV Libraries, Las Vegas, Nevada,) Spilde Collection, Box 2, NY Oneida, 1<sup>st</sup> Folder.

<sup>94</sup> “NIGA Profile Sheet.”



*Syracuse* ranked the Oneida Nation as the 13<sup>th</sup> largest employer in the 16 counties that make up Central New York,” with a payroll of \$70 million a year.<sup>95</sup> In 1999, the Oneida “spent \$99 million in goods and services from outside vendors; \$40.8 million of that spending was from vendors in the three counties (Madison, Oneida and Onondaga) directly surrounding the Nation. The Nation’s workforce generates more than \$5 million a year in property tax revenues for Madison and Oneida counties...[and] \$23 million in state income, sales and other tax revenues.”<sup>96</sup> Tourism has doubled since 1993, when the Turning Stone Casino opened, and visitor spending in Oneida country in 1999 was \$120.9 million.<sup>97</sup> This analysis has explained that Oneida economic development has been decidedly beneficial since their bingo hall began in 1976, both for their reservation and the surrounding counties.

### III

This newfound economic income and development has allowed the Oneida to seek lands outside of their 32-acre reservation with hopes toward opening new casinos, as well as expanding their land base. The 1974 Supreme Court test case that overturned 140 years of U.S. case law, and allowed tribes a venue to hear their cases in court, has allowed the Oneida to seek even more claims to their lost lands.<sup>98</sup> As described earlier, the 1985 test-case, *County of Oneida v Oneida Indian Nation of New York State*, involved less than 900 acres that Oneida and Madison counties acquired in violation of the Nonintercourse Acts of 1790 and 1793. The court’s decision went in the Oneidas’ favor,

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<sup>95</sup> “NIGA Profile Sheet.”

<sup>96</sup> “NIGA Profile Sheet.”

<sup>97</sup> “NIGA Profile Sheet.”

<sup>98</sup> Hauptman, *Struggle for Survival*, 180.

the justices required the two counties to pay “fair rental value for two years, 1968 and 1969, for unlawful seizure of Indian ancestral lands,” and the case was also important because it reaffirmed the 1974 test-case, which allowed tribal communities to bring suit to reacquire lost lands. The case concluded with a recommendation that the federal government step in and settle the Oneida land cases.<sup>99</sup> The federal government did not move to support the Oneidas until 1999, fourteen years after their 1985 test case was approved. The Oneida have since named “20,000 property owners in central New York as defendants,” this has been their attempt to move their case through the court systems.<sup>100</sup> The U.S. federal government’s role in supporting the Oneida land claim of over 270,000 acres, found them again distancing itself from the Oneida due to the public fury over involving the 20,000 independent landholders in their law suit.<sup>101</sup>

This move to name defendants drew ill will from government officials: “the Oneida Indian Nation does not pay taxes. And thanks in part to their new Turning Stone Casino, the Oneidas have seemingly risen from abject poverty to unbridled affluence in a very short time, while their neighbors have been grappling with a tough local economy.”<sup>102</sup> The Oneida found themselves demonized by how politicians and the U.S. public viewed their attempts at reparations. A case that had been in the making for 29 years had yet to be decided, and the Oneida were attempting to move it along. In 1995, a

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<sup>99</sup> Hauptman, *Struggle for Survival*, 203.

<sup>100</sup> James Dao, “U.S. Government Joins Oneida Indians’ Suit Against New York State,” *National New York Region*, 01-13-1999, Tribal Gaming Research Files, MS-00092, (Special Collections, UNLV Libraries, Las Vegas, Nevada,) Spilde Collection, Box 2, NY Oneida, 1<sup>st</sup> Folder.

<sup>101</sup> David W. Chen, “U.S. Eases Stance on the Eviction of Landowners in Oneidas’ Suit,” *The New York Times*, 03-30-1999, Tribal Gaming Research Files, MS-00092, (Special Collections, UNLV Libraries, Las Vegas, Nevada,) Spilde Collection, Box 2, NY Oneida, 1<sup>st</sup> Folder.

<sup>102</sup> Chen, “U.S. Eases Stance.”

different land issue arose, the Oneida sought to increase their land base in the Catskills by establishing another casino. New York Governor George E. Pataki was against those plans.<sup>103</sup> The casino would be established ninety miles from New York City, which would be closer than Atlantic City and the Foxwoods Resort Casino.<sup>104</sup> The land acquisition would be located in an area in economic turmoil, which has long “wanted to attract casinos but have been blocked by Albany.”<sup>105</sup> The property they were seeking to buy was the Monticello Raceway, located in Sullivan County, and because of Governor Pataki’s stonewalling, the Oneida offered to pay New York, “the equivalent of the top corporate income tax in exchange for” the Governor’s approval.<sup>106</sup> If the governor still did not act, the tribe stated that it would take the matter to court.<sup>107</sup> The top corporate tax on earnings was 9%, but the Oneida “will not open their books, meaning that any payments would be determined by a formula- based on something like average expected losses per bettor—rather than a direct tax—...It would be for less than a non-Indian casino would pay in gaming taxes.”<sup>108</sup> The Governor responded through his spokesperson Aileen Long, who explained that the “Governor remained opposed to casinos that do not pay local and state taxes.”<sup>109</sup> However, part of the Governor’s job, as mandated by the Indian Gaming Regulatory Act, is to work with local tribes, and in the case of taking new land into trust,

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<sup>103</sup> Lawrence Van Gelder, “Oneidas Seek Casino in Catskills,” *The New York Times*, 03-01-1995, Tribal Gaming Research Files, MS-00092, (Special Collections, UNLV Libraries, Las Vegas, Nevada,) Spilde Collection, Box 2, NY Oneida, 1<sup>st</sup> Folder.

<sup>104</sup> Gelder, “Seek Casino in Catskills.”

<sup>105</sup> Gelder, “Seek Casino in Catskills.”

<sup>106</sup> Davidson Goldin, “Oneida Indians Offer Albany an Inducement for Approval of a Casino in the Catskills,” *The New York Times*, 08-26-1995, Tribal Gaming Research Files, MS-00092, (Special Collections, UNLV Libraries, Las Vegas, Nevada,) Spilde Collection, Box 2, NY Oneida, 1<sup>st</sup> Folder.

<sup>107</sup> Goldin, “Oneida Offer Albany an Inducement.”

<sup>108</sup> Goldin, “Oneida Offer Albany an Inducement.”

<sup>109</sup> Goldin, “Oneida Offer Albany an Inducement.”

their jobs are to determine whether a casino would be “detrimental to the surrounding community and [if] it would be good for the tribe.”<sup>110</sup> Interestingly, Sullivan County had already backed the Oneida, for both the benefit that a casino would bring to their much depressed tourist industry, but also that the Oneida had promised to “pay Sullivan County and its municipalities \$5 million a year while they have the monopoly on casinos in New York.”<sup>111</sup> Thus, both counties had already backed the Oneida in establishing subsequent casinos.

This deal fell through and represented the issues that face tribal sovereignty; even though the Oneida had the backing of the local counties, they were still facing opposition from the New York state governor. The Oneida also faced issues through having to work with the Interior Department in their attempt at taking the land into trust. The Interior Department wanted the opinion of the governor, who had been quite anti-Oneida in the past. The Oneida’s attempts were foiled in 1995, but have remained active through to current time. In 2003, the Oneidas had competition in the Catskills between the St. Regis Mohawks, Cayuga Nation of New York, Wisconsin Oneida, and the Stockbridge Munsee band of Mohicans.<sup>112</sup> New York Senator John J. Bonacic, a Catskill district representative, argued in his own words, “the governor has refused to approve casino deals with other tribes in a vain hope that he could lure Mr. Halbritter into settling the

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<sup>110</sup> Goldin, “Oneida Offer Albany an Inducement.”

<sup>111</sup> Goldin, “Oneida Offer Albany an Inducement.”

<sup>112</sup> Charles V. Bagli, “Deal by Wisconsin Oneidas May Clear Way for Casino,” *The New York Times*, November 19, 2003, <http://www.nytimes.com/2003/11/19/nyregion/deal-by-wisconsin-oneidas-may-clear-way-for-casino.html?module=Search&mabReward=relbias%3As%2C%7B%22%22%3A%22RI%3A12%22%7D&pagewanted=print>.

state's largest land claim by offering him a Catskill casino."<sup>113</sup> This attempt never came to fruition while he was in office, but it explained the stonewalling by Governor Pataki for the eight years that the Oneida lobbied for the Catskills property.

The 2012 Congressional hearing, "Fulfilling the Federal Trust Responsibility: The Foundation of the Government-to-Government Relationship," reviewed the trust relationship of nationally recognized tribal nations with state and local governments and the relationship between the tribes and the federal government.<sup>114</sup> The hearing recognized a litany of tribal speakers, one of which was Ray Halbritter, an Oneida nation representative and Wolf Clan tribal leader. Halbritter's opening statement and prepared testimony primarily highlighted tribal sovereignty and economic development issues relevant to both the Oneida and all tribal nations within the United States. His opening statement addressed the general role of trust relationships and the federal recognition of Iroquois and Oneida sovereignty. He cited the initial trust doctrine between the U.S. and the Oneida, the Treaty of Canandaigua—signed in 1794 by George Washington. Halbritter explained that it expressly recognized two things, "the United States acknowledges the lands of the Oneida, called our reservation, to be our property, and the United States will never claim our lands, nor disturb us in the free use and enjoyment of our lands...[and that, the treaty] provides safeguards to both parties," so that if one party

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<sup>113</sup> Bagli, "Deal by Wisconsin Oneidas."

<sup>114</sup> Ray Halbritter, "Fulfilling the Federal Trust Responsibility: The Foundation of the Government-to-Government Relationship," in *Hearing Before The Committee On Indian Affairs: United States Senate: One Hundred Twelfth Congress: Second Session, 2012*. ProQuest (ATT 4355574), <http://congressional.proquest.com.ezproxy.library.unlv.edu/congressional/result/congressional/pqpdocumentview?accountid=3611&groupid=120167&pgId=74869a37-94f4-4bc7-8615-eb6e1cb9a580&rsId=149913CE8E0> .

did harm against the other, their would be just compensation and friendship sustained no matter the issue.<sup>115</sup> Furthermore, Halbritter argued that treaty documents retain obligatory language that binds the U.S. and its territories from overreaching into tribal issues and sovereignty. Halbritter asserted that it was the Federal government's responsibility to safeguard tribal lands secured in government-to-government treaties. As he explained,

“in the case of New York's use of its own tax codes to stop transfer of the lands into trust, the duty of addressing those issues falls on the United States pursuant to its treaty obligations. The United States sometimes fulfills its obligations, oftentimes it does not and, when it does, it frequently comes after the damage is done.”<sup>116</sup>

Halbritter cited the third legal case involving Oneida attempts at reacquiring lost lands, *City of Sherrill vs. Oneida Indian Nation of New York*, which ruled that the Oneida could not bring newly acquired lands into trust.<sup>117</sup> Halbritter explained that his testimony meant to highlight past uses of trust and government-to-government interactions, but also stated that there should be an amendment to this relationship by “creating a new bipartisan American Indian Policy Commission” to review tribal self-sufficiency, aid the poorest reservations, help tribes close to self-sufficiency to achieve it, and include a “mechanism to ensure that the funding of critical Indian programs are not subject to arbitrary reductions,” or misappropriations by state and county governments.<sup>118</sup> Halbritter explained that recent tribal sovereignty has been defined by courts rather than by inter-governmental collaboration, and has led to a redefinition of trust relationships. Halbritter further explained, “[s]ome of those decisions have turned the trust relationship on its head, emphasizing its value as a shield from federal liability instead of construing it in a

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<sup>115</sup> Halbritter, 49.

<sup>116</sup> Halbritter, 49.

<sup>117</sup> Halbritter, 57.

<sup>118</sup> Halbritter, 50.

manner that would benefit the very people who were the intended beneficiaries of it.”<sup>119</sup>

This statement explained how tribal sovereignty has been viewed by the public, that it is a “shield” exempting tribes from taxation and allowing assistance from programs that the U.S. public does not benefit from. But Halbritter countered this by explaining that the Oneida in New York are one of the largest employers in the state, and as far as their tri-county area is concerned, they have “invested more than \$1 billion in infrastructure in Central New York. We have spent \$2 billion on goods and services with non-tribal vendors...we have generated more than \$140 million in income and property taxes for the state and local governments.”<sup>120</sup> Furthermore, Halbritter argued that court decisions have changed sovereignty relationships between federal and tribal governments. For instance, Halbritter cited *Carciere vs. Salazar* as a case in point. This legal decision designated that only tribes which were federally recognized during the Indian Reorganization Act, could have lands taken under trust by the U.S., this effectively created a precedent by which state, local, and federal governments could rule against tribal societies that have made land progress since 1934. As such, Halbritter argued, “[c]ongressional action is magnified where the United States Supreme Court issues opinions that are contrary to Indian laws and settled expectations,” in essence government-to-government relationships should not constitute a court mandated liberty.<sup>121</sup> Instead, Halbritter explained,

“the federal government’s trust responsibility is grounded in the United States’ fulfillment of its treaty obligations, implemented based upon historic and the inherently governmental agreements between each separate Indian nation and the United States...[but] is complicated by the

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<sup>119</sup> Halbritter, 52.

<sup>120</sup> Halbritter, 64.

<sup>121</sup> Halbritter, 53.

actions of non-federal parties who regularly insert themselves into matters that should be primarily between the United States and Indian nations.”<sup>122</sup>

These rights were mandated in a myriad of treaties between the U.S. and tribes across the U.S; established in the U.S. Constitution; and a litany of historic Supreme Court decisions, such as the “Marshall Trilogy.”<sup>123</sup> Overall, Halbritter argued that government-to-government relationships erode, and if there are not actions taken to safeguard tribal sovereignty, then there will be a reoccurrence of tragedy that has been historically prominent in tribal relationships with the federal government. He argued that to prevent federal and state infractions, there needs to be safeguards secured through the creation of a bi-partisan Indian Policy Review Commission, which would create consultation committees and help impoverished tribal nations and self-sufficient nations stay afloat. In essence, this congressional document expressly discussed how the Oneidas’ and other tribes’ sovereignty have been at risk, because the federal government have allowed courts to do what has historically been their obligation—writing effective tribal policies that benefit both the U.S. government as well as their tribal counterparts.

In conclusion, trust relationships and state and federal policies have shifted to the courts, further eroding the government-to-government relationship between Native Americans and the federal government. This is threatening tribal communities because of the transgressions they have faced in the past with respect to local and federal court systems. The Oneida are one of a few instances when the courts have ruled in their favor,

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<sup>122</sup> Halbritter, 54.

<sup>123</sup> Halbritter, 55, 56.



and even so, the discussion above has so far encapsulated their test-cases. They have had to “test” that their cases are viable before bringing them to legal action. This conclusion both encapsulates how the Oneida land-issues have been resolved, in reference to their three legal cases, and overall stresses how little interaction the federal government has had with respect to their treaty obligations. In brief, the Oneidas’ first court land battle was decided in 1974; since then, the Oneida have accumulated over 14,000 acres of land. By 1997 it had purchased an area of 5,000 acres, but due to Oneida and Madison Counties’ lawsuits, they have been unable to secure their acquired lands into trust.<sup>124</sup> But, finally on May 16<sup>th</sup>, 2013, the case between the *Oneida tribe of New York vs. Madison and Oneida Counties* was decided in a deal between the Cuomo administration and the two counties.<sup>125</sup> The deal required the Oneida Turning Stone casino to give the state 25 percent of its revenue from slot machines, the Oneidas agreed to “place no more than 25,000 acres of land into trust, effectively settling the tribe’s longstanding land claims,” the state would give 25 percent of the revenue that it received from the Turning Stone casino to Oneida County, Madison County would “receive a one-time payment of \$11 million for past tax claims,” and the two counties “agreed to drop continuing litigation against the Oneidas over the tribe’s application to put land into trust.”<sup>126</sup> The deal would also “grant the Oneida Nation exclusive rights to casino gaming in Central New York,” for the portion of its revenues stated above. The location would cover “a ten county

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<sup>124</sup> Connor, “One Good Turn.”

<sup>125</sup> “State Grants Oneida Indians Exclusive Territory for Casino,” *The New York Times*, May 16, 2013, [http://www.nytimes.com/2013/05/17/nyregion/new-york-grants-oneida-indians-exclusive-territory-for-casino.html?module=Search&mabReward=relbias%3As%2C%7B%22%22%3A%22RI%3A12%22%7D&\\_r=0&pagewanted=print](http://www.nytimes.com/2013/05/17/nyregion/new-york-grants-oneida-indians-exclusive-territory-for-casino.html?module=Search&mabReward=relbias%3As%2C%7B%22%22%3A%22RI%3A12%22%7D&_r=0&pagewanted=print) .

<sup>126</sup> “State Grants Oneida Exclusive Territory.”

region of Central New York (Cayuga, Chenango, Cortland, Herkimer, Lewis, Madison, Oneida, Onondaga, Oswego, and Otsego counties).”<sup>127</sup> The Oneida also

“expressly waives its rights of sovereignty over any land over the cap amount, . . . impose a Nation sales tax that equals or exceeds the state’s and counties’ sales [which would] . . . apply to all cigarettes, motor fuel, and all other sales by Indian retailers to non-Indians . . . [and] to waive its sovereign immunity for enforcement of the agreement.”<sup>128</sup>

The deal seemed to favor New York, but it does allow the Oneida to open more casinos on property that could expand to 10,000 additional acres with their tribal population of roughly 900 members.<sup>129</sup> Thus, the reason the Oneidas’ land cases have been resolved is a result of their historic assertion of sovereignty through land claims, together with economic power accumulated through casino development.

The Oneida contestation of land claims through court battles, the overall rejection of federal and state policies seeking to restrict their power, and reoccurring declaration of sovereignty allowed the Oneida to remain resolute with their dealings with the Federal and New York governments. It must be stressed that without their court battles over land, the Oneida may never have been recognized as a federal tribe, might never have challenged Oneida County for failing to respond to their reservation fire—which lead to establishing their own casino—and furthermore would not have been able to barter with the state of New York and the two counties over securing a deal that recognized their sovereignty

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<sup>127</sup> “Governor Cuomo Announces Landmark Agreement, Between State, Oneida Nation, and Oneida and Madison Counties,” *The Official Website of New York State*, May 16, 2013, <http://www.governor.ny.gov/news/governor-cuomo-announces-landmark-agreement-between-state-oneida-nation-and-oneida-and-madison> .

<sup>128</sup> “Cuomo Announces Landmark Agreement.”

<sup>129</sup> Bagli, “Deal by Wisconsin Oneidas.”

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<sup>130</sup> Per a course requirement, this study required use of only primary research located within the Spilde Collection.

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