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Dispersal: Wisconsin, New England, New York State, 1821-2004

Brothertown Prior to Removal from New York State.

Brothertown had started slowly, with comparatively few of Reverend Occom's intended companions choosing to emigrate from southern New England. Moreover, among those who did come were some who advocated leasing land to whites, and scorned Occom's commitment to building a community altogether free of a white presence. This resulted in internal problems, and Brothertown's autonomy as well as its land area had been curtailed by the New York Legislature. But Brothertown's State-appointed superintendents proved to be conscientious, and while the sale of more than half of the town's land to whites was certainly a tragedy, the land was sold at market value and yielded an endowment that could support a school and other public projects. After the drastic measures imposed by the Legislature in 1795, Brothertown's population began to grow. By 1813, it had reached 302, double the 150 reported in 1796. An 1822 estimate of 400 residents may be high, but an 1825 estimate of 360 is credible.¹

At least some of this growth was due to in-migration direct from the original southern New England settlements that Reverend Occom had hoped to draw on. Others may have turned up after military service or years at sea. Innumerable individuals scattered far and wide could qualify for admission to Brothertown by establishing some connection to one of the tribal communities whose descendants were authorized by the New York Legislature to live in Brothertown. Many thus qualifying probably considered themselves both residents of

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Brothertown and members in good standing of one or another of southern New England's tribal communities. Travel back and forth was not difficult, via the Mohawk and Hudson Rivers and Long Island Sound.

Continuity of leadership at Brothertown as well as continuity of connection to southern New England was assured by a few prominent families, most notably by Occom's relatives. Occom's brother-in-law David Fowler, who made his first visit to the Oneida Country in 1761, settled at Brothertown after the Revolutionary War, and was a leader there until his death in 1807. Other Occom relatives remained at Mohegan in Connecticut, including his sister Lucy Tantaquidgeon and daughter Tabitha Occom Johnson. The two sons of Joseph Johnson and Tabitha Occom Johnson were raised by their mother at Mohegan, Connecticut, following Joseph Johnson's death. But in 1797, Joseph Johnson, Jr., then aged twenty-one, moved to Brothertown, where he remained until 1820 when he returned permanently to Mohegan.² No doubt he had also occasionally visited relatives at Mohegan between 1797 and 1820.

As initially laid out pursuant to the February 25, 1789 Act of the Legislature, Brothertown had comprehended some 24,000 acres located immediately west of the 1768 Line of Property. In 1795, over 14,000 of these acres were sold, leaving somewhat more than 9,000 for Brothertown residents. The lands sold were on the east, adjoining the 1768 Line of Property, and left Brothertown consolidated on the west side closest to New Stockbridge.³

Brothertown's State-appointed superintendents made sure that the funds realized from the 1795 sale of Brothertown lands were spent to benefit the community, as they understood this.

1 1813: Love 306; 1822: Morse; 1825: *American State Papers, Indian Affairs*, 2:542-47.

2 Joseph Johnson 28.

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There was money enough to hire a well-paid teacher, and several qualified Brothertown residents were available, including David Fowler's daughter. But the State's superintendents decided to hire a white teacher. The New York City Quaker John Dean moved his family to Brothertown in 1799, and remained there until his death in 1820. The meeting house where he taught school, handsomely constructed with funds realized from the sale of Brothertown lands,

was twenty-four feet by thirty, built of timbers sawed four or five inches thick and dove-tailed together, with a white oak floor and shingled roof. Outside it was covered with planed boards standing upright and painted. The chimney rose on the east. The door was in the middle of the south side, and it was well provided with windows, having twelve lights of glass each. The cost was L167, 5s.⁴

In 1803, Brothertown's superintendents reported that school enrollment "has generally consisted of about thirty Scholars." In 1819, the figure was forty, in 1825 eighty.⁵

The timbers used to construct Brothertown's meeting house probably came from Brothertown's own saw-mill, also paid for from Brothertown's endowment, and local craftsmen may well have been involved in the construction. While most adult males worked as farmers, four residents were carpenters. As of 1813, there were also two blacksmiths, four shoemakers, two tailors and five weavers.⁶

Except as explicitly provided by the Legislature, the residents of Brothertown were expected to conform fully to New York civil and criminal law. On July 16, 1801, Brothertown resident George Peters was convicted by a New York court of murdering his wife Eunice Peters on February 24, 1800, by hitting her on the head with a wooden club, because he thought she had

3 See map in Love 332.

4 Love 308-09.

5 New York State Archives, "Report of the Superintendents of the Brothertown Indians," November 21, 1803; Love 309.

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been too friendly with another man. George Peters was executed on August 28, 1801. On July 25, 1817, seventeen-year-old Narragansett John Tuhi was hanged, after being convicted by a court in Rome, New York for killing his cousin Joseph Tuhi with an axe on May 1, 1817. Fifteen thousand persons witnessed his public hanging.⁷

These assertions of New York jurisdiction provoked no protest comparable to that made several years later by the Seneca chief Red Jacket when the State attempted to prosecute a Seneca man for murdering another Seneca man. Even before moving to New York, the founders of Brothertown had endorsed Connecticut's imposition of criminal penalties on members of Connecticut tribes. Occom and Joseph Johnson both publicly defended the justness of the sentence imposed on their fellow tribesman Moses Paul, who was executed on September 2, 1772, for murdering a man outside a New Haven tavern. Occom preached a sermon attended by the condemned man, the text of which was "For the wages of sin is death" (Romans 6:23). This sermon was published and widely distributed, as was Joseph Johnson's "Letter...to his Countryman Moses Paul, under Sentence of Death, in New-Haven Gaol."⁸

The regulations that Brothertown residents imposed on themselves were like those found in many colonial New England towns. "Shooting, fishing, sporting, playing, horseracing, hunting" were forbidden on Sundays. Betting on cards or dice was wholly prohibited. Confinement in stocks was a common penalty.⁹

Reverend Occom had expected Brothertown to follow the example of colonial New

6 Love 306.

7 Love 303.

8 Joseph Johnson, 141-46, 151.

9 Love 302.

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England towns in having one established Protestant church. Identity of town and church, and use of the town's one meeting house for both religious and secular town purposes, was a basic tenet of Puritan New England. But the idea of an established church supported by public taxation was rejected by the Revolution, and following Occom's death in 1792 religious pluralism came to Brothertown as well. The orthodox Reverend Sergeant was established in New Stockbridge and the orthodox Reverend Kirkland among the Oneidas, but Brothertown's meeting house hosted a succession of revivalist preachers, including Seventh Day Adventists, Methodists and Baptists, the most notable of whom was Elder Samuel Ashbow, a Connecticut Mohegan who converted David Fowler, Jr., who then "spake with great vehemence till he almost foamed at the mouth," according to the disapproving Reverend Kirkland, a friend of his father. Two competing congregations of Baptists eventually coalesced. Freewill Baptists and "close communion Baptists" gathered at Brothertown's meeting house on alternate Sundays.¹⁰

Brothertown differed only marginally from countless other small agricultural towns in New York and New England, with the notable exception of its ethnic composition. Brothertown's residents were current members or descendants of at least six historically hostile tribes: Narragansetts, Pequots, Mohegans, Niantics, Montauks and Tunxis. So many rival tribal backgrounds were represented at Brothertown that a neutral, non-tribal governmental structure was probably the only possible choice. Nor was this choice lamented by Brothertown's founders, who were as complete converts to Anglo-American legal forms as they were to Protestant Christianity.

In what sense then can this community be deemed tribal? Virtually one hundred percent

¹⁰ Love 309-12.

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of Brothertown's residents were tribal by ancestry, and most would also have been personally acquainted with friends and relatives who were actively committed to maintaining tribal customs and traditions. Brothertown itself preserved very few tribal cultural traditions---though a conch shell is said to have been sounded to call Sunday worshipers. But all residents of Brothertown would have been aware of their ancestry, and of the way members of nearby tribes lived. Visits to the neighboring communities of New Stockbridge and the Oneida villages would have reminded Brothertown residents of their distinctiveness as members of what might be called a "post-tribal" community, even as they recognized the many bonds linking them to New Stockbridge and the Oneida villages, both in fact and in the eyes of neighboring whites.

New Stockbridge Prior to Removal from New York State.

Unlike Brothertown, where past tribal affinities were viewed with mixed emotions, New Stockbridge maintained a strongly positive sense of tribal identity. Tribal leadership was exercised within and alongside town governmental structures, and tribal leaders and town officials substantially overlapped. Though strongly positive, New Stockbridge's tribal identity was nonetheless complex. The town's original tribe, the Stockbridge Mahicans, had assimilated uprooted refugees from various tribes during the Revolutionary War. Then, in 1804 the Mahicans of New Stockbridge adopted an intact New Jersey tribe, in a manner reminiscent of the way the Oneidas had earlier adopted the "New England Indians" and the Stockbridge Mahicans.

The background of the tribe adopted in 1804 is recounted by the historian Ives Goddard:

In New Jersey there were [Delaware-Munsee] settlements at Crosswicks, Coaxen (also

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called Weekpink, west of Vincentown), and elsewhere, and in 1746 the mission town of Cranbury was founded. In 1758 all Indian claims in New Jersey were relinquished at conferences held at Crosswicks and Easton, and those wishing to remain in the colony were given a reservation, named Brotherton, on Edgepillock Creek (Indian Mills).¹¹

Encouraged by New Stockbridge Mahican leaders, this Delaware-Munsee group decided to sell their lands at Indian Mills, New Jersey, and move to New Stockbridge. On arrival in October of 1804, the emigrants' leader made this gracious speech:

Grandchildren attend: A few years ago at Thowanpehtuhquok (the Indian name of a town in New Jersey) you invited me to come and see your fine place in this town, and if I should like it, you would take me by the hand and all my women and children, and lead me with all my substance to this place. Accordingly we came and viewed it. And it pleased us well, the more so because the gospel was preached here, and school kept for the instruction of children so that all might come to the knowledge of our Saviour. But by reason of some difficulties we did not arrive until of late. Now according to your promise you have received us your own grandfather and we have all the privileges you enjoy equal with you. Now I thank the great good spirit that he has put it into your heart, to have compassion on your old grandfather and receive him cordially to partake of all the good things contained in your dish. (Then a belt of wampum was delivered [on which was shown]...two persons standing and a tree between them, to represent the Council fireplace established by the Mohheakunuk Tribe.)¹²

Among the “difficulties” delaying their departure from New Jersey had been arranging the market-value sale of their New Jersey-granted lands. The validity of this sale under New Jersey law was upheld by the U.S. Supreme Court in an important 1812 Opinion by Chief Justice John Marshall (*New Jersey vs. Wilson*). This advantageous land sale would certainly have been remembered when efforts began a few years later to secure market value for New York lands sold before emigrating to Wisconsin.

Though still functioning as self-conscious tribes, the New Jersey Munsees and the New

11 Ives Goddard, “Delaware,” in William C. Sturtevant, ed., *Handbook of North American Indians*, Washington: Smithsonian, 1978, 15:222.

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Stockbridge Mahicans held their lands under grants from New Jersey and New York, respectively, and sales of these state lands were regulated by each state's laws. The notion that states could not independently regulate any sales of tribally-held lands dates from the twentieth century, and has no foundation in the early republic. Modern-day confusion on this point stems from the fact that the sale of some tribal lands did require federal treaty regulation. From this, arguments have been developed that no sale of tribal land held by any tenure was valid unless confirmed by federal treaty. This fails to account for legal distinctions well understood in the early republic but which have since faded from view. As New York Congressman Henry Storrs observed on the floor of Congress in 1826, "The Stockbridge and Brotherton tribes are treated, in every sense, as subjects of the State jurisdiction; but other tribes, as the Senecas and Oneidas, are not considered so." For example, noted Storrs, "In a...case of a homicide by an Indian on the Seneca reservation, the jurisdiction of the State over the party was questioned in the Courts." Furthermore, explained Storrs, "Some of the tribes in the State hold their lands under the State; but others retain their original title as tribes or nations."¹³ Thus, while the Oneidas differed from Brothertown and New Stockbridge in not being fully subject to New York civil and criminal jurisdiction, they also differed from the Senecas in the nature of their land tenure, the Oneidas holding their land by State grant whereas the Senecas retained "their original title."

The neighbor towns of Brothertown and New Stockbridge were fully subject to State jurisdiction. As of 1820, they were also prosperous and well-led. Each town had fertile

12 Sergeant Typescript 11.

13 *Register of Debates in Congress*, 19th Cong., 1st Sess, 1599.

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agricultural lands, one or more schools, roads, mills, etc. In the absence of a strong inducement to depart, these two communities might well have continued to develop in upstate New York, and still be there today. While residents of Brothertown and New Stockbridge were prepared to consider a new proposal to move to western federal territory, having been once betrayed by the federal government, they now knew the importance of making definite arrangements in advance, and knew to ask questions such as: Would they be adequately paid for the lands and improvements they left? What lands under what tenure would they have in their new homes?

The move to Indiana attempted from 1808 to 1820 had been motivated by a desire to be of service to the federal government as well as to tribes in the Indiana region. This move made sense in terms of the hopes and ambitions of U.S. Army Captain Aupaumut to help lead traditional tribes toward agriculture and Christianity and in the process to a more accepting attitude toward U.S. expansion westward. The proposal to move to Wisconsin that began to be contemplated by Brothertown and New Stockbridge residents about 1820 was in contrast approached as more of a hard-headed business venture. Less trust was placed in the federal government, and more attention was paid to legal details.

Removal to Wisconsin.

In this post-1820 phase of emigration discussions, the initiative was taken not by Brothertown leaders (as in 1773-1785) or New Stockbridge leaders (as in 1808-1820), but rather by the Saint Regis Mohawk Eleazer Williams, from his base among the Oneidas. Unlike the thriving Brothertown and New Stockbridge communities, the Oneidas in 1820 were in disarray. Disoriented by the break-up of the historic “Six Nations” Confederacy, distracted by federal and

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State rivalries, weakened by the death in 1792 of its most talented younger leader Peter Otsiquette, directionless but still stirred by high political ambitions, the Oneidas proved amenable to the exhortations of a clever outsider. Eleazer Williams in turn proved amenable to the blandishments of the Ogden Company, which in 1810 had acquired (for fifty cents an acre) fee title to almost 200,000 acres of Seneca-occupied land.

Since the 1790s collaboration of Timothy Pickering and Robert Morris that culminated at the 1797 Treaty of Big Tree in the concentration of the Senecas on eleven scattered reservations, there had not been much effort to evict the Senecas from these reservations---until Eleazer Williams began conferring with Ogden Company investors. It is uncertain whether Williams's interest in leading an emigration to Wisconsin preceded or followed his acquaintance with Ogden Company investors, but Williams quickly grasped the possibilities Wisconsin offered---to himself as well as to anyone he could persuade to accompany him. Long before he proclaimed himself in the 1840s the son of King Louis XVI and Queen Marie Antoinette and therefore the rightful King of France, Williams was already interested in founding a kind of kingdom near Green Bay, with himself at its head.

Williams's Ogden Company backers were financially interested in ousting the Senecas because they owned fee title to Seneca lands. But encountering stubborn resistance among the Senecas, who claimed absolute proprietorship of their ancestral lands, the Ogden investors decided to subsidize the emigration of *other* New York tribal groups (in whose lands the Ogden investors had no financial interest), hoping that this indirect approach might sway the Senecas.

Williams and the Ogden Company used the term "Six Nations" to describe the assortment of New York tribal groups they hoped would move to Wisconsin because the "Six

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Nations” name still resonated, and of course included the Senecas. But the awe-inspiring “Six Nations” Confederacy had been disbanded around the year 1800, and replaced by two low-profile successor organizations based respectively in British Canada and the United States. As invoked by Williams and the Ogden Company, the term “Six Nations” referred to an entirely new assemblage of tribal groups. Williams’ natal Saint Regis Mohawks were included, even though they were historically one of the “Seven Nations of Canada” and not one of the “Six Nations.” Williams similarly saw no problem in including Brothertown, even though this would have been unimaginable to the “Six Nations” in the 1790s. Brothertown in fact played a vital role in the Williams-Ogden emigration project because Brothertown had endowment money to contribute.

On August 18, 1821, Williams succeeded in negotiating a private intertribal agreement by which Wisconsin tribes transferred their “Indian Title” to some 860,000 acres to the self-styled “Six Nations.” Unfortunately, President Monroe approved this agreement, which was not submitted to the Senate. An intertribal transfer as opposed to an extinguishment of “Indian Title” was deemed, oddly, not to need Senate consent. Secretary of War John Calhoun informed New Stockbridge leader Solomon U. Hendricks on November 22, 1821, that “The treaty concluded by the Delegates with the Menominees and Winnebagoes is approved by the president which is all the ratification that is necessary as those Treaties only to which the U. States is a party require the addition of the sanction of the Senate.” What this ignored was the fact that the “Indian Title” of Wisconsin tribes had been extinguished, by means of the President-approved transfer of their “Indian Title” to a private party calling itself the “Six Nations.” Calhoun told Hendricks, “The country the Six nations have or may acquire from the Menominees and Winnebagoes, will

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be held by them in the same manner as the Indians who previously owned it.”¹⁴ Calhoun was not even willing to enter into the question of how the self-described “Six Nations” might divide up their “Indian Title” acquisitions.

In relation to the degree of title which the respective tribes forming the Six nations may have in the lands which have been or may be ceded to them by the Menominees and Winnebagoes, it is a subject in which the Government cannot interfere. The claim of each tribe it is believed can be more satisfactorily settled among themselves by their head men.¹⁵

On September 23, 1822, an even more astonishing agreement negotiated by Williams increased the area to be transferred to two million acres. As part of this second agreement, a cash payment of \$950 was made to the Wisconsin tribes from Brothertown’s endowment funds.¹⁶ President Monroe decided not to endorse this enormous transfer of “Indian Title” land, but lobbying by the Ogdens and Williams succeeded in changing the President’s mind, and on October 18, 1823, Calhoun informed Williams that President Monroe had certified the transfer of the entire two million acres.¹⁷

In 1808, Captain Aupaumut had negotiated terms by which New York emigrants became subordinate right holders under local Indiana tribes, who retained the right to sell their “Indian Title,” which they proceeded to do. In Wisconsin, the New York emigrants were themselves in theory to possess “Indian Title” transferred by Wisconsin tribes, and the President of the United States had certified that no one could subsequently sell this “Indian Title” land except the New

14 John C. Calhoun *Papers* Columbia: University of South Carolina Press, 6:524.

15 Calhoun *Papers* 6:696-97.

16 Love 322.

17 Calhoun *Papers* 8:253.

York emigrants themselves.

Prior to leaving for Wisconsin, Brothertown residents wished to sell their New York State lands advantageously. Responding to a petition from Brothertown residents, the New York Legislature on April 16, 1827, authorized the piecemeal sale of all Brothertown lands at a “fair and reasonable price.” Purchasers would receive fee title.¹⁸ From 1795, when the Legislature first authorized a sale of Brothertown lands, there seems never to have been a question that Brothertown residents possessed full-value lands. New Stockbridge residents and the Oneidas on the other hand had a hard time gaining recognition of their right to market payment for their lands. In 1795, even as the sale of Brothertown lands was being authorized at market rates, the Legislature had illogically denied this right to the Oneidas. This stance persisted for more than three decades. But on February 11, 1829, the Legislature declared itself in favor of paying the Oneidas “a fair price for their lands” allowing only for the deduction of actual expenses. Improvements were also to be paid for, separately to the individuals who had made them.¹⁹ Predictably, this reversal by the Legislature provoked a new round of lobbying to secure supplementary compensation for land rights sold prior to 1829 for less than full value.²⁰

New Stockbridge also encountered problems with the Legislature. Reverend Sergeant complained on January 11, 1824, that several years earlier the State had “purchased a part of their township for a mere trifle...[and] sold the lands they bought of them to white settlers for

18 *Laws of New York*, 50th Sess., Ch. 298.

19 *Laws of New York*, 52nd Sess., Ch. 29.

20 For an instance of successful lobbying, see *Laws of New York*, 58th Sess. Ch. 285, May 11, 1835.

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five times more than they gave the Indians.” Sergeant argued that “the remainder of their lands, mills and all their buildings and improvements should be sold for its value which would not only pay all the expense of their emigration but leave a fund to follow them and their children forever.”²¹ A year later, on February 11, 1825, New Stockbridge leader Solomon U. Hendricks informed Secretary of War Calhoun that New Stockbridge residents were seeking “the full value of the lands we claim in this State, whenever we are ready to emigrate to Green Bay, as the State has heretofore allowed us only two dollars per acre for our said lands.”²² New Stockbridge residents were however again obliged to accept considerably less than full market value, though no doubt some resolved even at this time to continue pressuring the Legislature. Significant success was achieved in 1848 when the New York Legislature appropriated \$10,000 to be paid those who had left New Stockbridge in the 1820s, “in consideration of the profits accruing to the people of this State, in the purchase and sale of lands heretofore belonging to said tribe of Indians.”²³

While residents of Brothertown, New Stockbridge and the Oneida villages were preoccupied with these preliminary preparations for a move west, the increasingly suspicious Wisconsin tribes decided to repudiate their 1822 agreement. Attempts by the federal government to mediate resulted in treaties completed in 1827, 1831, 1832 and 1838, none of which entirely resolved the problems caused by the federal government’s various decisions allowing the dubious Williams-Ogden initiative to proceed. Decades later, the Supreme Court confirmed that

21 Sergeant Typescript 83-84.

22 National Archives, Secretary of War, Letters Received, Microfilm Publication M-234.

23 *Laws of New York*, 71st Sess., Ch. 208.

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the federal government had repeatedly mishandled this issue.²⁴

Partial satisfaction for those wishing to emigrate was however attained by the 1831 and 1832 treaties. A 23,040 acre tract for Brothertown was agreed on, approximately as large as the original tract designated for Brothertown by New York State in 1789. What became Brothertown, Wisconsin, was located on the eastern shore of Lake Winnebago, and extended four miles north/south, eight miles east/west. It was now possible for Brothertown residents to move to Wisconsin, even as controversy continued about “Six Nations” claims to other lands in Wisconsin and (after 1838) in Kansas. A few community members were still stranded in Indiana, and proceeded directly from there to Wisconsin. Forty others left New York in 1831. This group included Thomas Commuck, a Rhode Island Narragansett who had moved to Brothertown only six years before. A multi-talented individual, Commuck eventually became the postmaster of Brothertown, Wisconsin.²⁵ In 1832, forty-four more headed west from Brothertown, New York. Other groups left in 1834, 1835 and 1836. Only ninety-six Brothertown residents remained in New York in 1843, by which time some two hundred fifty had reached Wisconsin. In 1893, a thorough search turned up only one survivor, Billy Paul, remaining in the vicinity of Brothertown, New York.²⁶

Wisconsin’s Brothertown.

24 Charles J. Kappler, *Indian Affairs, Laws and Treaties*, Washington: Government Printing Office, 1904, 2:319-25, 377-82, 502-16. *The New York Indians v. The United States*, decided May 15, 1905.

25 Thomas Commuck, “Sketch of the Brothertown Indians,” *Wisconsin Historical Collections*, 1859.

26 Love 325-27.

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In New York State, Brothertown residents had possessed fully valued lands, but in Wisconsin only nebulously valued “Indian Title” land was obtainable. Eleazer Williams had spoken tantalizingly of exchanging small quantities of New York land for much larger quantities of federally-regulated “Indian Title” land in the west. Then to be offered only a small tract of “Indian Title” land was severely disappointing. Not surprisingly, the residents of Brothertown, Wisconsin quickly began pressing for full fee title ownership of at least this small tract. Congress responded on March 3, 1839, by directing that “the township of land...reserved for the use of the Brotherton or Brothertown Indians...may be partitioned and divided among the different individuals composing said tribe of Brothertown Indians, and may be held by them separately and severally in fee simple.” After surveys had been completed, the President of the United States was to “cause patents to be issued to the several individuals...by which the said persons shall be authorized to hold said lands in fee simple to themselves and their heirs and assigns.” Once this division of township lands had been made,

The said Brothertown Indians, and each and every of them, shall then be deemed to be, and from that time forth are hereby declared to be, citizens of the United States to all intents and purposes, and shall be entitled to all the rights, privileges and immunities of such citizens, and shall, in all respects, be subject to the laws of the United States and of the Territory of Wisconsin, in the same manner as other citizens of said Territory; and the jurisdiction of the United States and of said Territory shall be extended over the said township or reservation now held by them in the same manner as over other parts of said Territory; and their rights as a tribe or nation, and their power of making or executing their own laws, usages, or customs, as such tribe, shall cease and determine; *Provided, however,* That nothing in this act shall be so construed as to deprive them of the right to any annuity now due to them from the State of New York or the United States, but they shall be entitled to receive any such annuity in the same manner as though this act had not been passed.²⁷

As a result of this 1839 Act, Brothertown residents could feel that their move from fully valued

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New York lands to “Indian Title” lands in federal territory might not have been a complete financial fiasco.

In subsequent years, three Brothertown residents served in the Wisconsin Legislature. Younger members of the community however began to move away in search of opportunities elsewhere, and newcomers moved in. With Brothertown no longer thoroughly identified with its original settlers, Congress in 1878 authorized the sale of all lands as yet unpatented under the 1839 Act, the proceeds to be distributed “to the Brothertown Indians, according to the former usages, customs and regulations of said tribe.”²⁸ By 1898, only 150 out of 1,500 residents of Brothertown, Wisconsin were descendants of the original emigrants.²⁹

Brothertown in Fantasy and Reality.

Even after 1898, indeed down to the present day, many Brothertown descendants, though scattered far and wide, have preserved an awareness of their unique historic identity. Among the reasons for this is awareness of long-lost assets for which compensation may be obtained. More than a century ago, William DeLoss Love noted that Brothertown’s community organization was “perpetuated in large measure by the necessity of their [Kansas] land claim.”³⁰ This pattern has continued, as new legal avenues have opened up. In 1950, Brothertown descendants joined in litigation before the newly created Indian Claims Commission, and in due course received cash

27 25th Cong., 3rd Sess., Ch. 83.

28 45th Cong., 2nd Sess., Ch. 63.

29 Love 329.

30 Love 330.

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payments because of federal mishandling of Brothertown’s nineteenth century land claims.³¹ In 1995, the “Brothertown Indians of Wisconsin” petitioned the recently established Acknowledgment Project of the Bureau of Indian Affairs for “federal acknowledgment as an American Indian tribe.” And in 2001 the newly organized “New York Brothertown Indian Nation” filed suit in federal court for the Northern District of New York seeking invalidation of the sale of Brothertown lands in New York State in 1795 and 1827 because the federal treaty process was not used.

As these pending legal questions proceed slowly toward resolution, Brothertown is assured a place in the foreseeable future as well as in the distant past. Indeed to a remarkable extent Brothertown has been linked to the vagaries of Euro-American tribal policy, from the “wild east” days of seventeenth century New England to the high-stakes casino era of the twenty-first century. In the early seventeenth century, the break-away colonists of Connecticut and Rhode Island sought legitimacy by purporting to buy land from local sachems. When Connecticut and Rhode Island obtained royal charters in the 1660s, these same tribes were arbitrarily subjected to colonial jurisdiction and assigned reservations. Over time, members of tribes once perceived as profoundly alien were accepted as marginal elements of colonial society. No longer feared as demonic, members of New England tribes came to be viewed as a non-white lower class---and as such were largely ignored by all except missionaries, colonial administrators and immediate neighbors.

Then came the democratic disorder of the Revolutionary era, out of which emerged the

31 *Emigrant New York Indians et al. v. U.S.*, Docket Number 75.

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dual system of jurisdiction over tribes established under the Constitution, in which states and the federal government collaborated. As white settlers expanded westward, tribes and tribal lands were regularly transferred from federal to state jurisdiction---and sometimes from state to federal jurisdiction. These transfers often required treaties. The 1838 Treaty of Buffalo Creek for example enabled groups of “New York Indians” to move to federally-regulated western lands. In connection with this elaborate move by groups holding land in New York State under a variety of different tenures, the Treaty spelled out tasks for both State and federal governments. As a result of this 1838 Treaty, after decades of regulation by New York State, the Brothertown community became federally regulated for a few years, before returning to state regulation, this time in Wisconsin.

Such federal involvement from time to time in the affairs of tribal and “post-tribal” groups under ordinary state jurisdiction is often cited today as evidence of a federal intent to establish an on-going government-to-government relationship with that community. What such federal involvement may actually recognize is the legitimacy of ordinary state jurisdiction, notwithstanding occasional federal intervention when needed for some specific purpose. For example, no federal treaty had been required for the 1795 and 1827 sales of Brothertown’s New York State-granted lands but Brothertown’s move to federal territory in Wisconsin did require federal assent. As Chancellor Kent observed in 1840, there are so many different kinds of federal treaties relating to tribes that one must look at the text of each treaty to determine whether or not a continuing government-to-government relationship is intended.³²

32 James Kent, *Commentaries on American Law* (Fourth edition, 1840), 3:383n.

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Congressional acts require similar scrutiny. Congress's 1839 and 1878 Acts for example referred to the Brothertown "tribe." Though today called evidence of federal intent to establish or continue a government-to-government relationship with this "tribe," these Acts really only reflected the fact that the word "tribe" in these years was used loosely to refer to any tribally-descended group. In the nineteenth century, no presumption existed that tribal groups should not be state-regulated when this was appropriate. Indeed all tribal groups were expected to become state-regulated as they approached citizenship.

The twentieth century shift away from this dual federal-state regulatory regime for tribes was propelled by successive shifts in popular white attitudes toward members of tribes. Viewed in colonial times as lower class non-whites, members of tribes were then elevated by the Revolutionary generation to the status of potentially equal citizens of the American republic. This Revolutionary commitment however became overshadowed in the nineteenth century by the narcissistic white fantasy that members of tribes were Vanishing Americans.

Two New York writers, Washington Irving and James Fenimore Cooper, made important contributions to this shift away from the Revolution's egalitarianism. In 1819, Washington Irving published "Philip of Pokanoket" eulogizing the long-hated seventeenth century Wampanoag leader known as King Philip. "Proud of heart, and with an untamable love of natural liberty," Irving rhapsodized, "he preferred to enjoy it among the beasts of the forest, or in the dismal and famished recesses of swamps and morasses, rather than bow his haughty spirit to submission, and live dependent and despised in the ease and luxury of the settlements."³³ "Praying Indians" such as those living methodical Christian lives of "ease and luxury" at

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Brothertown and New Stockbridge could not hope to match the gloomy glamor of the swamp-dwelling “Philip of Pokanoket.” Irving urged nineteenth century white Americans to hurry up and admire exciting tribes lurking in dark forests before they vanished altogether, to be replaced by a white society ludicrously described by Irving as resembling “a lawn, where every roughness is smoothed, every bramble eradicated, and where the eye is delighted by the smiling verdure of a velvet surface.”

Thanks to their neighbor James Fenimore Cooper, the Mahican tribe became closely associated in popular imagination with the “vanishing” of tribes. Cooperstown is only a short distance from New Stockbridge, but Cooper’s stoically expiring Mahican Chingachgook, *The Last of the Mohicans*, bore no resemblance to any Mahican, living or dead. As for the Brothertown community, Cooper’s plain-spoken Leatherstocking Natty Bumppo sarcastically derided “them Yankee Indians, who they say be moving up from the sea-shore, and who belong to none of God’s creatures, to my seeming, being, as it were, neither fish nor flesh---neither white man nor savage.”³⁴

Even the grand figure of Samson Occom was Romantically maligned. In an 1824 novel,

33 Washington Irving, *Sketch Book*, 1819.

34 James Fenimore Cooper, *The Pioneers* (first published 1823), chapter 41.

Connecticut novelist Lydia Sigourney transmuted Occom's forward-looking reasons for founding Brothertown as a dynamic Christian farming community in traditional tribal hunting territory into a variant on the Romantic theme of inexorable tribal doom. "My brethren are degenerate," Sigourney had her imaginary Occom say. "They are but shadows of their ancestors. I wish to associate their broken spirits with others less degraded." Occom had deeply resented discriminatory treatment of members of tribes by white New Englanders, but Sigourney preposterously portrays him offering a Chingachgook-like salute to a white-dominated future that will not include his people. "We trust, Madam," Sigourney's Occom confides to a benevolent white lady,

"that your favored race, who are exalting the country to a glory which under us it could never have known, will yet impress with civilization and Christianity, the features of our roving and degraded character. Then it will be but a small matter to have yielded to you these perishable possessions, if through you, we become heirs to the kingdom of heaven."³⁵

Occom, who devoted his life to transforming tribal society to save it from destruction by whites, is here absurdly shown praising whites for not entirely destroying his people until they had received from whites the hope of salvation after death.

Such nineteenth century nonsense led in the early twentieth century to a reaction among whites who rejected Romantic narcissism and instead insisted on viewing tribes as threatened but viable preservers of important human values. Envisioning tribes as islands of communal harmony in a sea of white greed, critics of "robber baron" capitalism began a movement to help tribes become living admonitions reproving rampant American individualism. This well-

35 Lydia Sigourney, *Sketches of Connecticut Forty Years Since*, Hartford, 1824, 157-60.

intended movement led by John Collier, President Franklin Roosevelt's Commissioner of Indian Affairs, triumphed with passage of the 1934 Indian Reorganization Act, which committed the federal government to a long-term program of tribal resuscitation. The federal government would henceforth nurture tribes, conceived of as small, communal and idealistic. To further this commendable objective, proponents bizarrely reinterpreted early federal tribal law and treaties as also committed to this goal. In this manner, a new federal policy designed to rehabilitate small tribal communities as exemplars of a non-capitalist value system became associated with the early republic's tribal policy, which had by treaty allowed large, martial tribes to govern themselves independent of ordinary state jurisdiction.

Two centuries ago, remaining a federally regulated, self-governing tribe involved harsh choices, and accepting ordinary state jurisdiction offered numerous advantages. Nowadays, many more advantages accrue to federal tribal status, and history is being rewritten accordingly. By this odd route, the great enemy of tribalism Samson Occom has come to be conceptualized as the founder of a tribe, and the little community of forty farm families that Occom led from New England to New York State is now imagined to have been a sovereign nation with which the federal government had a government-to-government relationship.