

Epilogue: The Campisi and Taylor Reports

The undated, untitled Expert Report of Dr. Jack Campisi and the Expert Report of Professor Alan Taylor dated August 28, 2003, entitled “Oneida Land, New York Treaties, 1775-1845” (Civil Act 74-CV-187, U.S. District Court, Northern District of New York) both assume that trusteeship of Oneida assets was U.S. policy in the early republic. The first sentence of Professor Taylor’s Report reads, “During the early 1770s, on the eve of the American Revolution, the approximately 1,500 Oneida people possessed a domain of about six million acres centered on Oneida Lake” (Taylor 2). The Oneidas are said to have “possessed exclusive ownership of the land, with the Tuscaroras as their tenants-at-will” (Taylor 4). Professor Taylor apparently believes that this was not simply an Oneida claim, but an accepted U.S. commitment. As evidence, he quotes verbal assurances given by Continental Congress Treaty Commissioners during negotiations at Fort Stanwix in 1784 that “it does not become the United States to forget those nations who preserved their faith to, and adhered to their case, those therefore must be secured in the full and free enjoyment of their possessions” (Taylor 58). But the final text of the Treaty states only that “The Oneida, and Tuscarora nations shall be secured in the possession of the lands on which they are settled.” Details such as boundary, jurisdiction and nature of title are conspicuously absent.

Prior to 1763, Oneida proprietorship of land had been advocated by the British to contest French ownership claims based on Discovery. (See above, pages 13-14.) But when the British monarch succeeded to the French monarch’s North American legal position in 1763, Oneida proprietorship was repudiated, and after 1776 New York State and the Continental Congress followed this British precedent. Neither New York State nor the Continental Congress ever

accepted the Oneida claim to proprietorship of six million acres. The Continental Congress promised their pro-Revolutionary Oneida allies some secure land rights, but nothing more specific.

According to Dr. Campisi, in the negotiations that followed the Revolutionary War, conniving New York officials repeatedly deceived gullible Oneidas. He speaks sweepingly of “the land swindles of private speculators and the Governor of New York” (Campisi 27) and contends that “New York State set about to take the [Oneidas’] land by any means” including “deceit and threats of force” (Campisi 45). Yet Professor Taylor’s Report documents a quite different dynamic in the initial post-Revolutionary War negotiations between New York State and the Oneidas, one he calls “rich in the exchange of views” (Taylor 144). Professor Taylor describes for example how at Fort Herkimer in 1785, the Oneida leader Good Peter told New York State Governor Clinton, “*The United States have informed Us that the Soil of our Lands was our own*” (Taylor 66). After the Revolutionary War, insisted Good Peter, the Oneidas had been promised that “we should be the sole proprietors of our own land; and that our disposal of it should be optional with us” (Taylor 43-44). Good Peter claimed this was due the Oneidas in return for their support of the Revolution, and offered to lease Oneida land to New York State. “As lessors, the Oneida would retain ultimate title to the land, keeping open future options to reclaim the premises or to increase the rents” (Taylor 69). New York Governor Clinton flatly refused, saying this “would make the Government of the State tributary to You” (Taylor 71).

Expressing sympathy for Good Peter’s desire that the Oneidas be accorded complete freedom to sell or lease land to anyone they wished, Professor Taylor attributes New York State’s refusal to allow this to the State’s “addiction to the revenue derived from buying Indian land cheap and selling it for the state’s profit” (Taylor 44). This derisive characterization of New York State’s supposed “addiction” ignores the fact that no U.S. authority ever endorsed Good Peter’s demand for what Professor Taylor

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calls a “free market in Oneida land” (Taylor 44). What this could lead to was made clear early in 1788 when the Oneidas agreed to lease most of their ancestral lands for 999 years to “one Great Man” for a sum never to exceed \$1500 annual rent (Taylor 77-79). New York State promptly voided this lease as contrary to State law because the land the Oneidas had tried to lease for 999 years was land the State claimed to own as successors in interest to the British Crown. The Oneidas, who in 1788 numbered 588 (Taylor 87, 143), had hoped that their Revolutionary War services would be rewarded by a restoration of their pre-1763 status as a sovereign nation and original proprietors of six million acres. Disparaging what New York State was offering instead, Jacob Reed in 1788 retorted (as cited by Professor Taylor), “Brothers, we are more surprised still, to learn [that] you claim a Right to controll us in the Disposal of our Lands; you acknowledge it to be our own as much as the Game we take in hunting. Why then do you say that we shall not dispose of it as we think best? You may, Brothers, with as much Propriety, when one of our Hunters comes to your Market with a Pack of Beaver, point out the Person to whom he shall sell, and to no other” (Taylor 80). The Oneidas did however finally surrender their claims to independent political sovereignty and outright ownership of six million acres, and in 1788 grudgingly accepted New York State’s offer to make them absolute proprietors under State guardianship of a 300,000 acre State-granted reservation, parts of which they would be free to lease for up to twenty-one years.

The Oneidas disliked New York State’s undisguised determination to assert authority over them, but understood what New York State was proposing. After agreeing to New York State’s proposed 1785 extinguishment of a portion of their aboriginal land claims, the Oneidas requested (as noted by Professor Taylor) “that the state grant patent title for specific tracts to tribal favorites with informal Oneida grants” because “an informal Indian grant had little legal value unless completed by a state patent” (Taylor 73). Already by 1785, the Oneidas discerned what New York State intended. Oneida resentment resulted not from having been tricked but rather from disappointment with the circumscribed rights openly offered

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and repeatedly explained by New York State. In 1790, ten chiefs expressed dissatisfaction that, “Instead of leasing our Country to you for a respectable Rent, we find that we have ceded and granted it forever for the Consideration of the inconsiderable Sum of Six hundred Dollars per Year” (Taylor 91).

Understanding New York State’s terms didn’t make them any easier to accept. In Professor Taylor’s words, the Oneidas

felt that their past military services and sacrifices warranted persistent respect. . . . From the Oneida perspective, their sufferings and losses warranted greater, not diminished, respect from the allies who had so greatly benefited from their losses of life in war and from their post-war losses in land cessions. But state leaders did not share that perspective (Taylor 144-145).

New York leaders believed that the Oneidas, though once capable of governing themselves as an independent polity, could no longer do so, however much they still wanted to try. Professor Taylor acknowledges, “The Oneida needed state protection” (Taylor 71).

Prior to 1788, the Oneidas had hoped that the Continental Congress might concede them more autonomy than was being offered by New York State. But, as Professor Taylor observes, the Continental Congress “lacked the funds, the leadership, and the authority to fulfill its treaty promises to the Oneida” (Taylor 60). Beginning in 1789, the Oneidas hoped that the new federal government might assist them in escaping from the State jurisdiction they had accepted in 1788. Oneida leaders energetically pursued this possibility in negotiations with Federal Treaty Commissioner Pickering, protesting the Oneidas’ treatment by New York State and imploring his intervention on their behalf.

Pickering proved sympathetic and, as Professor Taylor puts it, “the federal connection. . .stiffened the Oneida resolve” (Taylor 119). But Professor Taylor also makes clear that the federal government’s interest in the Oneidas and in reviving the “Six Nations” concept was primarily motivated by desire to counter British influence among the Senecas, and waned

once the British withdrew from Fort Niagara in 1796. Valued for their supposed ability to influence the Senecas within the “Six Nations” framework, the Oneidas were stimulated by the short-lived encouragement they received, and disappointed by the federal government’s loss of interest in them once the British had withdrawn from U.S. soil and the Senecas had been reservationized. In Professor Taylor’s words, “The Oneida felt especially rankled that the state, like the federal government, was more solicitous of the Seneca in western New York. Although the Seneca had fiercely opposed the American Revolution, they got more respect because their relatively large population and their strategic location on the Canadian border rendered them credible enemies if alienated” (144-145).

At odds with this reality, Professor Taylor maintains that subsequent to the Treaty of Canandaigua, “As sovereign nations in formal alliance with the United States, the Iroquois Six Nations became much more than dependent ‘members’ of New York State” (Taylor 125). Ironically, the 1794 Treaty described by Professor Taylor as bringing the “Six Nations” into a “formal alliance with the United States” was understood by Federal Treaty Commissioner Pickering as preparing the way for the demise of the “Six Nations” Confederacy, and proved to be the last U.S. treaty ever held with the “Six Nations.”

As part of the federal government’s Seneca-oriented “Six Nations” strategy, Federal Treaty Commissioner Pickering explained both the 1790 and 1793 federal Indian Trade and Intercourse Acts at a series of treaty conferences. At the 1794 Canandaigua conference, in response to the Oneidas’ description of an ill-considered private lease arrangement they had agreed to, he informed them that he believed the land sale section of the 1793 federal Act could be invoked to invalidate this lease. A confrontation ensued between the federal government and New York State concerning whether Pickering’s belief was justified. Dr. Campisi considers

incontrovertible Pickering’s interpretation of the land sale section of the 1793 Indian Trade and Intercourse Act, as developed in U.S. Attorney General William Bradford’s June 16, 1795 opinion, that all dispositions of the Oneidas’ State Reservation lands, including leases, required use of the federal treaty procedure. Yet Pickering himself considered his interpretation one that might or might not prove viable, and that others would certainly dispute. Dr. Campisi quotes Pickering as saying, “I have explained to you what I take to be the true meaning of the law; and I believe I am not mistaken...I know you will be told the State has all the power over your lands...But, Brothers, even if the right of the United States to interfere were doubtful, your own right is certain” (Campisi 28).

Dr. Campisi also suggests that John Jay, who had served from 1789 to 1795 as the first Chief Justice of the U.S. Supreme Court, accepted the Pickering-Bradford theory and adjusted his conduct as New York Governor accordingly. Of Jay’s response to Bradford’s opinion, Dr. Campisi writes, “John Jay...wrote to Pickering acknowledging the receipt of Bradford’s opinion. On 18 July, Jay wrote to Pickering requesting the appointment of a commissioner to hold a treaty with the St. Regis” (Taylor 37). This omits mention of Jay’s expression of skepticism about Bradford’s opinion, or that Pickering himself noted that Jay’s request for a Saint Regis federal treaty commissioner evidently reflected “a distinction” made by Jay between different categories of tribal land transactions. (See above, pages 266-268.)

Professor Taylor seems similarly to believe that the land sale section of the 1793 Indian Trade and Intercourse Act definitely applied to the Oneidas’ State reservation, yet Professor Taylor himself notes (Taylor 129) what made this problematic: the Act was intended to regulate “aboriginal title” occupancy rights of negligible sale value, whereas the Oneidas possessed State-granted land rights that were far more valuable. Professor Taylor contends nonetheless that the Act certainly applied to the

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Oneida State reservation, and that President Washington understood this (Taylor 140-141). Professor Taylor goes so far as to suggest that President Washington's supposed willingness to acquiesce in open lawbreaking by New York State was a result of mere expediency: "Faced with state officials adamant to proceed with their Indian land purchases that summer, but willing to accept federal oversight in **future** transactions, the Washington administration backed away from a fight" (Taylor 141). It seems far more credible that Washington considered the Pickering-Bradford theory speculative, and was therefore willing to allow Pickering to test the theory, but not to endorse it in advance. Strongly conscious that his every action as President would become a precedent, Washington would certainly not have reacted to open state law-breaking with a pious expression of hope that if the federal government backed off maybe things would work out better next time. (See above, pages 269-270.)

Like Dr. Campisi, Professor Taylor deems Governor Jay's conduct acknowledgment of the validity of the Pickering-Bradford theory, and writes that "Pickering was disappointed in his hopes that Governor John Jay would **immediately** bring state Indian and land policy into line with the federal Trade and Intercourse Act" but relieved that Jay "would commit to federal supervision in **subsequent** state land deals with the Indians" (Taylor 140). Yet, if Jay had really believed that State transactions underway were fatally flawed, he would have halted them even though nearly completed because they could never be valid. Jay remained committed to the legality of these transactions almost a year later, when he accepted new legislation to implement them. In any case, there is no evidence whatsoever for Professor Taylor's claim that the State acted "in knowing violation of federal law" (Taylor 178).

Concerning Governor Jay's request for a federal treaty commissioner to approve the 1798 Oneida land sale, Professor Taylor argues that this "complied with federal law" (Taylor 146). But Professor Taylor also notes that the State acted quite casually: "Without providing for, or waiting upon, a federal treaty commissioner" the State negotiated the transaction, and then only

“belatedly sought a technical compliance with federal law” (Taylor 147). Professor Taylor even speculates that this might have been done simply “to head off...an Oneida appeal to the federal government” (Taylor 147).

Concerning why the 1802 federally supervised Oneida land sale was not proclaimed by President Jefferson, Professor Taylor notes that Jefferson seemingly had some “unspecified caveat” (Taylor 151). That this may have reflected the fact that the 1802 land sale did not concern aboriginal “Indian Title” claims is explained above, pages 352-353. That the 1802 land sale did not concern “Indian Title” might also account for the fact noted by Professor Taylor that in 1822 the 1802 transaction was not listed among “federally sanctioned treaties extinguishing Indian title” (Taylor 152).

Both Professor Taylor and Dr. Campisi present evidence that by 1800 the once-mighty Oneida nation had fallen apart. Professor Taylor refers to the 1795 funeral of Captain John as “a funeral for Oneida autonomy as well as for its able defender” (Taylor 138). The Oneidas are described as “powerless to resist” (Taylor 20). The policy pursued by New York State is said to have “resulted in splitting the tribe” (Taylor 40) and this “factionalism...made it impossible for the Oneidas to maintain a common, unified front against the efforts of the state” (Taylor 44). “In 1810 the Oneida country had nearly seventy settlers per Indian. Disproportionate numbers and power bred an indifference, and often a contempt, for the Indian minority” (Taylor 143). “In 1804, Captain Peter complained, ‘Whiteskins have whipped & beaten some of us poor despised Indians because of our frailties & follies & chased us from their houses with such whips as they used upon refractory horses. Alas! How times are changed. In the days of the glory of our forefathers it was not so’” (Taylor 165). Professor Taylor concludes, “Once the reservation lost its cohesion as a substantial block distinct from the outside world, the Oneida became caught in a

downward spiral...as their reservation became interpenetrated by a society and a culture premised on the circulation of money” (Taylor 163).

Beginning in 1785, New York State articulated its firm intention to subordinate all Oneidas and all Oneida land to ordinary New York State jurisdiction. The State’s plan was denounced and resisted by Oneida leaders, who nonetheless agreed to it in 1788. In 1790-1791, Federal Treaty Commissioner Pickering’s unsettling arrival with his Seneca-driven agenda “stiffened the Oneida resolve” (Taylor 119) and prolonged for a decade the troubled process of Oneida acceptance of State regulation. New York State certainly could and should have been a better guardian of Oneida interests. But the Oneidas, hopeful that their “federal connection” (Taylor 119) would result in a restoration of their pre-1788 status, proved to be uncooperative State wards.