NEW YORK UNIVERSITY
JOURNAL OF INTERNATIONAL LAW AND POLITICS

EMPOWERMENT OR DEPENDENCE? THE PRACTICAL VALUE AND MEANING OF NATIVE AMERICAN SOVEREIGNTY

RAY HALBRITTER
WITH STEVEN PAUL MCSLOY

VOLUME 26 SPRING 1994 NUMBER 3

EMPOWERMENT OR DEPENDENCE? THE PRACTICAL VALUE AND MEANING OF NATIVE AMERICAN SOVEREIGNTY*

RAY HALBRITTER
(ONEIDA INDIAN NATION OF NEW YORK, WOLF CLAN)**
WITH
STEVEN PAUL MCSLOY***

---

* This article was originally presented as a speech on November 19, 1993 at the "Nationalism: No Longer a Domestic Dispute" symposium sponsored by the *New York University Journal of International Law and Politics*. The views expressed herein are the personal views of the author and do not represent in any way official positions of the Oneida Indian Nation of New York.

** Nation Representative, Oneida Indian Nation of New York; Chief Executive Officer, Oneida Indian Nation Enterprises; Member, New York State Constitutional Revision Committee; Adjunct Assistant Professor of Law, New York University School of Law; Adjunct Professor of Law, Benjamin N. Cardozo School of Law, Yeshiva University. B.S., Syracuse University, 1985; J.D., Harvard Law School, 1990. For interviews and further biographical background, see Francis X. Clines, *Where Profit and Tradition Mingle*, N.Y. TIMES, Aug. 2, 1994, at B1; *A Salute to Those Who Came Before Us*, ROME OBSERVER, July 29, 1993, at 1; Walt Shepperd, *Ray Halbritter: Oneida Nation Leader is the Indian the White Man Doesn't Want to See*, SYRACUSE NEW TIMES, June 9-16, 1993, at 9; Andy Marino, *From Frustration to Prosperity: Halbritter Carves His Niche in Oneidas' History*, ONEIDA DAILY DISPATCH, Aug. 27, 1993, at 1; Don Harting, *The Man Behind the Casino: Harvard-Educated Lawyer Grew Up Dirt-Poor on Onondaga Indian Reservation*, THE CENT. N.Y. BUS. J., Nov. 29 - Dec. 12, 1993, at 1; *Oneidas Hope to Build Future, Preserve Past*, UTICA OBSERVER-DISPATCH, Sept. 6, 1992, at 11A.

I would like to thank the editors of the *Journal* for their invitation to speak at their symposium and for their offer to publish this article. I also wish to thank my mother, who has been my source of inspiration, and my brother Barry, the only true sovereign man I have known.

*** Assistant Professor of Law, St. John's University School of Law; Adjunct Assistant Professor of Law, New York University School of Law; Adjunct Professor of Law, Benjamin N. Cardozo School of Law, Yeshiva University. B.A., New York University, 1985; J.D., Harvard Law School, 1988. I would like to thank Ray Halbritter for allowing me to work with him on this Article, and for his constant friendship. I would also like to thank my wife, Alison Jane Rooney, for her constant support, my father, Paul McSloy, Niels Holch, Dave Gregory, and Jacqueline Bouchard for their helpful comments, and Don MacLeod and Victor Hou for their invaluable research assistance. Research support was provided by the St. John's University School of Law Faculty Research Program.

She:go. That is an ancient word of address and how our Oneida[1] people still greet one another.[2] My purpose in writing this article is to relate some of the history of my people, the Oneida Indian Nation,[3] one of the Six Nations of the Iroquois Confederacy (more properly referred to as the "Haudenosaunee),"[4] and to describe the context in which we have

---

1. "Onyotáa:ka" in our language, which means "People of the Standing Stone." Our legends hold that whenever the Oneida people moved, a particular large stone, the "Standing Stone," followed us to our new home. The Standing Stone is today still on our Territory.

2. Though suffering from two centuries of forced dispersion and gradually declining usage, the Oneida language has enjoyed a renaissance in recent years through the institution of language classes by the Oneida Indian Nation. In her youth, my grandmother was corporally punished in school for speaking even one word of her native tongue. The Oneida language is a member of the Iroquoian family of languages spoken by the Haudenosaunee, the original inhabitants of what is now New York State and surrounding areas. *See* Floyd G. Lounsbury, *Iroquoian Languages, in* 15 HANDBOOK OF NORTH AMERICAN INDIANS 334 (Bruce G. Trigger, vol. ed., William C. Sturtevant, gen. ed., 1978) [hereinafter 15 HANDBOOK]. Though their history has never specifically converged with that of the Haudenosaunee, the Cherokee people also belong to the Iroquoian linguistic group. *Id.*

3. The Oneida Indian Nation of New York is a federally recognized Indian Nation. *See* Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 53 C.F.R. sec. 52,829 (1988). Oneida people who moved to Green Bay, Wisconsin, in the early nineteenth century are today a separately recognized people as the "Oneida Tribe of Wisconsin." *Id.* at 52,831. *See also* discussion *infra* note 33. There is also a group of Oneidas who emigrated to the Thames River in Ontario, Canada, in the early 1800s. They are today subject to Canadian law and are known as the "Oneida of the Thames Band." *See* Robert J. Surtees, *The Iroquois in Canada, in* THE HISTORY AND CULTURE OF IROQUOIS DIPLOMACY: AN INTERDISCIPLINARY GUIDE TO THE TREATIES OF THE SIX NATIONS AND THEIR LEAGUE 67, 79 (Francis Jennings, ed., William N. Fenton, joint ed., 1985) [hereinafter IROQUOIS DIPLOMACY]; Jack Campisi, *Oneida, in* 15 HANDBOOK, *supra* note 2, at 481, 487-89. According to the 1990 Census, the Oneida Indian Nation of New York has 1,109 members. The Wisconsin Oneidas number approximately 10,000 and there are approximately 3,500 members of the Thames Band.

4. Pronounced "Ho-dee-no-so-nee." The term "Iroquois" is a French version of a pejorative name given to the Haudenosaunee by other indigenous peoples with whom they had warred. *See* FRANCIS JENNINGS, THE AMBIGUOUS IROQUOIS EMPIRE 25 (1984). The English and later the Americans referred to the Haudenosaunee in a political sense, calling them the "Six Nations" or "Six Nation Confederacy." *See, e.g.*, Treaty with the Six Nations, Nov. 11, 1794, 7 Stat. 44. The other Haudenosaunee constituent peoples (and languages) are the Mohawk, the Onondaga, the Cayuga, the Seneca, and the Tuscarora. *See* BASIC CALL TO CONSCIOUSNESS 67 (Akwesasne Notes

survived in this society and this country. I will also relate some of my personal history as an Oneida person[5] and as a leader of my people,[6] and will explain some of our recent achievements as a nation.[7] In relating these stories,[8] my intention is to elab-

---

rev. ed. 1982) (Mohawk Nation, via Rooseveltown, New York 13683) [hereinafter BASIC CALL]; Elisabeth Tooker, *The League of the Iroquois: Its History, Politics, and Ritual, in* 15 HANDBOOK, *supra* note 2, at 418.

5. I am, and we are, Oneida. To the extent we belong to any larger grouping of human beings, it is to the Haudenosaunee. There is no such thing as an "Indian." The people called Indians are, of course, more distinct from one another racially, linguistically, geographically, religiously, culturally and along any other axis than the people sometimes referred to as "Europeans." For reasons unknown to us, "Indians" are not referred to by the name of our particular nations, whereas "Europeans" are commonly accorded respect by individually denoting them as French, British, German, and the like. Even though the term "Indian" is fundamentally false, as it results from Columbus's notorious misappellation for (and misapprehension of) the civilizations he encountered, it is useful nonetheless in marking our separateness at a political level from "America." Many indigenous peoples, including the Oneida Indian Nation, adopt the usage of the term. As for being "Native American," we are, but our struggle for sovereignty is more important to us than fighting for others' political correctness.

6. I have been a leader of my people since 1975 and federally recognized as such since 1987. I was chosen through a centuries-old process of consensus among the three clans of the Oneida Nation, the Turtle, the Wolf, and the Bear. The federal government unconditionally recognized me as the Nation Representative, chosen through traditional processes, after a recent struggle with the Bureau of Indian Affairs. *See* Andy Marino, *BIA Unconditionally Recognizes Halbritter as Oneidas' Leader,* ONEIDA DAILY DISPATCH, Feb. 5, 1994, at 1; *Halbritter Hails Ruling as "Victory,"* SYRACUSE HERALD-J., Feb. 5, 1994, at A1; *U.S. Gives Halbritter Unconditional Recognition as Oneida Representative,* ROME DAILY SENTINEL, Feb. 5, 1994, at 3; *U.S. Says Halbritter Leader of Oneidas,* SYRACUSE POST-STANDARD, Feb. 5, 1994, at A10.

7. We use the term "nation" deliberately, in its international law sense. *See generally* Steven Paul McSloy, *Back to the Future: Native American Sovereignty in the 21st Century,* 20 N.Y.U. REV. L. & SOC. CHANGE 217 (1993). This was also the policy of the United States, which conducted diplomatic relations with our people according to treaties. *See* FRANCIS P. PRUCHA, 1 THE GREAT FATHER 17 (1984) ("It is in the [Haudenosaunee] treaties that one sees best the acceptance by Europeans of the nationhood of the Indian groups that became a fixed principle in the national policy of the United States."); Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 559-60 (1832) ("The words 'treaty' and 'nation' are words of our own language . . . . We have applied them to Indians, as we have applied them to the other nations of the earth. They are applied to all in the same sense.") (Marshall, C.J.).

8. "Storytelling" has become a new and vital part of legal discourse, and has attained recognition as an official mode of communication in United Nations proceedings concerning indigenous peoples. *See* Robert A. Wil-

orate on a recurring theme in our history since the coming of the Europeans:[9] how can one be a Haudenosaunee-Oneida person in a changing world?

I. HISTORY

When our people are very young, they are told[10] wonderful stories about the Creator,[11] about how this world was cre-

---

liams, Jr., *Encounters on the Frontiers of International Human Rights Law: Redefining the Terms of Indigenous Peoples' Survival in the World*, 1990 DUKE L.J. 660; H. Elizabeth Dallam, *The Growing Voice of Indigenous Peoples: Their Use of Storytelling and Rights Discourse to Transform Multilateral Development Bank Policies*, 8 ARIZ. J. INT'L & COMP. L. 117 (1991). A premier example of this, and one I was proud to take part in, were the presentations by traditional Haudenosaunee leaders before the U.N. Conference on Discrimination against Indigenous Populations in Geneva in 1977. I presented a paper entitled "Economic History of the Hau de no sau nee." The papers are collected in BASIC CALL, *supra* note 4. On storytelling, see generally Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989).

9. Metaphors of arrival are more accurate and appropriate than concepts of "discovery." The first contact between the Haudenosaunee and the Europeans was the killing of a number of Mohawk people by Samuel de Champlain, the French explorer and colonial governor, in 1609. *See* BASIC CALL, *supra* note 4, at 2; JENNINGS, *supra* note 4, at 41-42. Treaty relations began shortly thereafter. *See Descriptive Treaty Calendar*, *in* IROQUOIS DIPLOMACY, *supra* note 3, at 157-208.

10. The Oneida, as with all the nations of the Haudenosaunee, have an oral history and tradition. In recent years, the Oneida Indian Nation has sponsored efforts to record and preserve this heritage in order to prevent the passing of these traditions and stories. To best preserve our tradition in the form in which it has always existed, the Nation has undertaken to videotape our elders and others among the Haudenosaunee.

11. Because our culture exists orally through a process of storytelling in our native tongue, in a sense it is not proper to offer citations to books or other documents for these stories, or even to relate them in English. To be helpful to others who are not of our culture, citations will be offered. An English version of the Creation Story, written by Haudenosaunee people, can be found in TRADITIONAL TEACHINGS 3-6 (1984) (Mike (Kanentakeron) Mitchell, Dir. of Res., 1984) (North American Indian Travelling College, R.R. no. 3, Cornwall Island, Ontario, K6H SR7 Canada (613)932-9352) [hereinafter TRADITIONAL TEACHINGS]. Another English version, this by a non-Indian, is HARRIET MAXWELL CONVERSE, MYTHS AND LEGENDS OF THE NEW YORK STATE IROQUOIS, New York State Museum Bulletin no. 125 (Arthur C. Parker ed., Albany 1908), *reprinted in* THE PORTABLE NORTH AMERICAN INDIAN READER (Frederick W. Turner III ed., Penguin Books 1974). Several versions in both the English and Haudenosaunee languages can be found in J.N.B. HEWITT, IROQUOIAN COSMOLOGY (AMS Press 1974) (Re-

ated, and about how our people came to be on this continent we call Turtle Island. We are told legends of beings from a Sky World, and of a pregnant woman from that world who fell to earth and brought life to this planet. A turtle rose from the waters to catch her fall, and on the back of this turtle, plants and life developed. The woman bore a daughter, and when the daughter was mature she was visited by a spirit and became with child. Good and evil entered the world because the daughter bore twins who took separate paths, and there has thus always been a primal struggle between good and evil.[12] My people, the Haudenosaunee,[13] long ago recognized the balance and interdependence of all things in this world. The way we view ourselves today comes from these beliefs about the Creator's design for us in this universe, and the ceremonies and protocols we observe in our councils recognize this ongoing struggle.

The Haudenosaunee people have existed from time immemorial in the region between the Hudson River and the Great Lakes, from the St. Lawrence to the Susquehanna,[14] an

---

printing parts of the 21st (1899-1900) and 43d (1925-26) Annual Reports of the Bureau of American Ethnology).

12. The birth of the second, evil twin killed the daughter. From her grave grew the basic staples of Haudenosaunee life: corn, beans, and squash. She is thus revered as Mother Earth. Her mother, the Sky Being, became our Grandmother, the moon. *See* TRADITIONAL TEACHINGS, *supra* note 11, at 4; CONVERSE, *supra* note 11. A version of this story told by our Wolf Clan Mother, Maisie Shenandoah, can be found in STEVE WALL, WISDOM'S DAUGHTER 138-39 (1993).

13. Though I am Oneida, I am also Haudenosaunee, as the Oneida Nation is united with others under the Great Law of Peace. Using standard English terminology, I am a member of the Oneida Indian Nation, which in turn is one of the Six Nations of the Iroquois Confederacy.

14. *See* BASIC CALL, *supra* note 4, at 66 (Haudenosaunee territory stretched from "Vermont to Ohio, and from present day Quebec to Tennessee"); Tooker, *supra* note 4, at 419 (map). Pictoral representations of Haudenosaunee Country can be found in REALM OF THE IROQUOIS (Time-Life Books ed. 1993). Indian nations in North America, as with nations in other parts of the world, defined boundaries along watercourses and continental drainage patterns. *See* JENNINGS, *supra* note 4, at 30-33. This system worked in reverse when it came to white settlement. Thus, as Indian peoples radiated outward along rivers, the Europeans established beachheads and expanded their colonies by traveling inward, going upriver. *Id.* at 29-30. New York thus grew northward up the Hudson and westward along the Mohawk, Connecticut northward up the Connecticut River Valley, Virginia westward up the Potomac and the James, and New Jersey and Pennsylvania

area centered around what is today central New York State.[15] The Haudenosaunee comprise five separate nations of Iroquoian-language speakers: the Mohawk, the Oneida, the Onondaga, the Cayuga, and the Seneca.[16] The name "Haude-

---

northwestward up the Delaware and the Susquehanna. *See, e.g.*, COLIN MCEVEDY, THE PENGUIN ATLAS OF NORTH AMERICAN HISTORY TO 1870 (1988). Such "errands into the wilderness," see PERRY MILLER, ERRAND INTO THE WILDERNESS (1956), were to give European society the literature of colonialism, most prominently Marlow's errand upriver in Conrad's HEART OF DARKNESS. *See generally* EDWARD W. SAID, CULTURE AND IMPERIALISM (1993).

15. New York State was settled and the Oneida and other Haudenosaunee peoples removed by means of fraudulent treaties which the Supreme Court has subsequently held void. *See, e.g.*, County of Oneida v. Oneida Indian Nation of N.Y., 470 U.S. 226 (1985). Other Haudenosaunee groups are seeking to build on the land claims precedents we have established. *See, e.g.*, Cayuga Indian Nation of N.Y. v. Cuomo, 565 F. Supp. 1297 (N.D.N.Y. 1983), *further proceeding*, 667 F. Supp. 938 (1987), *further proceeding*, 730 F. Supp. 485 (1990), *further proceeding*, 771 F. Supp. 19 (1991). Two different Seneca groups, the traditional government at Tonawanda and the Seneca Nation of the Allegany and Cattaraugus Reservations, have filed or are contemplating filing land claims against New York State as well. *See Seneca Nation Files Suit to Reclaim Grand Island*, N.Y. TIMES, Aug. 26, 1993, at B7; *Seneca Indians Sue for Island*, SYRACUSE POST-STANDARD, Aug. 26, 1993, at A10; *2d Seneca Tribe May Sue State*, SYRACUSE HERALD J., Sept. 3, 1993, at B2. Mohawk and Onondaga peoples are also contemplating land claims. *See* Indian Law Resource Center, 1992 Annual Report, at 4 (Helena, Montana); Brian Carn, *Onondagas to File Claim for Lost Land*, SYRACUSE HERALD J., June 29, 1994, at A1. *See generally* Kyle Hughes, *Settlements Sought to Indian Land Claims*, UTICA OBSERVER DISPATCH, Aug. 29, 1993, at 3C.

In addition to its original settlement, New York State has continually attacked remaining Haudenosaunee lands by condemning them for public works. The Kinzua Dam flooded Seneca lands, and Tuscarora lands were flooded by a reservoir after the Tuscarora Nation lost its fight in the Supreme Court. *See* LAURENCE M. HAUPTMAN, THE IROQUOIS STRUGGLE FOR SURVIVAL: WORLD WAR II TO RED POWER 105-22, 151-78 (1986); Federal Power Comm'n v. Tuscarora Indian Nation, 362 U.S. 99 (1960); Seneca Nation of Indians v. Brucker, 262 F.2d 27 (D.C. Cir. 1958), *cert. denied*, 360 U.S. 909 (1959); Seneca Nation of Indians v. United States, 338 F.2d 55 (2d Cir. 1964), *cert. denied*, 380 U.S. 952 (1965). The Tuscarora case, decided by a vote of 4 to 3, prompted an outraged dissent by Justice Black, who stated (in reference to United States treaty promises to the Haudenosaunee) that "great nations, like great men, should keep their word." *Tuscarora Indian Nation*, 362 U.S. at 142 (Black, J., dissenting). Mohawk lands were flooded and destroyed by the construction of the Saint Lawrence Seaway, and they have contemplated land claims as well. *See* HAUPTMAN, *supra*, at 123-50, 243.

16. *See generally* BASIC CALL, *supra* note 4; TRADITIONAL TEACHINGS, *supra* note 11. Originally a Confederacy among five nations, a sixth, the Tuscarora Nation, joined the Confederacy in the early 1700s after fleeing from war

nosaunee" means "People of the Longhouse,"[17] and in our culture this has a double meaning. Socially, our villages and towns were organized in longhouses, large communal structures shared by members of the same families or larger clans.[18] In addition, the term referred to the political Confederacy of the Five Nations of the Haudenosaunee, which was seen as a larger longhouse encompassing all the Haudenosaunee peoples.[19] The Mohawk Nation, living along the Hudson River, thus represented the "Eastern Door" of the Haudenosaunee

---

with, and settlement pressures from, whites in their homeland in the Carolinas. *See* BASIC CALL, *supra* note 4, at 104; David Landy, *Tuscarora Among the Iroquois, in* 15 HANDBOOK, *supra* note 2, at 518. Though they were a Southern people, the Tuscarora are members of the Iroquoian linguistic family. *Id.*

Each century has produced major histories by non-Indians concerning the Haudenosaunee. The eighteenth century produced Cadwallader Colden's famous THE HISTORY OF THE FIVE INDIAN NATIONS (Cornell Univ. Press reprint 1958) (Part I (1727) & Part II (1747)). The nineteenth century produced Lewis Henry Morgan's influential classic, LEAGUE OF THE IROQUOIS (Citadel Press reprint 1962) (1851) as well as Henry R. Schoolcraft's NOTES ON THE IROQUOIS (Kraus Reprint Co. 1975) (1846). This century's offerings include recent works by Francis Jennings, THE AMBIGUOUS IROQUOIS EMPIRE (1984) and Daniel K. Richter, THE ORDEAL OF THE LONGHOUSE: THE PEOPLES OF THE IROQUOIS IN THE ERA OF EUROPEAN COLONIZATION (1992), as well as Edmund Wilson's classic APOLOGIES TO THE IROQUOIS (Octagon reprint 1978) (1960) and Anthony F.C. Wallace's THE DEATH AND REBIRTH OF THE SENECA (1969). The contributions of other non-Indian historians such as Robert Venables, William Fenton, Elisabeth Tooker, and Laurence Hauptman, to name just four, have also been substantial. Major compilations include 15 HANDBOOK, *supra* note 2; IROQUOIS DIPLOMACY, *supra* note 3; AMERICAN INDIAN ENVIRONMENTS: ECOLOGICAL ISSUES IN NATIVE AMERICAN HISTORY (Christopher Vecsey & Robert W. Venables eds., 1980) [hereinafter AMERICAN INDIAN ENVIRONMENTS]; EXTENDING THE RAFTERS: INTERDISCIPLINARY APPROACHES TO IROQUOIAN STUDIES (Michael K. Foster et al. eds., 1984); BEYOND THE COVENANT CHAIN: THE IROQUOIS AND THEIR NEIGHBORS IN INDIAN NORTH AMERICA, 1600-1800 (Daniel K. Richter & James H. Merrell eds., 1987).

17. TRADITIONAL TEACHINGS, *supra* note 11, at 31 (offering alternative English spelling "Hotinonshonni"); BASIC CALL, *supra* note 4, at 66 (offering translation as "people who build").

18. A discussion can be found in William Fenton, *Northern Iroquoian Culture Patterns, in* 15 HANDBOOK, *supra* note 2, at 296.

19. "Since the Haudenosaunee call themselves the People of the Longhouse," the "first and most important principle [is] that under the law all of the people of the [separate] nations were one people." BASIC CALL, *supra* note 4, at 13. Thus, "the country of the Haudenosaunee was itself a Longhouse, with the sky as its roof and the earth as its floor." *Id.*

Longhouse, and the Seneca Nation, living by Lake Erie, represented the "Western Door." The Onondaga Nation lived in the center of the Confederacy, and thus had the responsibility of keeping the "Central Fire" of the Haudenosaunee.[20]

There was a time in our history when the peoples of the Haudenosaunee were not united under one longhouse, and they fought bitterly against one another. There was so much warfare between and within our nations that it threatened the very existence of us all.[21] One day a man came. It is told that he was of a virgin birth, and that he came in a stone canoe, representing a supernatural quality and power.[22] Today he is known as the Peacemaker.[23] The Peacemaker brought a message to the Haudenosaunee, a message of "peace, right-

---

20. *See* TRADITIONAL TEACHINGS, *supra* note 11, at 33 (citing provisions of the Great Law of Peace); JENNINGS, *supra* note 4, at 34-35.

21. *See* TRADITIONAL TEACHINGS, *supra* note 11, at 18; BASIC CALL, *supra* note 4, at 1, 9; JENNINGS, *supra* note 4, at 39-40.

22. TRADITIONAL TEACHINGS, *supra* note 11, at 17-18.

23. Though his name is often rendered in non-Indian anthropological records in the Iroquois tongue, Haudenosaunee people only speak his full name on sacred occasions. Otherwise he is referred to as the Peacemaker. In our oral traditions there are certain times when the full and complete story, which takes several days to recite, is told.

Various versions of the story of the Peacemaker exist in the English language. For those rendered by Haudenosaunee people, see TRADITIONAL TEACHINGS, *supra* note 11, at 17; BASIC CALL, *supra* note 4, at 9; and KNOWLEDGE OF THE ELDERS: THE IROQUOIS CONDOLENCE CANE TRADITION (Northeast Indian Quarterly 1991) (As told by Jacob Thomas, Snipe Clan Chief of the Cayuga Nation). Perhaps the most authoritative is the so-called "Gibson Version" originally dictated in the Onondaga language by Chief John Arthur Gibson in 1912 and recently reworked and republished in both the English and Onondaga languages. CONCERNING THE LEAGUE: THE IROQUOIS LEAGUE TRADITION AS DICTATED IN ONONDAGA BY JOHN ARTHUR GIBSON, Memoir 9, Algonquian and Iroquoian Linguistics (Hanni Woodbury et al. trans., based on A.A. Goldenweiser's manuscript, 1992) (Fletcher Argue Building, 28 Trueman Walk, Winnipeg, Manitoba, R3T 2N2 Canada) [hereinafter GIBSON VERSION]. Other English versions include PAUL A. WALLACE, THE WHITE ROOTS OF PEACE (Chauncy Press 1986) (1946) and Arthur C. Parker, *The Constitution of the Five Nations* [hereinafter PARKER VERSION], *in* PARKER ON THE IROQUOIS (William N. Fenton ed., 1968). Bibliographic essays on the various written versions of the Peacemaker story and the Great Law of Peace, both in Haudenosaunee tongues and in English, can be found in the *Introduction* to the GIBSON VERSION, *supra*, at lv-lxi, in Fenton's *Introduction* to PARKER ON THE IROQUOIS, *supra*, at 38-47, and in Wallace's *Acknowledgements* in his WHITE ROOTS OF PEACE, *supra*, at vii-ix. *See also* William N. Fenton, *The Lore of the Longhouse: Myth, Ritual and Red Power*, 48 ANTHRO. Q. 131 (1975).

eousness, and power."[24] With this message, the Peacemaker, with the help of Hiawatha,[25] planted among the warring Haudenosaunee nations a vision of unity and cooperation,[26] and the idea that reason, what we refer to today as the "power of the good mind," should replace war.[27] Thus, the Haudenosaunee Confederacy was established many centuries ago.[28] It was the beginning of a still existing union of nations founded in peace for the mutual benefit of one another, so that the "power of the good mind" will prevail.[29]

---

24. TRADITIONAL TEACHINGS, *supra* note 11, at 18; BASIC CALL, *supra* note 4, at 10-12 (translating ideas as "Power, Reason and Righteousness.").

25. *See* TRADITIONAL TEACHINGS, *supra* note 11, at 22-28. The poet Longfellow mistakenly made Hiawatha a Chippewa (more correctly, Ojibwa) in his famous 1855 "Song of Hiawatha." According to some traditions, the Peacemaker had asked for the help of Hiawatha in relating his message because he had a speech impediment. *See* WALLACE, *supra* note 23, at 4.

26. The Peacemaker also specifically planted a Great Tree of Peace over a hole in the earth into which the Haudenosaunee weapons of war had been cast into an underground river. Thus, the weapons may never be retrieved. *See* WALLACE, *supra* note 23, at 7-9. This is the origin of the phrase "to bury the hatchet." The roots of the Great Tree of Peace reach to the four cardinal directions and thus extend the peace of the Haudenosaunee to all mankind, so that other peoples might join with the Haudenosaunee beneath the branches of the tree and have the protections of the Great Law of Peace. *Id.* at 8-9. An eagle is perched at the top of the tree to warn the Haudenosaunee of threats to the Great Peace. *Id.* at 9. *See generally* TRADITIONAL TEACHINGS, *supra* note 11, at 31-32. A painting of the Great Tree of Peace, though inappropriately captioned with the true name of the Peacemaker, can be found in Oren Lyons, *The American Indian in the Past, in* EXILED IN THE LAND OF THE FREE 13, 15 (1992).

27. Reason is thus the "power" of which the Peacemaker spoke, as opposed to military or other power. However, if reason in the pursuit of righteousness was to recommend the use of force, as in a case of affirmative peacekeeping or deterrence of evil, military force could be justified. The Great Law of Peace is a pragmatic, natural law, not an artificially pacifist one. *See* BASIC CALL, *supra* note 4, at 11-12.

28. Contemporary scholars date the founding of the Confederacy, sometimes called the "League of the Iroquois," to be between 1400 and 1600 A.D. *See* JENNINGS, *supra* note 4, at 39; Tooker, *supra* note 4, at 418-22.

29. The Six Nations continue today as a confederacy, and there is a great deal of evidence that their example of the benefits of mutual alliance influenced the American colonies to embark on similar plans of union. *See infra* note 49. The Haudenosaunee believe that their Confederacy was the "first 'United Nations.'" BASIC CALL, *supra* note 4, at 1. The Haudenosaunee believed that the Europeans, like other nations, could join the Confederacy if only they were to embrace the Great Law.

The instructions we have received from the Creator and the message of the Peacemaker are today referred to as the Great Law of Peace of the Haudenosaunee.[30] The Great Law is something that many of our people still endeavor to follow, and though many of our traditions and much of our culture have been eroded or lost,[31] there is a tremendous effort today to keep the Great Law principles, language, and ceremonies intact. Because of the tremendous disruption of the last two centuries,[32] there is sometimes confusion about what the Great Law means to each nation and individual. Ultimately, however, all Haudenosaunee people believe that the principles of the Great Law should prevail in Haudenosaunee country, keeping the peace for the mutual benefit and protection of all our people. Our governments are founded upon the

30. The "Gayaneshakgowa." English renderings of the Great Law are usually found along with the renderings of the story of the Peacemaker. The most authoritative is the GIBSON VERSION, *supra* note 23. *See also* TRADITIONAL TEACHINGS, *supra* note 11; WALLACE, *supra* note 23; PARKER VERSION, *supra* note 23. *See generally* the bibliographic essays cited in WALLACE, *supra* note 23, at vii-ix.

31. In 1994, there are only two living Haudenosaunee persons who can perform the "Condolence Ceremony" by which a chief is installed. The ceremony is called a "Condolence" because the nation which has lost a chief is consoled by the other nations of the Haudenosaunee for their loss, and a new chief is raised up. *See* GIBSON VERSION, *supra* note 23; *see also* TRADITIONAL TEACHINGS, *supra* note 11, at 42.

32. The original five, and later six nations, are today widely dispersed. My people, the Oneida Indian Nation occupy lands in New York State and continue as a traditional government and matrilineal society. There is a large group of non-traditional and separately recognized Oneidas in Wisconsin, and there are also Oneidas in Canada. *See supra* note 3. The Mohawks occupy several distinct parcels of their aboriginal land, some in Canada, some in New York, and one straddling the border (at least from the United States and Canadian perspectives). The Seneca occupy four distinct territories in New York, and the Tuscaroras live on territory purchased from the Senecas. The Onondaga retain a reservation in New York, and the Cayuga are landless. Some Cayugas live among the Seneca in New York, and other Senecas and Cayugas share a reservation in Oklahoma. There are Mohawks, Cayugas, Senecas, Tuscaroras, and Onondagas in Canada also. In total, the "six separate nations . . . occupy fifteen separate settlements today." Laurence M. Hauptman, *Iroquois Land Issues: At Odds with the "Family of New York," in* IROQUOIS LAND CLAIMS 67, 68 (Christopher Vecsey & William A. Starna eds., 1988). *See generally* HAUPTMAN, *supra* note 15.

Great Law and our meetings and public discourse are guided by it.[33]

In brief,[34] the Great Law prescribes that Haudenosaunee nations are to be matrilineal and divided into clan families.[35] Women in the clans, the "Clan Mothers," nominate the leaders of the nation from among the men.[36] Each clan can nominate a certain number of leaders, who must be approved by a consensus of their clan and then by a consensus of all the clans in the nation. This requirement of consensus is also mandated

---

33. Though for some of the present day Haudenosaunee descendants this is less true. The Oneida Tribe of Wisconsin, Inc., has departed from matrilinearity and has chosen a corporate elective form of government under the Indian Reorganization Act, ch. 576, 48 Stat. 984 (1934) (codified as amended at 25 U.S.C.A. secs. 461-479 (West 1993)). *See* LAURENCE M. HAUPTMAN, THE IROQUOIS AND THE NEW DEAL 70-71 (1981); Campisi, *supra* note 3, at 487. "The leaders of the New York Indians who were willing to remove to Wisconsin were partially assimilated, with white education and values, as were many of their followers." Robert W. Venables, *Victim versus Victim: The Irony of the New York Indians' Removal to Wisconsin, in* AMERICAN INDIAN ENVIRONMENTS, *supra* note 16, at 140. "There was no Longhouse . . . at Oneida, Wisconsin. . . . The Oneidas who immigrated to Wisconsin brought with them little of their traditional political structure." Campisi, *supra* note 3, at 486.

One group of Senecas, the Tonawanda Band of Seneca Indians, has retained a traditional government, but the other, the Seneca Nation of Indians, which controls the Allegany, Cattaraugus, and Oil Springs reservations, broke with the Haudenosaunee Confederacy in 1848 to form a constitutional representative democracy. *See* Robert B. Porter, *The Jurisdictional Relationship Between the Iroquois and New York State: An Analysis of 25 U.S.C. secs. 232, 233*, 27 HARV. J. ON LEGIS. 497, 497 n.1 (1990); Thomas S. Abler & Elisabeth Tooker, *Seneca, in* 15 HANDBOOK, *supra* note 2, at 505, 511-15. There is also conflict between traditional and elective factions in Mohawk country. *See generally* RICK HORNUNG, ONE NATION UNDER THE GUN (1991); William A. Starna, *The Repeal of Article 8: Law, Government, and Cultural Politics at Akwesasne*, 18 AM. INDIAN L. REV. 297 (1993).

34. A proper recitation of the Great Law would not be in English, and would take several days.

35. TRADITIONAL TEACHINGS, *supra* note 11, at 49 (citing Great Law); Fenton, *supra* note 18, at 309-14; Renee Jacobs, *Iroquois Great Law of Peace and the United States Constitution: How the Founding Fathers Ignored the Clan Mothers*, 16 AM. INDIAN L. REV. 497 (1991).

36. This is because it was a woman who was the first to embrace the Peacemaker's message. TRADITIONAL TEACHINGS, *supra* note 11, at 18-19. For a discussion by Marilyn John, Clan Mother of the Bear Clan of our Nation, see Lorna McNeill, *Women's Role gets Positive Approach*, UTICA OBSERVER-DISPATCH, Oct. 19, 1994, at 3A.

for general political decisions by the individual nations.[37] Each nation is an equal, sovereign entity[38] which holds lands communally.[39] The Haudenosaunee nations are joined in a solemn Confederacy, which acts by unanimity among its members[40] and is accorded certain responsibility to act in international matters that affect the Confederacy as a whole.

The Great Law has a spiritual quality, and that spirituality is intertwined with the Great Law's precepts concerning the governance of the Haudenosaunee people, both as to the governments of the separate nations and as a confederacy of na-

---

37. *See generally* TRADITIONAL TEACHINGS, *supra* note 11, at 31; GIBSON VERSION, *supra* note 23.

38. "Each of the communities of the Haudenosaunee controlled its internal affairs independently of the Confederacy Council. . . . [The] communities were free to disagree with the decisions of the Confederacy Council, especially on trade issues. . . . Under this democratic system, they were free to do so." Lyons, *supra* note 26, at 39. "We are made up of Six Nations. Each of us is equal. Each of us is sovereign." Oren Lyons, *quoted in* STEVE WALL & HARRY ARDEN, WISDOMKEEPERS 69 (1990).

Early European and American observers had agreed as well. *See, e.g.*, COLDEN, *supra* note 16, at xx. ("Each Nation is an absolute Republick [sic] by its self. . . ."); SCHOOLCRAFT, *supra* note 16, at 77 ("[T]hey came together as independent tribes . . . and fell on the plan of a confederation which should produce general action, and yet leave the several members free, both in their internal polity, and in the exercise of most of their co-tribal powers. . . . Each tribe . . . was still governed by its own chiefs, civil and military."); MORGAN, *supra* note 16, at 77 ("The crowning feature of the League, as a political structure, was the perfect independence and individuality of the national sovereignties . . . .").

39. *See* BASIC CALL, *supra* note 4, at 13-14; JENNINGS, *supra* note 4, at 325. Such communal land holding offended the European mind and prompted the use of utilitarian and individualistic legal theories to dispossess the Indians. *See, e.g.*, Johnson v. McIntosh, 21 U.S. (8 Wheat.) 543 (1823); Robert A. Williams, Jr., *Jefferson, the Norman Yoke, and American Indian Lands*, 29 ARIZ. L. REV. 165 (1987); Howard R. Berman, *The Concept of Aboriginal Rights in the Early Legal History of the United States*, 27 BUFF. L. REV. 637 (1978). Previously the English had used such theories to justify dispossession of the indigenous peoples of Ireland. *See* Nicholas P. Canny, *The Ideology of English Colonization: From Ireland to America*, 30 WM. & MARY Q. 575 (1973). On the religious underpinnings of the ideology of colonization of Indian lands, see Steven T. Newcomb, *The Evidence of Christian Nationalism in Federal Indian Law: The Doctrine of Discovery*, Johnson v. M'Intosh, *and Plenary Power*, 20 N.Y.U. REV. L. & SOC. CHANGE 303 (1993).

40. *See* GIBSON VERSION, *supra* note 23, at 251-77; SHARON O'BRIEN, AMERICAN INDIAN TRIBAL GOVERNMENTS 19-20 (1989).

tions.[41] The rules of our politics and our laws are thus believed to be actual instructions from the Creator, and it is therefore inappropriate for men or women to change them.[42] We think of the entire world in this fashion, in the sense that laws were established by the Creator for all things, for birds, for animals, even for the sun and the moon, the water and the air. All the parts of the world have received direction from the Creator, and as long as those directions are followed, the world will progress and live in harmony. It is no more appropriate for men and women to depart from the Great Law of Peace than it would be for birds not to sing or the sun not to shed its light.

It is for this reason that at every meeting held in one of the individual nations, and at any time when all of the nations gather together, we have a ceremony of beginning. It is called an Opening, and it is a thanksgiving address to the Creator for the world, for the plants and other living things in it, for the things that nourish us, and for the Great Law.[43] By giving such thanks before undertaking the business of governing ourselves, we are reminded that we are here on earth as only a part of Creation, and not superior to any other part. We are

---

41. This spiritual mandate in governing, which can also be found in the governments of many Indian nations not related to the Haudenosaunee, is the reason that the 1968 Indian Civil Rights Act, 25 U.S.C.A. sec. 1302 (West 1993), which statutorily imposed the Bill of Rights upon Indian nations in their actions as governments, nonetheless contained some slight forbearance by deliberately not including the Establishment Clause. *Compare* 25 U.S.C.A. sec. 1302(1) (West 1993) *with* U.S. CONST. amend. I.

42. Such thinking is at the core of "natural law" theory in Western law. *See* BASIC CALL, *supra* note 4, at 12. *See, e.g.*, THE DECLARATION OF INDEPENDENCE (U.S. 1776) ("We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights. . . ."). The Great Law does provide for an amendment process, which, in keeping with the Longhouse metaphor, is referred to as "adding to the rafters." *See* TRADITIONAL TEACHINGS, *supra* note 11, at 39 (citing Great Law); PARKER VERSION, *supra* note 23, at 34.

43. An English translation of an Opening, titled "Thanksgiving Speech," is found in the book WISDOMKEEPERS, *supra* note 38, at 110. The Opening was given in the Onondaga language by Chief Irving Powless, Sr., of the Onondaga Nation, on the 200th anniversary of the signing of the 1784 Treaty of Fort Stanwix, 7 Stat. 15, between the Haudenosaunee and the American colonists. Though the translation into English is credited to the chief's son, Irving Powless, Jr., this is curious, since to my knowledge the chief's son does not speak any Haudenosaunee language.

thus reminded of our personal mortality and the consequent need to look forward to the generations as yet unborn for the mutual benefit and survival of our peoples.[44] We are to follow our instructions because this is what the Creator has instructed us to do; as long as we follow the precepts of the Great Law, the Creator will stand by us and guide us to Him.

The Confederacy prospered for several centuries after its founding,[45] holding the balance of power amongst the competing Dutch, French, English, and American colonists due to its combined diplomatic skill and military might.[46] The Dutch and then their English successors forged a "Covenant Chain" with the Haudenosaunee,[47] a solemn alliance based on mutual respect, defense and trade.[48] The alliance of the Haudenosaunee was desperately sought, and our political system was

---

44. Haudenosaunee leaders are enjoined to make decisions with the "Seventh Generation" yet to come in mind. *See* TRADITIONAL TEACHINGS, *supra* note 11, at 40; WALLACE, *supra* note 23, at 43.

45. *See generally* Jennings, *supra* note 4; RICHTER, *supra* note 16; BEYOND THE COVENANT CHAIN, *supra* note 16.

46. As stated by one author, if the Haudenosaunee had not allied with the British, "people in the United States might speak French today." STEPHEN L. PEVAR, THE RIGHTS OF INDIANS AND TRIBES 3 (2d ed. 1992). *See also* JENNINGS, *supra* note 4, at 43-44.

47. The relationship was also symbolized in traditional Haudenosaunee manner by a wampum belt of purple and white quahog shells. The wampum symbolizing the European/Haudenosaunee relationship was called the "Gus-Wen-Tah" or "Two-Row Wampum." As explained by Tehanetorens:

> This belt symbolizes the agreement and conditions under which the Iroquois welcomed the white peoples to this land . . . . These two rows symbolize two paths or two vessels, traveling down the same river together. . . . We shall each travel the river together, side by side, but in our own boat. Neither of us will make compulsary [sic] law or interfere in the internal affairs of the other. Neither of us will try to steer the other's vessel.

TEHANETORENS, WAMPUM BELTS 10 (n.d., Six Nations Indian Museum, Onchiota, New York 12968). *See also* Robert A. Williams, Jr., *The Algebra of Federal Indian Law: The Hard Trail of Decolonizing and Americanizing the White Man's Indian Law*, 1986 WISC. L. REV. 219, 291-99. On Haudenosaunee wampum traditions generally, see the articles collected in the Spring 1990 issue of the NORTHEAST INDIAN QUARTERLY (Vol. 7, No. 1).

48. A famous example of the respect accorded the Europeans by the Haudenosaunee, and of the occasional instances when such respect was not reciprocated, is Red Jacket's (Seneca) 1828 oration to a Reverend Cram. Cram "had asked for approval to spread his faith among [the Haudenosaunee]. When the meeting was over, Cram refused to shake the Indians' hands. There could be no fellowship between the religion of God and the

looked upon admiringly by men such as Thomas Jefferson and Benjamin Franklin.[49] It was not until the end of the eight-

works of the devil, he announced." NATIVE AMERICAN TESTIMONY 57 (Peter Nabokov ed., 1991). Red Jacket replied:

> Brother!- The Great Spirit has made us all. But he has made a great difference between his white and red children. He has given us a different complexion and different customs . . .[W]hy may we not conclude that he has given us a different religion, according to our understanding? The Great Spirit does right. He knows what is best for his children. We are satisfied.
>
> . . . .
>
> Brother!- We are told that you have been preaching to white people in this place. These people are our neighbors. We are acquainted with them. We will wait a little while, and see what effect your preaching has upon them. If we find it does them good and makes them honest and less disposed to cheat Indians, we will then consider again what you have said.

Reprinted in GREAT DOCUMENTS IN AMERICAN INDIAN HISTORY 159 (Wayne Moquin & Charles van Doren eds., 1973). Versions also appear in NATIVE AMERICAN TESTIMONY, *supra*, at 57; THE WAY: AN ANTHOLOGY OF AMERICAN INDIAN LITERATURE 165 (Shirley H. Witt & Stan Steiner eds., 1972).

49. There has been a great deal of debate concerning the extent of the influence of the Haudenosaunee Confederacy on the American experience and on American forms of government. *See generally* Felix S. Cohen, *Americanizing the White Man*, 21 AM. SCHOLAR 177 (1952); JACK WEATHERFORD, INDIAN GIVERS: HOW INDIANS OF THE AMERICAS TRANSFORMED THE WORLD (1988); JACK WEATHERFORD, NATIVE ROOTS: HOW THE INDIANS ENRICHED AMERICA (1991). It is certainly true that the Framers, in trading and treating with the Haudenosaunee, became familiar with Haudenosaunee governance concepts and respected and admired the united diplomatic and military front presented by the Six Nations. Benjamin Franklin wrote in 1751 that:

> It would be a very strange thing if Six Nations of Ignorant Savages could be capable of forming a Scheme for such an Union and be able to execute it in such a manner, as that it has subsisted Ages, and appears indissoluble, and yet a like union should be impracticable for ten or a dozen English colonies.

Letter from Benjamin Franklin to James Parker (Mar. 20, 1751), *quoted in* BRUCE E. JOHANSEN, FORGOTTEN FOUNDERS: HOW THE AMERICAN INDIAN HELPED SHAPE DEMOCRACY 66 (1982). The strength of the confederate form had been demonstrated to the colonials by Haudenosaunee leader Canassatego at the Treaty of Lancaster in 1744. Canassatego held up one arrow and then broke it easily; he then bundled twelve together, and could not break them. Colonial negotiators were to quote this advice back to the Haudenosaunee nearly 30 years later during the Revolution, when they were seeking the alliance of the Haudenosaunee against the British. *Id.* at 75-76.

Broader claims that the U.S. Constitution is directly based on the Great Law of Peace are somewhat harder to prove. For various sides of the debate, see Gregory Schaaf, *From the Great Law of Peace to the Constitution of the United*

eenth century that a crisis came to the unity of the Confederacy. That crisis was the American Revolution, and during the war the Oneida people decided, as an independent sovereign nation, to ally with the rebelling colonists,[50] while members of the other Six Nations allied with the British.[51] The disruption of the unity of the Confederacy presented a grave question for all the Haudenosaunee people,[52] but we Oneidas are very

---

States: A Revision of America's Democratic Roots, 14 AM. INDIAN L. REV. 323 (1989); Eric M. Jensen, *The Imaginary Connection Between the Great Law of Peace and the United States' Constitution: A Reply to Professor Schaaf*, 15 AM. INDIAN L. REV. 295 (1990); Robert Miller, *American Indian Influence on the United States Constitution and its Framers*, 18 AM. INDIAN L. REV. 133 (1993); Elisabeth Tooker, *The United States Constitution and the Iroquois League*, 35 ETHNOHISTORY 305 (1988). Though not dispositive, Congress in 1987 passed a concurrent resolution recognizing Haudenosaunee contributions to American democracy. S. Con. Res. 76, 100th Cong., 1st Sess., 133 CONG. REC. 12,214 (1987); *see also* Hearing on S. Con. Res. 76, S. Hrg. 100-610 (Dec. 21, 1987).

Interestingly, the Haudenosaunee are also credited with having a major influence upon the design of the Constitution's greatest competitor: The Communist Manifesto. Karl Marx and Freidrich Engels closely studied Lewis Henry Morgan's classic work on the Haudenosaunee, and Engels's major work, ORIGIN OF THE FAMILY, PRIVATE PROPERTY AND THE STATE, was subtitled "In Light of the Researches of Lewis H. Morgan." *See* Miller, *supra* at 141 n.59 (listing sources).

50. *See generally* BARBARA GRAYMONT, THE IROQUOIS IN THE AMERICAN REVOLUTION (1972). The Tuscarora people also joined with the Oneidas in allying with Americans, as they had taken refuge in Oneida territory after their flight from the South.

51. As stated by Oren Lyons, "people who argue that the Confederacy ceased to exist [because the other Haudenosaunee nations did not join with the Oneidas and Tuscaroras on the side of liberty] fail to understand the non-coercive nature of the Confederacy vis-a-vis its members." Lyons, *supra* note 26, at 39. Because "the Confederacy Council had no coercive power whatsoever over its people, . . . [individual Haudenosaunee] communities were free to disagree with the decisions of the Confederacy Council." *Id.*

52. According to nineteenth century scholar Lewis Henry Morgan:

> At the beginning of the American Revolution, the Iroquois could not agree in council to make war as a confederacy upon our confederacy [the colonies]. A number of Oneida sachems [chiefs] firmly resisted the assumption of hostilities, and thus defeated the measure as an act of the League [Confederacy], for the want of unanimity. Some of the nations, however, especially the Mohawks [under the leadership of the notorious Joseph Brant], were so interlinked with the British, that neutrality was impossible. Under this pressure of circumstances, it was resolved in council to suspend the rule, and leave each nation to engage in the war upon its own responsibility.

proud of our alliance, believing that we stood on the side of the freedom and liberty that had always been practiced in our society.[53] We fought in critical battles alongside the colonists,[54] delivered food to the starving troops at Valley Forge[55]

MORGAN, *supra* note 16, at 113-14. According to Elisabeth Tooker, the Haudenosaunee "covered the Council Fire of the League in 1777, leaving each tribe to pursue its own course of action during the war." Tooker, *supra* note 4, at 435. *See also* GRAYMONT, *supra* note 50, at 113.

53. As written in 1778 by James Duane, a federal treaty agent, to Governor George Clinton of New York, regarding a meeting with the Oneida Nation:

> An Oneida Chief answered for that Nation and the Tuscarorers [sic] with a Spirit and Dignity which would not have disgraced a Roman Senator. He . . . declared the *unalterable* Resolution of the Oneidas & Tuscarorers [sic], at every hazard, to hold fast the Covenant Chain with the United States, and with them to be buried in the same Grave; or to enjoy the *Fruites* [sic] of Victory and Peace. . . . He concluded with a solemn assurance that these two nations would at all Times be ready to cooperate with Us against all our Enemies.

Letter from James Duane to Governor George Clinton, March 13, 1778, Clinton Papers, Library of Congress, Manuscript section, *reprinted in* 4 THE ONEIDA INDIAN NATION, no. 3, March 1993, at 3 (Official publication of the Oneida Indian Nation of New York).

54. One of the Oneidas' greatest contributions to the colonists' cause was their help in the decisive battle of Oriskany, "often described as the bloodiest battle of the Revolution." David M. Ellis, *Military Developments During Colonial and Revolutionary Era, in* 1 STUDY OF THE ONEIDA INDIAN LAND CLAIMS: ONEIDA INDIANS: A COMPILATION OF HISTORICAL READINGS ON THE ONEIDAS 310, 314 (Ames Brown ed., n.d.) (American Indian Program, Cornell University). Under the leadership of General Herkimer, the Oneidas and the colonial militia were able to stop the eastward march from the Great Lakes of a British expeditionary force under General St. Leger and Mohawk leader Joseph Brant. Several Oneidas distinguished themselves in the battle, including Henry Cornelius, Blatcop, Thomas Spencer, Honyery Doxtater (Thawengarakwen or Tewahongarahkon), his brother Honyost, and his wife, Dolly Cobus, the "Oneida Molly Pitcher." *Id.* at 311; Barbara Graymont, *The Oneidas and the American Revolution, in* THE ONEIDA INDIAN EXPERIENCE: TWO PERSPECTIVES 31, 36 (Jack Campisi & Laurence M. Hauptman eds., 1988). Had St. Leger been able to move east and link with General Burgoyne, who was marching south from Canada, the British would have established a line across New York from east to west and then down the Hudson to New York City, effectively dividing the colonies in half and isolating Boston from Philadelphia and Virginia. Ellis, *supra*, at 311. Burgoyne lost the Battle of Saratoga shortly after St. Leger's retreat, a decisive loss which convinced France to back the American cause. "The repulse of St. Leger . . . was a necessary link in the chain of events, which brought about freedom from invasion and led to eventual [American] independence." Ellis, *supra* at 317; Graymont,

and in the end were victorious in that struggle.[56] As a result of our alliance, the Oneida Nation entered into treaties with the United States that gave special protection to our lands, superior to that accorded to the lands of the other Six Nations.[57]

---

supra, at 37. For other views of the battle, see GRAYMONT, *supra* note 50, at 129-56; Cassie Evans, *On History's Bloody Trail*, ROME SUNDAY SENTINEL, Aug. 7, 1994, at 3. On recent discoveries concerning the battle, see Joe Dowd, *Battlefield Revelations*, UTICA SUNDAY OBSERVER-DISPATCH, Aug. 15, 1993, at 6B.

55. *See* Graymont, *supra* note 54, at 37-38; Campisi, *supra* note 3, at 483. A related story is that of the "Polly Cooper shawl." Polly Cooper was an Oneida woman who accompanied the men to Valley Forge, where she taught the colonial soldiers ways to prepare the corn the Oneidas had brought. She refused any compensation for her work, and out of gratitude Martha Washington took Polly to Philadelphia after the Revolution and bought her a shawl, which remains in the hands of her descendants. *See* Gloria Halbritter, *Oneida Traditions, in* THE ONEIDA INDIAN EXPERIENCE, *supra* note 54, at 145, 145; Guy C. Hulbert, *Oneida will display their gift from Martha Washington*, ONEIDA DAILY DISPATCH, Feb. 22, 1994, at 1.

56. The Oneidas and the other Haudenosaunee would later ally with the United States in this century. Since Indians were not citizens in 1916 when the United States entered World War I, there was a real question as to whether they could be drafted. The Haudenosaunee rendered the issue moot by independently declaring war on Germany and then deputizing their people to serve in the armies of the United States. *See* VINE DELORIA, JR., BEHIND THE TRAIL OF BROKEN TREATIES: AN INDIAN DECLARATION OF INDEPENDENCE 17-18 (1974). As with the American Revolution, the Oneida won the war. Due to their meritorious service, veterans were granted United States citizenship upon request in 1919. Act of November 6, 1919, ch. 95, 41 Stat. 350. As Senator Daniel Inouye has noted, American Indians have historically served in the United States armed forces "in numbers proportionally far greater than any other ethnic group in the United States." Sen. Daniel K. Inouye, *Preface, in* EXILED IN THE LAND OF THE FREE, *supra* note 26, at ix, ix.

57. *See* Treaty Between the United States and the Oneida, Tuscarora, and Stockbridge Indians, Dwelling in the Country of the Oneidas, Dec. 2, 1794, 7 Stat. 47, 48 ("Whereas, in the late war, . . . the Oneida . . . adhered faithfully to the United States, the United States . . . acknowledged their obligations to these faithful friends, and promised to reward them."); Treaty With the Six Nations (Treaty of Canandaigua), Nov. 11, 1794, 7 Stat. 44, 45 ("The United States acknowledges the lands reserved to the Oneida . . . Nation[ ], . . . and called their reservation[ ], to be their property; and the United States will never claim the same, nor disturb them . . . in the free use and enjoyment, thereof: but the said reservations shall remain theirs, until they choose to sell the same to the people of the United States."); Treaty of Fort Harmar, Jan. 9, 1789, 7 Stat. 33, 34 (Oneidas were "again secured and confirmed in the possesssion of their . . . lands"); Treaty of Fort Stanwix, Oct. 22, 1784, 7 Stat. 15, 16 ("The Oneida and Tuscarora shall be secure in the possession of

Today the Oneidas continue to hold to the promises made to them in their treaties with the federal government.[58] In addition, the guarantees given to us as victorious allies to protect our lands form the basis of our two victories in the Supreme Court in our claims for the return of our homeland.[59]

---

the lands on which they are settled."). Contemporary Congressional resolutions were to the same effect:

> We [the United States] have experienced your [Oneida] love, strong as an oak, and your fidelity, unchangeable as truth. You have kept fast hold of the ancient covenant-chain, and preserved it free from rust and decay, and bright as silver. Like brave men, for glory you despised danger: you stood forth, in the cause of your friends, and ventured your lives in our battles. While the sun and moon contrive to give light to the world, we shall love and respect you. As our trusty friends, we shall protect you; and shall at all times consider your welfare as our own.

9 Journals of the Continental Congress, 1774-1789, at 996 (Dec. 1777).

To the other Haudenosaunee nations which had allied with the British, the victorious United States "dictated a series of harsh terms. As for the Oneidas, they were treated as allies, their right to undisturbed use of their land guaranteed." Jack Campisi, *The Oneida Treaty Period, in* THE ONEIDA INDIAN EXPERIENCE, *supra* note 54, at 48, 48. *See also* REGINALD HORSMAN, EXPANSION AND AMERICAN INDIAN POLICY, 1783-1812, at 19-20 (1967).

58. Among the promises to the Oneida Nation in the 1794 Treaty of Canandaigua was a payment of $4,500 "forever" for the purchase of needful things. Treaty of Canandaigua, *supra* note 57, 7 Stat. at 44. In the modern era, since the sum has not grown with inflation, the United States has fulfilled its obligation by annually purchasing muslin cloth for the Oneida people. Francis X. Clines, *Peace Prevails In an Offering of Simple Cloth*, N.Y. TIMES, Sept. 25, 1994. Our people come each year to our Territory to collect a small piece of the so-called "treaty cloth." As my grandmother used to say: "Even if this cloth gets as small as the size of a postage stamp, you still go and collect it. This means the treaty the government made with us is still in effect." *See* THE ONEIDA INDIAN NATION, March 1992, at 9 (Official publication of the Oneida Indian Nation of New York).

59. For the various cases involving our land claims, see United States v. Boylan, 256 F. 468 (N.D.N.Y. 1919), *aff'd*, 265 F. 165 (2d Cir. 1920), *app. dismissed*, 257 U.S. 614 (1921) (*Boylan*) (upholding 32 acre claim); County of Oneida v. Oneida Indian Nation of N.Y., 414 U.S. 661 (1974) (*Oneida I*); 470 U.S. 226 (1985) (*Oneida II*) (upholding claims arising from post-1790 treaties); Oneida Indian Nation of N.Y. v. New York, 860 F.2d 1145 (2d Cir. 1988), *cert. denied*, 493 U.S. 871 (1989) (*Oneida III*) (denying claims arising from pre-1790 claims). 1790 is a critical date because in that year Congress passed the Trade and Intercourse Act, ch. 33, 1 Stat. 137, codified at 25 U.S.C.A. sec. 177 (West 1983), which forbids state purchases of Indian lands without federal consent. Since nearly all of the New York State treaties taking our land were made without federal consent, we have been successful in claims arising after 1790.

These land claims arose immediately after the Revolution when the solemn promises of the federal government were broken by the land hungry settlers of New York, led by Governor George Clinton. In league with the financier Robert Morris, the notorious Ogden Land Company, the state of Massachusetts, which claimed rights to western New York lands under its colonial charter, and revolutionary war veterans seeking land as compensation for their services,[60] Governor Clinton deliberately sabotaged federal efforts to fulfill the treaty guarantees and undertook to take Oneida lands by "treaties" with the State of New York.[61] The size of the Oneida home-

---

We withdrew our claims from the Indian Claims Commission in 1982 when it became clear that the Commission was not empowered to return land but only to give monetary judgments, and that such monetary judgments would bar any claims for return of land. The Indian Claims Commission had, however, made numerous findings of fact by then. *See* Oneida Indian Nation of N.Y. v. United States, 20 Ind. Cl. Comm'n 337 (1969), *further proceeding*, 26 Ind. Cl. Comm'n 583 (1971), *further proceeding*, 37 Ind. Cl. Comm'n 522 (1976), *aff'd*, 576 F.2d 870 (Ct. Cl. 1978) (addressing pre-1790 claims); 26 Ind. Cl. Comm'n 138 (1971), *aff'd in part, remanded in part*, 477 F.2d 939 (Ct. Cl. 1973), *on remand*, 43 Ind. Cl. Comm'n 373 (1978) (addressing post-1790 claims).

Much has been written about our claims. *See, e.g.*, GEORGE C. SHATTUCK, THE ONEIDA LAND CLAIMS: A LEGAL HISTORY (1991) (written by one of our former lawyers); IROQUOIS LAND CLAIMS, *supra* note 32; HAUPTMAN, *supra* note 15, at 179-203; John Barry, Oneida Indian Nation v. County of Oneida: *Tribal Rights of Action and the Indian Trade and Intercourse Act*, 84 COLUM. L. REV. 1852 (1984); William A. Starna, *Indian Land Claims in New York State: A Policy Analysis*, SPECIAL REPORT no. 21 (Nelson A. Rockefeller Institute of Government, State University of N.Y., Fall 1987); Ward Churchill, *The Earth is Our Mother: Struggles for American Indian Land and Liberation in the Contemporary United States, in* THE STATE OF NATIVE AMERICA: GENOCIDE, COLONIZATION, AND RESISTANCE 139, 152-62 (M. Annette Jaimes ed., 1992) (including maps).

60. *See* HELEN M. UPTON, THE EVERETT REPORT IN HISTORICAL PERSPECTIVE: THE INDIANS OF NEW YORK 17-49 (1980); Campisi, *supra* note 57, at 48.

61. *See Oneida II*, 470 U.S. at 232; *Oneida*, 434 F. Supp. 527, 534-36 (N.D.N.Y. 1977); *Oneida*, 26 Ind. Cl. Comm'n 138 (1971). *See also* HORSMAN, *supra* note 57, at 17-21. The many illegal New York State treaties are set forth in the so-called "Whipple Report." REPORT OF THE SPECIAL COMMITTEE TO INVESTIGATE THE INDIAN PROBLEM OF THE STATE OF NEW YORK, APPOINTED BY THE ASSEMBLY OF 1888 (1889) [hereinafter Whipple Report]. Unfortunately for the Oneida today, of the 25 New York state "treaties" taking our land, the two treaties which took the greatest tracts of our homeland, the 1785 Treaty of Fort Herkimer, see Whipple Report, *supra* at 234-36, and the 1788 Treaty of Fort Schuyler, see Whipple Report, *supra* at 237-41, were concluded prior to the ratification of the U.S. Constitution in 1789, the passage of the Trade

land gradually diminished, and in the 1830s a large number of individual Oneidas sold their land and relocated to Wisconsin,[62] while others went to Canada.[63] Many refused to sell and remained in New York with the Oneida Nation.[64] The six million acre ancestral homeland of our people[65] was reduced to a present day holding of only thirty-two acres.[66]

II. CONFLICT

Today my people must constantly determine and decide the question of their existence. I do not mean this in an existential or philosophical sense, though those inquiries are implicated.[67] What I mean is the constant question posed by our simply still being here, no longer alone on Turtle Island, but within the United States, within New York State, within the County of Oneida, and within the City of Oneida.[68] We have

---

and Intercourse Act of 1790, 1 Stat. 137, and the 1794 Treaty of Canandaigua, 7 Stat. 44, all of which provided for federal authority over Indian affairs and contained federal guarantees to protect our lands. Because these state treaties were made in 1785 and 1788, respectively, the federal courts have held that the federal guarantees were inapplicable, as the central government did not have the power under the Articles of Confederation to prevent New York from concluding Indian treaties. *See Oneida III*, 860 F.2d 1145 (2d Cir. 1988), *cert. denied*, 493 U.S. 871 (1989).

62. On the sale of land by certain Oneidas and their movement westward, see Campisi, *supra* note 3, at 485-487; Venables, *supra* note 33.

On the current situation of the Oneidas of Wisconsin, see *supra* note 33 (discussing departures from matrilinearity, traditional religion and Great Law governance precepts). *See generally* THE ONEIDA INDIAN EXPERIENCE, *supra* note 54.

63. *See generally* Campisi, *supra* note 3; Surtees, *supra* note 3.

64. *See Boylan*, 256 F. 468 (N.D.N.Y. 1919), *aff'd*, 265 F. 165 (2d Cir. 1920), *app. dismissed*, 257 U.S. 614 (1921). *See also* Boylan v. George, 117 N.Y.S. 573 (App. Div. 1909).

65. *See Oneida II*, 479 U.S. at 230 ("From time immemorial . . . the Oneidas inhabited what is now central New York State. Their aboriginal land was approximately six million acres, extending from the Pennsylvania border to the St. Lawrence River, from the shores of Lake Ontario to the western foothills of the Adirondack Mountains.")

66. *See Boylan*, 265 F. 165 (2d Cir. 1920).

67. I do not raise here the basic question of racism. Suffice it to say that as a Native person and the father of six Native children, I can vouch for the existence of anti-Indian racism.

68. There are those who say that we do not exist. *See, e.g., Boylan*, 265 F. at 176 (Ward, J., dissenting) ("From that date [1849] I think that [the Oneida] tribal relation ceased to exist as a matter of law."); Boylan v. George, 117

our Territory,[69] we have our people,[70] we have our culture,[71] and we have struggled daily to maintain and to rebuild our society and to live the way we decide. But we also have an enduring struggle for independence because we live within a society and within a nation that is very powerful, whose laws claim "plenary power" over us,[72] which claims to control the little land we have left,[73] and which constantly attempts to con-

---

N.Y.S. 573 (App. Div. 1909) ("[T]he defendants herein are all decendants of those members of the Oneida Indian tribe who remained in this state after the removal of their said tribe to the state of Wisconsin; . . . they mingled with the whites, dealt with the whites, and lived among them; . . . said parties have no relations with the said Oneida tribe, nor have they for the last 40 years maintained or supported any tribal government."); Henry S. Manley, *Indian Reservation Ownership in New York*, N.Y.S. BAR. BULL., Apr. 1960, at 134. Putting aside Manley's generally sneering tone toward the rest of the Haudenosaunee, he quotes the 1950 federal census of Indians in New York, which does not contain any mention of Oneida people. *Id.* at 135 n.6. *See generally* HAUPTMAN, *supra* note 15, at 179-203 (relating the story of the Oneida Indian Nation of New York's struggle for recognition of its existence, including accounts of the work of my mother, Gloria Winder Halbritter, my grandmother, Mary Cornelius Winder, and my great-grandfather, Wilson Cornelius, in keeping alive the Oneida land claims).

69. Pursuant to *Boylan*, 265 F. 165 (2d Cir. 1920).

70. According to the 1990 Census, the Oneida Indian Nation of New York has 1,109 members.

71. *See infra* text accompanying notes 125-34 (discussing revitalization and preservation of Oneida culture).

72. Indian nations in the United States today are subject to the "plenary power" of the federal government, Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians, 471 U.S. 845, 851 (1985), pursuant to which their sovereignty exists "only at the sufferance of Congress and is subject to complete defeasance," United States v. Wheeler, 435 U.S. 313, 323 (1978), and their lands are held subject to the " 'paramount power' " of Congress. United States v. Sioux Nation, 448 U.S. 371, 408 (1980) (quoting Lone Wolf v. Hitchcock, 187 U.S. 553, 565 (1903)). *See generally* Nell Jessup Newton, *Federal Power Over Indians: Its Sources, Scope and Limitations*, 132 U. PA. L. REV. 195, 199-236 (1984). For criticism of the Plenary Power doctrine, see McSloy, *supra* note 7.

73. *See* 25 U.S.C.A. sec. 177 (West 1983), based on the Trade and Intercourse Act of 1790, ch. 33, 1 Stat. 137 (forbidding alienation of Indian lands without federal consent). Unlike Indian lands in other parts of the United States, Indian lands in New York are not held in trust by the United States. They are, however, subject to the federal restraint on alienation. The lack of trust status is due to New York's status as one of the original thirteen colonies. *See Oneida I*, 414 U.S. 661, 670 (1974).

trol our government.[74] This same United States, however, holds itself out as a leader in the protection of human rights and peacemaking in the world. This irony is part of being an Oneida. The question of our existence is made harder by the fact that as an ally in victory, we were treated worse than other enemy nations were treated in defeat, from Germany and Japan to Iraq.[75]

At this point I would like to relate some of my own experiences as a Haudenosaunee-Oneida and perhaps illustrate some ways in which many Native people question what it is they believe themselves to be as Native persons.[76]

---

74. On the recent unsuccessful attempts by the Bureau of Indian Affairs to remove me from my position as Nation Representative, see *supra* note 6. *See generally* HAUPTMAN, *supra* note 15; HAUPTMAN, *supra* note 33.

75. As put by Peter Wilson, a Cayuga, to the New York Historical Society in 1847:

> Glad were your fathers to sit down upon the threshold of the Long House [i.e., the Atlantic seacoast]. Had our forefathers spurned you from it, when the French were thundering at the opposite side to get a passage through, and drive you into the sea, whatever has been the fate of other Indians, the Iroquois might still have been a nation, and I, instead of pleading here for the privilege of living within your borders, I - might have had a country.

Quoted in GREAT DOCUMENTS OF AMERICAN INDIAN HISTORY, *supra* note 48, at 159.

76. While again it is true that Indian nations can be as different from one another as any two other randomly selected nations of the world, it is also true that the United States, both politically and legally, has never treated Indian people other than as a race to be spoken of and legislated over as a whole. See, for example, the foundational cases in American Indian law: Johnson v. M'Intosh, 21 U.S. (8 Wheat.) 543 (1823); Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831); Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832); United States v. Kagama, 118 U.S. 375 (1886). In the end, the obvious exception, the specific terms of treaties with different nations, proves the rule, for other than specific metes and bounds and the occasional instance of Indian bargaining power, the political aspects of the treaties reflect general federal policies, and as the policies changed over time, so did the language of the contemporary treaties. Early treaties invited Indian nations to sit in the Continental Congress. *See, e.g.*, Articles of Agreement and Confederation, Sept. 17, 1778, U.S.-Delaware Nation, 7 Stat. 13; Treaty with the Cherokees at Hopewell, Nov. 28, 1785, U.S.-Cherokee Nation, 7 Stat. 18. Later treaties forced subjection. *See, e.g.*, STEPHEN CORNELL, RETURN OF THE NATIVE 47-49 (1988); ROBERT M. CLINTON ET AL., AMERICAN INDIAN LAW: CASES AND MATERIALS 145-47 (3d ed. 1991) (listing and discussing treaties).

During the early part of my life, although living among Native people,[77] I grew up very much like other people do in this country, watching television and playing Little League baseball. I did, however, begin to develop a consciousness of myself as an Indian, different somehow from other "Americans." Indian leaders and educators have noted this phenomenon, which seems to overtake Indian children in school. Very early on in their lives, Indian children perform in school along standard averages for other groups in society. When they get to the fifth and sixth grades, however, their performance falls. It is an educational phenomenon that has yet to be fully explained.[78]

My own view, as a Native person and as a Native parent,[79] is that it is at this time Indian children begin to discover that they are different. They discover that this society is not necessarily their society, and that a lot of the people and things that they have been embracing as their own heroes or values are actually quite different from who they are.[80] I believe this creates a cognitive dissonance,[81] as a conflict of loyalties begins to

77. Though I am Oneida, I spent my early years on the Onondaga reservation.

78. *See, e.g.*, Danielle M. Hornette, *Elementary-Age Tasks, Cultural Identity, and the Academic Performance of Young American Indian Children*, 12 ACTION IN TEACHER EDUCATION 43 (1990). I am indebted to Dan Umstead for this reference.

79. I have six children. My wife is a member of the Eel clan of the Onondaga Nation, in which her uncle is a condoled chief. Because of the traditional matrilineal nature of all Haudenosaunee nations, my children are not Oneidas, but Onondagas. Thus, they do not directly share in the things we have accomplished at Oneida, though we are all members of the larger Haudenosaunee family.

80. It hardly bears telling that traditional American games like "cowboys and Indians" have an odd resonance for Indian children. For detailed perspectives on the role of Indian peoples in American mythology and culture, from "Fort Apache, the Bronx" to "Indian Country" in Vietnam, see ROBERT F. BERKHOFER, JR., THE WHITE MAN'S INDIAN: IMAGES OF THE AMERICAN INDIAN FROM COLUMBUS TO THE PRESENT (1978); RICHARD DRINNON, FACING WEST: THE METAPHYSICS OF INDIAN HATING AND EMPIRE BUILDING (1980); RICHARD SLOTKIN, GUNFIGHTER NATION: THE MYTH OF THE FRONTIER IN TWENTIETH-CENTURY AMERICA (1992).

81. At least superficially, there seems to be some resemblance between this phenomenon and what Carol Gilligan's studies of young girls entering their teenage years have revealed. *See generally* CAROL GILLIGAN, WOMEN, GIRLS, AND PSYCHO-THERAPY (1991). In recognition of the identity problems facing Indian children, federal legislation has specifically sought to preserve

develop within the Indian child.[82] It is a confusing time and an awakening period during which Indian children must begin to confront who they are. That identification is significant and difficult; many Indian people struggle with it all of their lives.[83] In one sense, the resistance by many Indian people to change, to success, and to education,[84] and their resistance in general to this country and its society, is an effort to identify and retain their own culture and integrity.[85] Indian people

---

the Indian culture of Indian children placed for adoption by giving Indian courts jurisdiction and by prioritizing placements with Indian parents. *See* Indian Child Welfare Act of 1978, Pub. L. No. 95-608, 92 Stat. 3069 (codified at 25 U.S.C.A. secs. 1901-1963 (West 1993)); *see generally* Mississippi Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989); Donna J. Goldsmith, *Individual vs. Collective Rights: The Indian Child Welfare Act*, 13 HARV. WOMEN'S L.J. 1 (1990).

82. Since citizenship was granted (some say imposed) on Indians generally in 1924, see Citizenship Act of 1924, ch. 233, 43 Stat. 253 (codified at 8 U.S.C.A. sec. 1401(b)(West 1994)), conscription of Indians has been upheld. *See, e.g., Ex parte* Green, 123 F.2d 862 (2d Cir. 1941), *cert. denied*, 316 U.S. 668 (1942). Indian people have historically served in the U.S. armed forces "in numbers proportionally far greater than any other ethnic group in the United States." Inouye, *supra* note 56. *See generally* Tom Holm, *Patriots and Pawns: State Use of American Indians in the Military and the Process of Nativization in the United States, in* THE STATE OF NATIVE AMERICA, *supra* note 59, at 345; HAUPTMAN, *supra* note 15, at 1-14 (discussing the Haudenosaunee and World War II).

83. *See, e.g.*, Anonymous, *What am I?, in* NATIVE AMERICAN TESTIMONY, *supra* note 48, at 411; Anonymous Indian children, *Indian Children in Crisis, in id.* at 401; *Indian Teen Survey Bleak*, NEW YORK NEWSDAY, Mar. 31, 1993, part II, at 63.

84. *See, e.g.*, Little Star, *Going Back, in* NATIVE AMERICAN TESTIMONY, *supra* note 48, at 388; Robert Lipsyte, *R.I.P. Tonto*, ESQUIRE, Feb. 1994, at 39 (describing reaction by Onondaga people to receipt of college degree by Faithkeeper Oren Lyons); Dirk Johnson, *Indian Rootlessness*, N.Y. TIMES, Nov. 4, 1990, at Sec. 4A, EDUC 27 (Special Education Life section).

85. It is important to distinguish the desire of Indian peoples to maintain their cultural integrity from similar desires of other minority groups in American society. Indian people are not looking for "multicultural perspectives" or "diversity" or for recognition of our contribution to the "melting pot." Our rights are not civil rights, minority rights, affirmative action rights nor anything of the kind. Our rights are those of sovereign nations, as recognized in repeated treaties with our fellow sovereign, the United States.

We did not immigrate to this land, at least not within the last ten millenia or so. (If anything, we should have had tougher immigration laws in 1492 regarding "boat people.") We have always been separate from non-Indian society, and non-Indian society has always treated us that way. In its Apportionment Clause, the United States Constitution provides that "Indi-

who are seen as assimilating into American society are sometimes considered traitorous and in violation of what the Creator intended, or at least to be acting inappropriately for a Native person.[86] This fundamental struggle confronts every Indian territory and every Indian person. The resolution, or attempts at resolution, of this fundamental question have greatly affected how Indian peoples define their goals and their strategies for reaching them.

During the early 1970s, I was working in Washington, D.C., as an ironworker. Many Haudenosaunee people find ironworking, despite being dangerous, to be a way to earn a

---

ans not taxed" be excluded from the census, U.S. CONST. art. I, sec. 2, cl. 3, "which, of course, excluded nearly all of that race." United States v. Kagama, 118 U.S. 375, 378 (1886). When the 14th Amendment changed the Apportionment Clause to strike the infamous 3/5 Clause regarding African-Americans, the "excluding Indians not taxed" phrase was reiterated, reaffirming the view that we were not part of "[w]e the people." U.S. CONST. amend. XIV. Even as to individual Indians who "severed [their] tribal relation . . . and fully and completely surrendered [them]self to the jurisdiction of the United States," Elk v. Wilkins, 112 U.S. 94, 98 (1884), the Supreme Court held in 1884 that they "were not a part of the people of the United States." *Id.* at 99.

The United States has thus always seen us as separate, and therefore our struggle to maintain our identity is unlike that of any other ethnic group. The desire of other groups in American society for equal rights is different from our desire for sovereignty. We are empathetic to the sufferings of others, but there are fundamental differences between sovereignty and equal protection or due process.

86. The price of separateness can be high. Not paying taxes, not respecting borders, or refusing to serve in the military can result in fines or imprisonment. *See, e.g.*, Lazore v. Comm'r, T.C.M. 1992-404 (unpublished), *available in* 19 Indian L. Rep. (Am. Indian Law. Training Program) 7105 (1992), *aff'd*, 11 F.3d 1180 (3d Cir. 1993) (taxes); *Mohawk Claims He Has a Right to Sell Tobacco in Canada Without Paying Taxes*, ROME DAILY SENTINEL, Feb. 3, 1994, at 7 (taxes and borders); Akins v. United States, 551 F.2d 1222 (1977) (borders); *Ex parte* Green, 123 F.2d 862 (2d Cir. 1941), *cert. denied*, 316 U.S. 668 (1942) (conscription). Refusing to get a Social Security number, see, e.g., Bowen v. Roy, 476 U.S. 693 (1986) (Native Americans refused to obtain a social security number for their child, claiming it violated their religious beliefs), can result in a denial of benefits. Practicing one's religion can get one fired and denied unemployment compensation. *See* Employment Div. v. Smith, 494 U.S. 872 (1991) (Native Americans fired for using ceremonial drug). Refusing to obtain a hunter's license or to pay highway tolls can result in arrest or prohibition.

considerable amount of money.[87] Such jobs are necessary given the poor economic conditions in Haudenosaunee country[88] and in Indian country generally in the United States. In 1972, when I was 21, an event occurred in Washington known as the "Trail of Broken Treaties." This was the culmination of a march from California to Washington by a caravan of Native peoples protesting centuries of broken treaty promises and land theft.[89] The participants had been told that when they reached the end of the march, they could camp in a national park in the capitol. When they arrived, however, they were told that they could not do so, and so they decided to go to the Department of Interior to find out what was going on.[90] After

87. *See, e.g.*, Joseph Mitchell, *The Mohawks in High Steel, in* EDMUND WILSON, APOLOGIES TO THE IROQUOIS 3 (Octagon reprint 1978) (1949); Jim Carlton, *Disappearance of Ironworking Jobs keeps Mohawk Men Home this Spring*, WALL ST. J., Apr. 20, 1992, at A5A.

88. According to the 1990 Census, the median annual per capita income on the Oneida Indian Nation Territory was $4,841. In the nearby non-Indian Town of Verona, it was $11,685. *See Oneidas Lack in Income*, UTICA OBSERVER-DISPATCH, Sept. 6, 1992, at 11A (box). A comprehensive 1992 survey of all our people, beyond just those living on the 32 acre Territory, revealed that 65% of Oneida households earned less than $15,000 per year, and that we had a 44% unemployment rate. *See* ONEIDA INDIAN NATION OF NEW YORK, SUMMARY OF PRELIMINARY DEVELOPMENT INITIATIVES 4 (Apr. 1992). According to recent news reports, the opening of our casino has resulted in "zero percent unemployment" for our people. Kathleen M. Haley, *Region Rakes in 1,200 New Jobs From Oneida Nation's Casino*, ROME DAILY SENTINEL, Feb. 12, 1994, at 16A.

89. *See* VINE DELORIA, *supra* note 56; Rebecca L. Robbins, *Self-Determination and Subordination: The Past, Present and Future of American Indian Governance, in* THE STATE OF NATIVE AMERICA, *supra* note 59, at 87, 102-03.

90. The Interior Department houses the Bureau of Indian Affairs (BIA). Indian Affairs had originally been the province of the War Department, as Indian relations were international matters, but jurisdiction was transferred to the Interior Department as the frontier was closing. Act of Mar. 3, 1849, ch. 108, sec. 5, 9 Stat. 395 (codified at 25 U.S.C.A. sec. 1 (West 1983). The BIA is thus one of the federal government's oldest bureaucracies, and has continually been one of its most inefficient and corrupt. *See* SENATE SELECT COMM. ON INDIAN AFFAIRS, SPECIAL COMM. ON INVESTIGATIONS, S. REP. No. 216, 101st Cong., 1st. Sess. (1989). Placing Indian Affairs in the Interior Department also creates a terrible conflict of interest. The Department is charged with fulfilling the United States' fiduciary trust relationship to Indians, including the administration of Indian lands. *See* Reid Chambers, *Judicial Enforcement of the Federal Trust Responsibility to Indians*, 27 STAN. L. REV. 1213 (1975). However, the Interior Department is also charged with managing public lands and administering mining, fishing, logging, grazing, and

marching to the Interior Department and finding that they could not get any satisfactory answers, they took over the building and the offices of the Bureau of Indian Affairs. The ensuing standoff lasted several weeks.

That event proved to be a great awakening for many Native people,[91] and for me in particular.[92] I started to think about where it was we were going as a people and what it was we were trying to do. After the takeover of the Bureau of Indian Affairs, I decided to move back to the Oneida Territory and began to get involved with the political issues of my nation. Many of those issues involved fundamental questions of

---

other activities on Indian lands. The Supreme Court has held that if a private trustee held both such responsibilities, it would present a conflict of interest, but that the federal government is not subject to such principles in its self-appointed capacity as trustee for Indian lands. Nevada v. United States, 463 U.S. 110 (1983).

91. *See* CORNELL, *supra* note 76, at 5-6; HAUPTMAN, *supra* note 15, at 205-43. On the American Indian Movement (AIM), see generally Vernon Bellecourt (Chippewa), *Birth of AIM, in* NATIVE AMERICAN TESTIMONY, *supra* note 48, at 372; PETER MATTHIESSEN, IN THE SPIRIT OF CRAZY HORSE (1983); 2 PRUCHA, *supra* note 7, at 1117-19. During its heyday, AIM was (rightly or wrongly) seen as a serious threat to the national security of the United States. *See, e.g., Revolutionary Activities Within the United States: The American Indian Movement, Hearing Before the Subcomm. to Investigate the Administration of the Internal Security Act*, 94th Cong., 2d Sess. (1976); REX WEYLER, BLOOD OF THE LAND: THE GOVERNMENT AND CORPORATE WAR AGAINST THE AMERICAN INDIAN MOVEMENT (1982); KENNETH S. STERN, LOUD HAWK: THE UNITED STATES VERSUS THE AMERICAN INDIAN MOVEMENT (1994).

92. Shortly before the BIA takeover, I had a similar though smaller epiphany. One day I went over to the BIA to see what it actually did for Native people. I started by asking the receptionist at the BIA office what it was the BIA actually did for Indian people. She seemed puzzled and inquired as to the nature of my question. As she ushered me from one puzzled bureaucrat to the next, I asked each, "what do you do for Indian people?" I never got an answer. At one point, I was even offered a job in public relations. Finally, at the end of the day, I came to a very large office entitled "Indian National Parks." I asked to see the person in charge, but was told by his secretary that the person was out. I then asked the secretary what it was that her boss did, and she replied, "he has done a lot for Indian people," and that was why he merited such a large office. I asked more specifically what it was this person did, and got the only straight answer I received all day. According to the secretary, if any Indian nation or person wanted to donate their land to the United States as a national park, her boss would help arrange it.

sovereignty and jurisdiction[93] over the thirty-two acres that remained of our once six million acre Oneida homeland.[94] Despite the small size of our Territory,[95] the struggles we faced in exercising our sovereignty were extremely significant not only for us, but to Indian people everywhere.

The largest and most dangerous part of our troubles began when we denied the local police departments the right to enter our Territory. We decided to do this because we felt that our people were suffering abuse at the hands of the police. The core arguments, however, were over the basic issue of jurisdiction. There were numerous, heavily armed confrontations with the police. The stage for real battle and imminent loss of life was set, and violence could have broken out many times. During one early standoff, we blockaded the road leading into the Territory. Someone, probably acting as an agent provocateur, reported a burglary on our Territory to the local police. With police facing us across the barricade, an officer told me that he needed to come onto the Territory to investigate the burglary. I told him that he could not, as the land was our sovereign territory where he had no jurisdiction. We ar-

---

93. Although disputed by many Indians in New York, the federal government granted New York State criminal jurisdiction over Indian lands within the state in 1948, Act of July 2, 1948, ch. 809, 62 Stat. 1224 (codified at 25 U.S.C.A. sec. 232 (West 1983), and civil jurisdiction in 1950. Act of Sept. 13, 1950, ch. 947, sec. 1, 64 Stat. 845 (codified at 25 U.S.C.A. sec. 233 (West 1983)). *See generally* Porter, *supra* note 33. These acts presaged the coming "termination era" in federal Indian policy, which, *inter alia,* led to the extension of state jurisdiction over Indians in many other parts of the country. *See generally* DONALD FIXICO, TERMINATION AND RELOCATION: FEDERAL INDIAN POLICY, 1945-1960 (1986); 2 PRUCHA, *supra* note 7, at 1013-84.

The laws of New York State often pose conflicts with Haudenosaunee treaty rights. *See, e.g.*, Gunton v. Cattaraugus County, No. 92-CV-0544E(F) (unpublished), *available in* 20 Indian L. Rep. (Am. Indian Law. Training Program) 3197 (W.D.N.Y. Aug. 26, 1993), *aff'd,* 23 F.3d 397 (2d Cir. 1994) (unsuccessful attempt by Seneca person to have firearms charge dismissed as inconsistent with Treaty of Canandaigua); Sean Kirst, *The Right to Unrestricted Hunting, Fishing: Iroquois Claim Tradition, Treaties Provide Privileges,* SYRACUSE POST-STANDARD, May 28, 1991, at A1.

94. We hold the 32 acres under United States v. Boylan, 265 F. 165 (2d Cir. 1920), *app. dismissed,* 257 U.S. 614 (1921), and continue to pursue our claims for our other treaty-protected lands. We lost our rightful claim for our six million acre homeland in Oneida Indian Nation of N.Y. v. New York, 860 F.2d 1145 (2d Cir. 1988), *cert. denied,* 493 U.S. 871 (1989).

95. In order to rebuild our land base, we have been pursuing land claims for years.

gued back and forth; the officer claimed he had a duty to investigate reports of crime, and I argued that he had no power on our land. Finally, the police officer stated that all he wanted to do was walk, alone, onto the Territory, a distance of only fifty feet, look in through the front door of the house that had allegedly been burglarized, and then turn around and come back. I asked him one question: "Are you asking me, or are you telling me?" He replied that he was telling me, and I told him that we would not let him pass.[96] I turned around and rejoined my people behind the barricade.[97]

I led my people through a number of similar confrontations. Often it appeared hopeless, and our occasional victories were pyrrhic, since in the end we knew that we could never win militarily against New York State or the federal government. But a change began on our Territory and with our people. A major event in this transformation was a fire on the Territory in which my aunt and uncle burned to death.[98] The city of Oneida refused to send their fire department, since we had refused to let the police come onto the Territory. Even after the fire, the city would not send a coroner, and the bodies of my aunt and uncle just lay in the smoldering ashes of their home. Our children had to walk by them on the way to school.[99]

After these militant confrontations and the fire, my philosophy and that of others in the nation began to change. We saw that our resources were extremely limited, and that we were at a great disadvantage in asserting our sovereignty and jurisdiction selectively. We came to the realization that rather than seeking the help of government agencies and departments, or of other countries and Indian nations, or of private

---

96. After I said this, the officer quite conspicuously called in a SWAT team by radio and ordered his men to fetch his riot helmet and bulletproof vest. For a contemporary account of these events, see John Kiener, *'Cold War' Pits Indians vs. Indian and Both Against City of Oneida*, N.Y. TIMES, Aug. 2, 1976, at 1.

97. Though I am not sure of the attribution, I have always been impressed by a statement I believe to have been made by Mohandas K. Gandhi: "You may beat me and you may even kill me, and have my dead body, but you will not have my obedience." Ultimately, a negotiated standdown was reached, but the barrier remained.

98. *See 2 Indians Die as Firemen Refuse to Enter Reservation in Oneida*, N.Y. TIMES, June 26, 1976, at 48; Kiener, *supra* note 96.

99. We finally were able to make private funeral arrangements.

persons and charitable groups, we needed to empower ourselves as a people and to develop our own resources. We could not allow these outside groups, whether political bodies or charities, liberal or conservative, our enemies or our friends, to define for us what our lives should be.[100] We could not claim to be truly sovereign and yet remain dependent on others. We would have to make the difference in our futures and in our lives.

The question then became, how do we do that? How do we change the way the game has been played for hundreds of years? As traditional Haudenosaunee people, we are told to just continue with things the way they are, to continue with our ceremonies and traditions, and we have done that, retaining and revitalizing our language, our culture, and our traditional governmental structure. But it seemed that in the world in which we lived, given the tremendous distribution and sources of power arrayed against us, coupled with events like the fire and the armed confrontations, there had to be something more. And so our people decided collectively to begin an effort to empower ourselves, to take control of our lives, our people, our land, and our future.

But we saw clearly that we could not effectively prepare for future generations by simply starting a war. That was not the best choice for our people. Beyond being in conflict with the spirit of the Great Law of Peace, there certainly was no way that our small group of Oneida people was going to stand militarily against the United States. Not that we were unwilling. The ultimate expression of sovereignty for our people would have been to lay down our lives for what we believed, no differently, I suppose, than at the Alamo or Masada.[101] In fact, a

---

100. Some of the greatest injustices against Indian peoples, most notably the enactment of the 1887 General Allotment Act, ch. 119, 24 Stat. 388, which sought to break up Indian nations politically and open up their land for white settlement by forcing the allotment of Indian lands into individual parcels, see Solem v. Bartlett, 465 U.S. 463, 466 (1984), were advocated by the "Friends of the Indians," a group of concerned religious and public figures who met annually at Lake Mohonk in New York from 1883 to 1916. *See, e.g., Program of the Lake Mohonk Conference, September 1884, reprinted in* DOCUMENTS OF UNITED STATES INDIAN POLICY 163 (Francis P. Prucha ed., 2d ed. 1990).

101. The Texans, it must be remembered, were fighting not for the United States but for their own sovereignty, which they enjoyed as an independent country for several years before joining the Union. The Jews of

great number of Native people consider themselves to be guerrilla fighters, engaged in the longest running war in human history.[102] Even in recent years, long after the frontier was closed[103] and Indians were relegated to Hollywood,[104] some Indian peoples, including some of the Haudenosaunee, have taken militant action against the United States,[105] Canada,[106]

Masada chose to commit mass suicide rather than to surrender to the Roman Legions that besieged them. Our willingness to lay down our lives was not unlike that of our historic allies, as Benjamin Franklin had two centuries prior famously cautioned his fellow patriots that they "must all hang together or assuredly we shall all hang separately," *quoted in* JOHANSEN, *supra* note 49, at 75. In a sense, this closes a circle, as there are those who claim that Franklin's statement had been inspired by the Haudenosaunee leader Canassatego. *Id.*

102. When Bartolomé de Las Casas, the "Patron Saint of the Indians," came to the New World in the 1500s (more particularly, Nueva Espana), he preached tolerance for the Indians at Chiapas, Mexico, the seat of the 1994 New Year's Day rebellion by Indian peoples against Mexico. *See* BARTOLOMÉ DE LAS CASAS, A SHORT ACCOUNT OF THE DESTRUCTION OF THE INDIES (Nigel Griffin ed. & trans., 1992) (1552).

103. The "frontier" "closed" in 1890, inspiring Frederick Jackson Turner's famous works. *See generally* FREDERICK JACKSON TURNER, THE FRONTIER IN AMERICAN HISTORY (Univ. Ariz. Press 1986) (1893). For Indian peoples, the relevant date is 1848, when gold was discovered in California just as Mexico was ceding all land north of the Rio Grande to the United States in the Treaty of Guadalupe Hidalgo. *See* ANGIE DEBO, A HISTORY OF THE INDIANS OF THE UNITED STATES 158 (1970). California became a state in 1850, and thus, with European and Mexican competition gone from the continent and the Pacific goal line in sight, the United States began aggressively to fulfill its "Manifest Destiny" by vigorously settling its "interior," building railroads, and forcing Indians onto reservations. *Id.* at 150-67, 215-98. Previously, federal Indian policy had been one of removal westward, as it was believed that there would always be enough land for all. *See, e.g.*, Letter from George Washington to James Duane (Sept. 7, 1783), *in* DOCUMENTS OF UNITED STATES INDIAN POLICY, *supra* note 100, at 1 ("As the Country, is large enough to contain us all, . . . we are disposed to be kind to [the Indians] and to partake of their Trade."). *See generally* GRANT FOREMAN, INDIAN REMOVAL: THE EMIGRATION OF THE FIVE CIVILIZED TRIBES OF INDIANS (1932).

104. *See generally* SLOTKIN, *supra* note 80.

105. *See generally* PETER MATTHIESSEN, INDIAN COUNTRY (1984). The most prominent recent actions were the 1974 Mohawk takeover of Ganienkheh (Moss Lake), the 1973 10 week (re)occupation of Wounded Knee, the 1972 takeover of the BIA and the 19 month seizure of Alcatraz in 1969. *See generally* GAIL H. LANDSMAN, SOVEREIGNTY AND SYMBOL: INDIAN-WHITE CONFLICT AT GANIENKEH (1988); Adam Fortunate Eagle, *Invading Alcatraz, in* NATIVE AMERICAN TESTIMONY, *supra* note 48, at 367; Indians of All Tribes, *Planning Grant Proposal to Develop an All-Indian University and Cultural Complex on Indian*

and Mexico,[107] believing their actions to be justified political acts of self defense. Such militant stands are one manifestation of the belief among many Native people that we cannot wait any longer for an outside government or group to determine what our rights are, and that we must assert forcibly our ancient and inherent sovereignty.[108] Fundamentally, I think that stance is one that all indigenous peoples have to adopt, and it is a position that many Indian peoples, including we at Oneida, have adopted.

But what would really be accomplished if we asserted our rights by force of arms and died?[109] We are told by the Great Law to think toward the seventh generation,[110] and to always make decisions for the future. If we were to die in a firefight, and even if someone were later to put a memorial stone on the

---

Land, Alcatraz, reprinted in GREAT DOCUMENTS IN AMERICAN INDIAN HISTORY, *supra* note 48, at 374; 2 PRUCHA, *supra* note 7, at 1015-20.

106. *See generally* HORNUNG, *supra* note 33 (discussing Mohawk militant activities in United States-Canada border area); Peter Blue Cloud (Mohawk), *Resistance at Oka, in* NATIVE AMERICAN TESTIMONY, *supra* note 48, at 432; Jane Hamilton, *'We Were Lied To,'* FREEHOLDER, Feb. 7, 1994, at 1 ("According to the [leaked] memo, senior Mounties [Canadian Mounted Police] prepared a plan to invade Akwesasne [a Mohawk territory], and the reserves in Brantford's Six Nations [the Canadian Haudenosaunee lands] and in Oneida, N.Y. . . . . The invasion would involve Mounties, Ontario and Quebec provincial police and New York State Police.").

107. *See, e.g.*, Tim Golden, *Mexican Rebel Leader Sees No Quick Settlement*, N.Y. TIMES, Feb. 20, 1994, sec. 1, at 3. *See generally* Chiapas: Challenging History, II AKWE:KON JOURNAL (formerly NORTHEAST INDIAN QUARTERLY) (No.2 Summer 1994) (Special Issue on Chiapas).

108. This is a sovereignty that the Supreme Court has paid lip service to but never fully enforced. *Compare* Santa Clara Pueblo v. Martinez, 436 U.S. 49, 55 (1978) ("Indian tribes are 'distinct, independent political communities, retaining their original natural rights,' " quoting Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 559 (1832)) *with* McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164, 172 (1973) (tribal sovereignty is only a "backdrop against which the applicable treaties and federal statutes must be read" in considering whether state laws can be imposed on Indian peoples).

109. In all our armed confrontations, we believed that it was only the negative public image of federal and state troops massacring Indians that kept us alive. We bet our lives, if not on the morality of the United States, then at least on its practical international public relations sense, and perhaps we should be grateful for such practicality. Certainly there are indigenous peoples all over the world whose governmental adversaries would not hesitate to open fire, especially if provoked by armed confrontation.

110. A sacred religious injunction now blatantly misappropriated by New Age mail order catalog companies.

spot and mark the bravery or foolishness of our act and the loss of our lives, would that really resolve the issues or pave a future for our children and those yet unborn?

III. SELF-EMPOWERMENT

And so I turned to education. I wanted to understand and learn as much as I possibly could about how the system worked, and what the people in the institutions of government at the state, federal, and local levels really believed or knew about life and about us. I wanted to understand how it came to be that people like my aunt and uncle could die without the help of their non-Indian neighbors, and how power, whether it be legal, political, police or military, could be wielded so thoughtlessly (or conspiratorily) to control and suppress the Oneida people. I went first to business school and then to law school, and out of that educational process I began to lead my people toward a different philosophy. We began to view economic power as the crux of sovereignty and political power.[111] Economic power in this society, and in this world, is the real power that is necessary to make change and to empower one-

111. *See* Donald L. Fixico (Creek-Seminole-Shawnee-Sac and Fox), *Revitalizing Sovereignty, in* NATIVE AMERICAN TESTIMONY, *supra* note 48, at 420. In a sense, this was a lesson learned from white society. The main goal of the Europeans regarding Indian people, as seen in the seminal legal decisions addressing the status of Indian nations, was not to obtain political power over us but to obtain our resources, and, most importantly, our land. *See, e.g.*, Johnson v. M'Intosh, 21 U.S. (8 Wheat.) 543 (1823) (holding that though Indian occupancy and use of land was to be respected, the ultimate title to "discovered" lands was held by Europeans). It was not until late in the nineteenth century that the Supreme Court sanctioned any intervention into the internal affairs of Indian nations. *See* United States v. Kagama, 118 U.S. 375 (1886) (upholding, for the first time, federal jurisdiction over intra-Indian crimes). America was more interested in securing Indian resources than in governing Indian people, at least until the frontier closed and all our resources were gone. This is most clearly seen in the Federal Removal Policy following the War of 1812: Indian Nations were "removed" from the East in order to get at our land, but once across the Mississippi in the "Indian Territory" were more or less free to do what they wished. *See* DEBO, *supra* note 103, at 117-49. That is why the "Indian Territory," known now as Oklahoma, was one of the last parts of the continent to become a state. *See* 2 PRUCHA, *supra* note 7, at 755-57.

self.[112] It is the means to reach the ends of sovereignty. The Oneida people of New York thus went into business. Among other things, we started one of the first high-stakes Indian bingo operations in the United States,[113] along with a tax-free smokeshop. In 1993 we opened a full-fledged casino on our

---

112. The conclusions drawn in a recent article by UCLA Professor and Turtle Mountain Chippewa Band member Duane Champagne are worth quoting at length:

> The move toward self-determination, coupled with aggressive Indian assertions of control, has begun to put decision-making power in Indian hands. In so doing it has made widespread reservation economic development possible for the first time. . . . Effective sovereignty exists not simply in the recognized right to decision making but in the ability to make decisions and carry them out. . . . In this process, culture is a strategic guide. The Indian cases show that culture is indeed a critical factor. It informs and legitimizes conceptions of self, of social and political organization, of how the world works, and of how the individual and group appropriately work in the world. . . . For federal policymakers the fundamental issue is simpler. To the extent that federal policy reinforces the legal, political, and institutional foundations of tribal sovereignty, it increases the chances that tribes can find their own pathways out of poverty.

Duane Champagne, *Economic Culture, Institutional Order, and Sustained Market Enterprise: Comparisons of Historical and Contemporary American Indian Cases, in* PROPERTY RIGHTS AND INDIAN ECONOMIES 195, 245-46 (Terry L. Anderson ed., 1992). For some small signs that the federal government is listening to Champagne's advice, see, e.g., Congress' "New Federalism" Proposals, SENATE SELECT COMM. ON INDIAN AFFAIRS, SPECIAL COMM. ON INVESTIGATIONS, S. REP. No. 216, 101st Cong., 1st Sess. (1989); Tribal Self-Governance Demonstration Project, Title III, Pub. L. No. 100-472, 102 Stat. 2296 (1988); Timothy Egan, *Embracing Self-Rule, 7 Tribes Begin 3-Year Experiment in Sovereignty*, N.Y. TIMES, Jan. 16, 1991, at A16.

113. As a result of the fire that killed my aunt and uncle, and the local fire department's refusal to help, we realized that we needed our own fire engine. In order to raise funds, we did what nearly every small fire department does: hold a bingo game, with the proceeds going to the purchase of the fire equipment. Once we saw the success of this operation, and the fact that under accepted precepts of federal Indian law the State of New York could not place any limits on our operation, *see* California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987), we began a full-time high-stakes bingo operation, one of the first, if not the first, in the nation on Indian land.

land,[114] and in the first year of operation the Oneida Nation has earned over $200 million in gross revenues.[115]

The big issue for the Oneida as a people was, of course, whether selling cigarettes or gaming was an "Indian" thing to do. Was it a sell-out, a sacrifice of what we believed as traditional Haudenosaunee people? In answer, we felt that the way we were forced to live, on the small, thiry-two acre piece of land, had put our backs to the wall, and no one seemed to offer any alternative solutions.[116] Our elders were passing on every year, and our language, culture, and ceremonies were being forever lost with them, never to be retrieved. The federal and state governments were in no rush to settle our land claims,[117] even with two Supreme Court victories behind us.[118] We had no natural resources to exploit, and with the restriction on alienation imposed on our land,[119] we could not even

---

114. *See* James Dao, *Cuomo Signs Pact with Indians for Casino in Upstate New York*, N.Y. TIMES, Apr. 17, 1993, at A1; James Dao, *Once Destitute, Oneida Tribe Braces for Flood of Gambling Profits*, N.Y. TIMES, July 18, 1993, sec. 1, at 27.

115. *See* R. Patrick Corbett, *Casino Totals Outdistance Projections*, UTICA OBSERVER-DISPATCH, July 20, 1994, at Front.

116. As stated by Oren Lyons, "[w]e still have pockets of serious poverty. . . . And we have no more fruitful way to live than high-stakes casinos." *Quoted in* David von Drehle & Laurie Goodstein, *Move Over, Macy's, For a Parade By Indigenous People*, WASH. POST, Nov. 28, 1991, at A3. The leaders of the Oneida Indian Tribe of Wisconsin, Inc., have adopted the same philosophy. As stated by chairman Rick Hill, "We have been reduced to gaming, but I feel at this time it offers the only chance we have for economic self-sufficiency." *Quoted in* Jon Magnuson, *Casino Wars: Ethics and Economics in Indian Country*, THE CHRISTIAN CENTURY, Feb. 10, 1994, at 1. *See also* Thomas Content, *Oneidas Speed Up Construction Plans*, GREEN BAY PRESS GAZETTE, Nov. 11, 1993, at A1 (noting that half of the Wisconsin tribe's $94.8 million budget comes from gambling revenues and quoting Tribal Chairman Debbie Doxtator as saying "[t]hat is very significant for us, because we're establishing our self-governance and self-determination for our nation."); Thomas Content, *Oneidas Bet on Solid Future*, GREEN BAY PRESS GAZETTE, Oct. 31, 1993, at A1 (quoting Art Skenandore, Wisconsin Oneida tribal general manager, as saying, "we need to enact the opportunities that exist now, to assure ourselves and our membership that we'll have a stable economy.").

117. The Supreme Court held New York State liable in 1985 for taking our land pursuant to invalid treaties, County of Oneida v. Oneida Indian Nation of N.Y., 470 U.S. 226 (1985), but settlement negotiations have dragged on for the last decade.

118. County of Oneida v. Oneida Indian Nation of N.Y., 414 U.S. 661 (1974), *further proceeding*, 470 U.S. 226 (1985).

119. 25 U.S.C.A. sec. 177 (West 1983), based on Trade and Intercourse Act of 1790, 1 Stat. 137. Perhaps we should be grateful that our lands are

obtain credit against the little we had.[120] Our only option was to exercise our sovereignty and simultaneously to exploit the long-standing principle of United States law that barred New York State statutes and taxation from reaching our activities.[121] At least until the federal government closes the window, we are free to conduct business on our land without state regulation and tax,[122] and given that the window might be a narrow one, we felt that gaming was the quickest way to build an economic base. Since we have never believed that as Indians we could have an opportunity for too long before the white man coveted it, we have never believed that the federal government would let us get away with making money for too long. We have, therefore, never viewed the casino as anything but a temporary measure.[123] The casino is not a statement of who we

---

not alienable without federal consent, since it was that law preempting state power, and not any notion of justice or morality, that made void the various "treaties" New York State had used to dispossess us after we returned as victorious allies from the Revolutionary War. *See Oneida*, 470 U.S. 226.

120. *See* Paul E. Frye, *Lender Recourse in Indian Country: A Navajo Case Study*, 21 N.M. L. REV. 275 (1991); John Fredericks, III, *Indian Lands: Financing Indian Agriculture, Mortgaged Indian Lands and the Federal Trust Responsibilty*, 14 AM. INDIAN L. REV. 105 (1989).

121. State laws have traditionally had no force in Indian country, due to the direct government-to-government relationship between the United States federal government and Indian nations. *See, e.g.*, Williams v. Lee, 358 U.S. 217 (1959); Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832). The federal cessions of criminal and civil jurisdiction to New York State in 1948 and 1950, 25 U.S.C.A. secs. 232, 233 (West 1983), do not make the Haudenosaunee subject to non-criminal regulatory state statutes. *See* Porter, *supra* note 33, at 533-51. *Cf.* Bryan v. Itasca County, 426 U.S. 373 (1976) (establishing principle that federal cessions of jurisdiction to states did not confer general regulatory authority upon the states).

122. The federal government did ultimately address the issue in 1988, enacting the Indian Gaming Regulatory Act (IGRA), Pub. L. No. 100-497, 102 Stat. 2467 (codified as amended at 25 U.S.C.A. sec. 2701-2721 (West 1993)). The Act did not prohibit Indian gaming but required an agreement with the state for certain types of gaming activity. 25 U.S.C.A. sec. 2701(5). Pursuant to IGRA, the Oneida Indian Nation signed a gaming compact with New York State on April 17, 1993. *See* Dao, *Cuomo Signs Pact*, *supra* note 114, at A1.

123. Efforts to amend the Indian Gaming Regulatory Act, motivated by cash-starved governors, the worried Nevada Congressional delegation, and the desperate Donald Trump, are already underway. *See, e.g.*, Wayne King, *Trump, in a Federal Lawsuit, seeks to Block Indian Casinos*, N.Y. TIMES, May 4, 1993, at B6. In addition, our ability to sell goods to non-Indians free of state sales and excise taxes was recently severely curtailed by the Supreme Court. *See* Dep't of Taxation v. Milhelm Attea & Bros., Inc., 114 S. Ct. 2028 (1994);

are, but only a means to get us to where we want to be. We had tried poverty for 200 years, so we decided to try something else.

Although we know as a people that some of our decisions have been controversial,[124] the results of our actions have empowered us greatly. Our decision to establish gaming has allowed us to reacquire more than 2,600 acres of our ancient land for our people,[125] the first lands ever reacquired in any manner by any of the Haudenosaunee nations. We feed our elders and are able now to conduct our ceremonies on a regular basis. The first building we built with our profits as a nation was a council house, which is our spiritual and governmental meeting place. We have since then built a cook house, a health services center,[126] a cultural center and museum,[127] a recreational center,[128] a swimming pool, a bath house, a chil-

---

Linda Greenhouse, *New York Sees Tax Windfall in Indian Sales,* N.Y. TIMES, June 14, 1994, at A1.

124. While I was attending law school in Massachusetts, the Oneida Nation bingo hall was seized by an armed gang of disaffected Oneidas and held hostage for nearly two months. *See* Jeff Bachman, *12 Oneida Indians Threaten to Use Force Against Marshals,* SYRACUSE HERALD J., Feb. 2, 1988, at A1. After finally being forced to leave by federal court order, the persons who took over the hall set it afire, resulting in its destruction. R. Patrick Corbett, *Bingo Blaze Arson Seen,* UTICA OBSERVER DISPATCH, Feb. 22, 1988, at 1A. Five members of the gang were later tried and convicted of arson and related crimes and sentenced to jail. Susan Clark, *Oneidas Sentenced for Bingo Takeover,* ONEIDA DAILY DISPATCH, Jan. 26, 1991, at 1. The Nation also won a $4.4 million judgment against the defendants and others involved in the takeover and arson. Oneida Indian Nation of N.Y. v. Hill, No. 88-CV-29, 1990 U.S. Dist. LEXIS 10,813 (N.D.N.Y. Aug. 15, 1990). *See generally* United States v. Markiewicz, 978 F.2d 786 (2d Cir. 1992), *cert. denied sub nom.* Beglen v. United States, 113 S. Ct. 1065 (1993).

125. *See* James T. Mulder, *Officials Watch Oneida Nation's Land-Buying Spree with a Wary Eye,* SYRACUSE HERALD J., Feb. 10, 1994, at A1.

126. *See* Andy Marino, *Oneidas Dedicate Health Center,* ONEIDA DAILY DISPATCH, Feb. 14, 1992, at A8. The first director of the center, Sheri Beglen, is an Oneida Nation member.

127. *See Oneida Indian Nation's Cultural Center,* ROME DAILY SENTINEL, Feb. 3, 1994, at 15; *Festival Marks Anniversary of Oneida's Cultural Center,* ROME DAILY SENTINEL, June 3, 1994, at 9. The 4,700 square foot white pine log structure was built entirely by hand, without a single nail, by Jules Obomsawin, an Oneida Nation member. *See Oneida Indian Nation's Cultural Center, supra.* The Cultural Center's manager is Marilyn John, the Clan Mother of the Bear Clan of our Nation.

128. *See* R. Patrick Corbett, *Oneidas Reach For a New Dream,* UTICA OBSERVER-DISPATCH, May 21, 1991, at 6A.

dren's playground, a gymnasium, and a lacrosse box. Using our own money we also have established scholarship programs, medical, dental, and optical services, job training and legal assistance programs, Oneida language and song classes, mental health and substance abuse programs,[129] elder meals programs, and other beneficial services for our people. We have established a police force,[130] paved our roads, built a septic system, consecrated a burial ground, opened a youth center, and built housing for our people,[131] and with the opening of the casino have become one of the major economic powers in Central New York State[132] and one of the largest employers in the Central New York region.[133] In the short run, we will build more housing, design a senior citizens center, institute day care, and expand our existing programs. In the future, we will be limited only by our imaginations.[134]

---

129. Alcohol has been a very critical problem among Native people for centuries, all the way back to its use by white settlers and governments to induce Indian people to sign treaties. *See* 1 PRUCHA, *supra* note 7, at 98-102. By our own choice, our casino does not serve alcohol, even though we conservatively estimate that our profits would increase 10 percent if it did.

130. *See, e.g.*, David Tobin, *Oneida Nation Seeks Full Powers for Police Force*, SYRACUSE HERALD J., Dec. 28, 1993, at B1; David Tobin, *Sheriff Deputizes Oneida Nation's Police Force*, SYRACUSE HERALD J., Feb. 11, 1994, at B1; David Tobin, *County Deprivatizes Oneida Police*, SYRACUSE HERALD J., Oct. 12, 1994, at B1.

131. *See* Susan Henry Sternberg, *Oneida Nation Brings Own Home to Ancestral Land*, CHENANGO VALLEY NEWS, Sept. 16, 1994, at Front; Kathleen M. Healey, *Village of White Pines Lures Oneida Indians to Homeland*, ROME DAILY SENTINEL, Aug. 16, 1994, at 9; Kristen Bowers, *Oneida Nation Invests in its Future with Opening of New Youth Center*, ONEIDA DAILY DISPATCH, Oct. 11, 1994, at Front.

132. *See, e.g.*, *Region Must Get Act Together and Work with Oneida Nation*, ONEIDA DISPATCH, Feb. 14, 1994, at 6A (Opinion) ("It comes as no surprise to anyone that the Oneida Indian Nation is a major player in the regional economy.")

133. *See, e.g.*, Haley, *supra* note 88; *Ray Halbritter Visits White House*, CANASTOTA BEE-JOURNAL, Sept. 28, 1993, at B3 (Oneida Nation "has created 1,600 new jobs, and . . . inject[ed] $1.1 million in payroll costs each week in to the local economy.")

134. A letter discussing the changes and developments in our nation, written by Nation member and Health Center Director Sheri Beglen, is reprinted in Robin Paul Malloy, *Letters From the Longhouse: Law, Economics and Native American Values*, 1992 WISC. L. REV. 1569, 1615-16. The views of Keller George, Men's Council member from the Wolf Clan, can be found in Eric Coker, *Oneidas' Wildest Dreams Coming True*, ONEIDA DAILY DISPTACH, Aug. 9,

We have empowered ourselves in a way that cannot be denied, and in a way that allows us to do things for our people that we have been unable to do for centuries. We are not dependent upon the federal government, the state government, the counties, towns or cities, churches, charities, nor any other entity. I believe that such empowerment is more than just a statement of sovereignty, it is sovereignty, and we have established that sovereignty without waiting or depending on other people to define what that term means. Whatever the international legal definition,[135] whatever the pronouncements of the Supreme Court,[136] sovereignty to us is the power to act by ourselves, for ourselves. Whether or not the United States likes it, and whether other Indian nations agree or disagree,[137] we as a

---

1994, at Front. *See generally* ONEIDA INDIAN NATION OF NEW YORK, SUMMARY OF PRELIMINARY DEVELOPMENT INITIATIVES (Apr. 1992).

135. Though international law constantly invokes the principle of self-determination, see McSloy, *supra* note 7, at 217, 287-89, there is no definition of the term. "One could expect . . . that a principle so readily utilized in the international arena would possess a definite meaning. This is not the case." Deborah Z. Cass, *Re-thinking Self-Determination: A Critical Analysis of Current International Law Theories*, 18 SYRACUSE J. INT'L L. & COM. 21, 21 (1992).

136. According to the Supreme Court, Indian sovereignty is merely the "backdrop against which the applicable treaties and federal statutes must be read" in considering whether state laws may be imposed upon Indian peoples. McClanahan v. Arizona State Tax Comm'n, 411 U.S. 164, 172 (1973). The reach of federal law can never be defeated by claims of Indian sovereignty, since according to the Supreme Court "[t]he sovereignty that the Indian tribes retain is of a unique and limited character. It exists only at the sufferance of Congress and is subject to complete defeasance." United States v. Wheeler, 435 U.S. 313, 323 (1978).

137. We are not the only Haudenosaunee nation facing controversy. The Onondaga Nation, whose reservation is part of their ancestral land and has always been under the control of their chiefs, *see* Harold Blau et al., *Onondaga, in* 15 HANDBOOK, *supra* note 2, at 491, 498, is faced with a tremendous environmental crisis due to the dumping of toxic waste on its land. *See* Mark Weiner, *Nation Gets Checked for Waste*, SYRACUSE HERALD AM., Aug. 22, 1993, at C2; *Toxic Waste Hunted at Onondaga Nation Landfill*, UTICA OBSERVER DISPATCH, Aug. 24, 1993, at 6A. A United States Environmental Protection Agency engineer stated that the cleanup was complicated by the fact that "scrap metal debris, auto parts and even whole cars" had been dumped in with the toxic waste. *Id.*

In addition, the Onondaga Nation has been violently split over an order by the chiefs to blockade businesses on the reservation with a barricade of over 40 junked cars dragged from all parts of the reservation. The chiefs gave the order after the businesses refused to pay the chiefs a 25 cent per carton tax on cigarettes. The businesses refused to pay the cigarette tax be-

people have exercised our power and are taking care of ourselves in a manner that has not been achieved in Oneida County for centuries. We are very proud of what we have done for our people. We have created a practical standard for judging leadership in Native American communities. Leaders must be judged by their actions, not their rhetoric, as actions speak louder than words. The debate, we believe, ends when one looks upon our once muddy thirty-two acres and our once potholed road and sees the wonderful buildings, services, and new opportunities we now can provide for our people.

The greatest accomplishment of all, however, is to a large degree intangible. It is the renewed self-esteem of our people and the renewed hope that has accompanied new opportunity.[138] This is the result of real, practical economic sovereignty according to our definition and under our control. Even if resources were made available to us by grant or charity, it is immeasurably more satisfying to have achieved all of this from our own effort and hard work. Thus can be seen, perhaps, a truer value which extends far beyond mere materiality. All these fine developments and possessions mean very little if they do not provide a pathway for the survival of our people,

---

cause the chiefs refused to make any accounting of how the taxes were being spent, and the merchants instead placed the taxes in an escrow fund for the benefit of the Onondaga people and used much of the money for community improvements. The chiefs have relied on the New York State Police and the Onondaga County Sheriff's Department to enforce their blockade. *See* Brian Carr, *State of the Nations: No End in Sight for High-stakes Onondaga Dispute*, SYRACUSE HERALD J., Mar. 31, 1994, at Front. Part of the problem at Onondaga lies in the fact that the two "chiefs" claiming the greatest authority, Oren Lyons and Irving Powless, Jr., are not Onondaga by birth, but are, respectively, Seneca and Mohawk. *Id.*

The Mohawk Nation has been bitterly split over the questions of governance and gaming. *See* HORNUNG, *supra* note 33; Starna, *supra* note 33; Barbara Stith, *Gambling Continues to Divide Mohawks*, SYRACUSE HERALD J., July 21, 1993, at B1; Clyde H. Farnsworth, *In Dodge City East, Cigarette Wars and Shootouts*, N.Y. TIMES, Jan. 1, 1994, at 4; Daniel D'Ambrosio, *Incident at Akwesasne*, GQ, Nov. 1993, at 217. The Seneca Nation of Indians has likewise faced controversy over plans to establish gaming operations. *See, e.g.*, *Casino Down the Drain, Seneca Leader Says*, UTICA OBSERVER DISPATCH, Aug. 2, 1993, at 5A.

138. *See, e.g.*, letter by Oneida Nation member Sheri Beglen, *in* Malloy, *supra* note 134, at 1615-16. One of our most gratifying achievements is the wonderful reaction of our Oneida children to their new opportunities. *See Kidding Around Rome . . .(and the Oneida Indian Nation)*, ROME OBSERVER, Mar. 6-12, 1994, at 8.

helping them to believe in themselves while retaining their culture and way of life. In our Haudenosaunee way of life, we are told that we must make decisions according to their effect upon the seventh generation to the future. Thus, we are simply caretakers of the present who bear a great responsibility for the future generations yet to come. The final answer to these questions of our existence thus resides within our own hearts, as we try to realize the Creator's design for all of us on Turtle Island.

With that in mind, if you ever come to Central New York, Exit 33 on the New York State Thruway,[139] stop by. That is where you will find us, that is where we have always been, and that is where we will always be.[140]

139. The Thruway runs along old Haudenosaunee trails, as do many tributary roads in Central New York.

140. For further information on the Oneida Indian Nation, please contact the Nation's press office at (315)829-3090 or by mail to: Oneida Indian Nation, Route 5, P.O. Box 1, via Vernon, New York, 13476, Attention: Public Relations Department. The Shako:wi Cultural Center and Oneida Museum, (315)363-1424, is located on the Oneida Territory, Route 46 South in Oneida, New York. Its hours are Tuesday through Saturday, 9:00 a.m. - 5:00 p.m.