

UNSETTLED NEW YORK:
LAND, LAW, AND HAUDENOSAUNEE NATIONALISM IN THE EARLY
TWENTIETH CENTURY

by

ANDREW BARD EPSTEIN

(Under the Direction of CLAUDIO SAUNT)

ABSTRACT

During the first decades of the twentieth century, officials in Washington, D.C. and Albany, N.Y. unsuccessfully attempted to “solve” the ideological, jurisdictional, and material problem posed by Haudenosaunee (Iroquois) communities in upstate New York. This administrative crisis stretched back to the first decades of the republic, when overlapping treaties, colonial charters, and private preemption rights clouded title – and, in turn, jurisdictional suzerainty – to much of what would become the northeastern United States. Within the interstices of colonial law and governance, Iroquois people maintained an independent political culture that exploded into a movement for territorial repatriation in the 1920s, a historical moment otherwise marked by imperial ascendance and racial backlash

INDEX WORDS: Native Americans, Sovereignty, Jurisdiction, New York, Land, Law, Settler Colonialism, Nationalism, Haudenosaunee, Iroquois Confederacy

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ANDREW BARD EPSTEIN
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ANDREW BARD EPSTEIN

Major Professor: Claudio Saunt

Committee: Bethany Moreton
Jace Weaver

Electronic Version Approved:

Maureen Grasso
Dean of the Graduate School
The University of Georgia
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DEDICATION

To Rhoda Epstein (1926-2011) & Leonard Epstein (1924-2011)

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To my family, my deepest thanks for your love and support.

I write these words from the passenger seat of my dinged up Nissan, careening back to Athens from a Thanksgiving in New York. Maresi Starzmann sits next to me, navigating the back roads of a foreign country, offering insight and advice where she can, laughter and reassurance where she can't. I am grateful for her presence in these last hectic weeks of my master's work, but even when separated by an ocean, she is never really absent. To her, I owe so much.

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INTRODUCTION

IMPERIUM IN IMPERIO

“What becomes of one nation inside of another?”

Dr. R.W. Hill, New York State Indian Commission, July 20, 1920

Robert G. Valentine prided himself on orderly administration. A former M.I.T. professor, settlement worker, and Roosevelt Progressive, Valentine became Commissioner of Indians Affairs in 1908 declaring that “speed, economy and efficiency” were all he cared for. Charting a cautious course atop a maligned bureaucracy, Valentine claimed to value a quality “which it was said was necessary for a chief of the Iroquois Indians to possess,” namely the acumen to navigate “between all kind of opposing forces” and carry out his duties in a businesslike manner.¹ In 1912, near the end of his single term, Valentine’s office received a letter from an actual Iroquois chief that surely disrupted this well-cultivated sense of order. On May 7, leaders of the St. Regis Mohawk reservation in northeastern New York gathered for a council meeting to review an old treaty. Mitchell Karikohe, a chief of the Big Pipe Band, reported to Washington, “The Treaty states that the Covenant Chain of Brotherly Love shall exist between the Seven Nations² of Iroquois and the American government as long as the sun and moon endure.” Given that both celestial bodies

¹ “Resigns Taft Office to Join Roosevelt,” *The New York Times*, September 11, 1912. Frances Paul Prucha, *The Great Father: The United States Government and the American Indians* (Lincoln: University of Nebraska Press, 1984), 769.

² The use of seven rather than the standard six nations could refer either to a distinction between the two Mohawk reservation on either side of the Canadian-U.S. border, or to separately include the Grand River Reservation – made up of multiple nations – in southern Ontario. Other times, five nations are spoken of, referring to the confederacy prior to the Tuscaroras admission in the early eighteenth century.

remained, the chiefs felt it necessary to inform the proper authorities that they would no longer abide by U.S. or New York State laws. “We want to stick to the kind of government laid out by our forefathers,” the letter concluded. Attached were six pages of treaty text transcribed by hand.³

A month prior, Valentine had addressed graduates of the Carlisle Indian School in Pennsylvania, advocating “more self-government” and “home rule for the Indians” – not, evidently, of the kind Mohawks envisioned.⁴ In response to the St. Regis letter, Valentine’s Second Assistant Commissioner C.F. Hauke acknowledged that while the “concurrent jurisdiction” of federal and state authority over the reservation might indeed cause some confusion, St. Regis Mohawks were nonetheless “subject to the laws of the State of New York” in most every matter and advised them to behave accordingly.⁵ The letter’s dismissive tone – a two-paragraph retort to pages of treaty history – was the standard in the early twentieth century. Under fire from Congress, the press, and Indian progressives for corruption and mismanagement, the Office of Indian Affairs hoped to avoid shielding any additional “wards” under its administrative wing; better to defer to New York, where politicians long proclaimed jurisdictional suzerainty over the Six Nations. The Iroquois were known in official circles as particularly troublesome, as was surely confirmed by the Karikohe’s letter, bucking national legislation and insisting on sovereignty. “I hear they all keep away from the New York Indians,” Board of Indian Commissioners secretary Malcolm

³ Mitchell Karikohe to Robert G. Valentine, Commissioner of Indian Affairs, May 7, 1912, Central Classified Files, 1907-1939, Box 4, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC.

⁴ “Home Rule for Indians,” *New York Times*, April 7, 1912. Valentine was advocating for “self-government” in the individualist sense.

⁵ C.F. Hauke, Second Assistant Commissioner of Indian Affairs, to Mitchell Karikohe, May 28, 1912, Central Classified Files, 1907-1939, Box 4, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC.

McDowell once told his colleagues, referring to officials in Washington.⁶ As the 1910s progressed, this disinterest would prove increasingly difficult to maintain.

Modern governments “puzzle before they power,” argues historian Margaret Canady. The state first must “know” that which it intends to regulate and rule, compelling a subject’s fixedness in relation to rights and the law.⁷ Thus, Mae Ngai finds in the same period of rapid administrative expansion the genesis of the “illegal alien,” a person who presented both a “social reality and legal impossibility,” bereft of the bureaucratic markings requisite for regulation: “impossible subjects,” in her powerful phrasing.⁸ Indian people, as most studies of American political development fail to note, have long proved among the most puzzling and “impossible” of all. Targets of genocide and ethnic cleansing, recipients of protection and aid, citizens, sovereigns, and “domestic dependent nations,” indigenous people have never easily fit into the prescribed categories of the liberal democratic state. At times, the very maintenance of those categories has been premised on either Indian extirpation, appropriation, or both.⁹ By the dawn of the twentieth century, however, Native people appeared closer than ever to the “colonial dream of fixity, control, visibility, productivity, and...docility.”¹⁰ The collapse of martial resistance, the incorporation of once contested territories, and new forms of bureaucratic knowledge-making like allotment rolls, census records, and compulsory school attendance all seemed to indicate that what was once

⁶ New York State Indian Commission, *The STATUS of the AMERICAN INDIAN Residing in the State of New York* (Albany, NY, 1922), 22. Cited hereafter as “The Everett Report.”

⁷ Margaret Canady, *The Straight State: Sexuality and Citizenship in Twentieth-Century America* (Princeton: Princeton University Press, 2009), 3.

⁸ Mae Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004), 4.

⁹ Morgensen makes such an argument in relation to modern sexuality. Scott Lauria Morgensen, *Spaces Between Us: Queer Settler Colonialism and Indigenous Decolonization* (Minneapolis: University of Minnesota Press, 2011). Deloria, on the other hand, traces the centrality of appropriated Indianness to the creation of an American subject. Phil Deloria, *Playing Indian* (New Haven: Yale University Press, 1998).

¹⁰ Phil Deloria, *Indians in Unexpected Places* (Lawrence: University of Kansas Press, 2004), 27.

disturbing and opaque now was nearly settled, brought safely within the boundaries of the American state.

Yet no one in Washington or Albany could quite place the Haudenosaunee. “Perplexing,” “peculiar,” and “anomalous” suffused official documents. The New York criminal justice system regularly expressed confusion over whether to arrest, how to try, and where to incarcerate Iroquois lawbreakers, or if they could be called “lawbreakers” at all. Court rulings drew on contradicting legal lineages and reached widely disparate conclusions on matters seemingly quotidian. The state launched initiatives to dissolve tribal courts and station police on reservations, only to see these efforts fall prey to unrelated political machination. And in 1919, an upstate judge returned to an Oneida family a parcel of foreclosed property, deploying a legal rationale that potentially undermined land title throughout New York. “Chaos reigns,” declared the Indian Rights Association at decade’s end.¹¹ Iroquois reservations represented a “legal landscape” of confusion.¹² “In its modern conception,” writes Benedict Anderson, “state sovereignty is fully, flatly, and evenly operative over each square centimetre of a legally demarcated territory.”¹³ For geographer David Delaney, such territories aspire “to near total reference or relevance to what is ‘inside.’”¹⁴ The failure to render Iroquois communities coherent within a legible national space suggests why a people numbering just over five thousand – more souls arrived at Ellis Island every two days at its 1907 height¹⁵ – should be considered a “problem” at all. As state and federal forces tried and failed to map reservations into the prevailing legal landscape,

¹¹ Prucha, 916.

¹² David Delaney coined the term *legal landscape* to describe “the complex ensemble of lines and spaces—territorial configurations—that give legal meaning to determinable segments of the physical world or actual lived-in landscapes.” Quoted in D. Anthony Tyeme Clark and Melea Powell, “Resisting Exile in the ‘Land of the Free’: Indigenous Groundwork at Colonial Intersections,” *American Indian Quarterly*, 32:1 (Winter 2008), 3.

¹³ Benedict Anderson, *Imagined Communities* (London: Verso, 1983), 19.

¹⁴ David Delaney, *Territory: A Short Introduction* (Malden, MA: Blackwell Publishing, 2005), 14.

¹⁵ Warren Hoffman, *The Passing Game: Queering Jewish American Culture* (Syracuse: Syracuse University Press, 2009), 12.

Iroquois “impossibility” proved a resource. Within the interstices of law and order, the Haudenosaunee nurtured an independent political culture that would fuel a resurgent confederacy and challenge the territorial boundaries of the Empire State in the 1920s.

Chapter one traces the jurisdictional crisis from its roots in the Revolutionary era to its prosaic manifestations a century later. It is a story bound to the varied and often illegal means by which Iroquoia was reduced to the small, disjointed land-base of the early 1900s. Dispossession and incorporation proved messy, with implications well into the twentieth century. The balance of the chapter explores the conflicting dimensions of state and federal rule, the various failed attempts to address these contradictions, and the administrative stalemate it yielded. Throughout, most Haudenosaunee people remained remarkably consistent in their claims to a distinct, national existence, though the forms of this expression changed with the political exigencies of the time. When a federal district court returned a parcel of Oneida land in 1919 and further undermined state rule, Albany created an investigative panel under the chairmanship of a little-known assemblyman named Edward A. Everett to finally settle the issue once and for all.

The commission broke the stalemate indeed but in ways unforeseen and unwelcome to its progenitor. Narrating Everett’s transformation from conservative politician to champion of Indian land rights, chapter two draws out Iroquois perspectives from the long-suppressed Everett Report on the eve of a national resurgence. Tasked by Albany to “discover the status” of Indian people in the hopes it could be “fixed,” Everett instead reached what he believed to be unavoidable conclusions about his state’s illegal boundaries, declaring that over six million acres, roughly two-thirds of New York, still belonged to its original owners. Haudenosaunee people pushed Everett to these conclusions by confronting his commission with legal and historic evidence for their claims to independence. Seizing the

unique opportunity afforded by the commission and its sympathetic chairman, the Six Nations moved from defending their sovereignty to advocating repatriation, extending the geography of confusion by questioning illegal title everywhere. For a moment, the Empire State appeared up for grabs.

Finally, chapter three explores the effort to act on Everett's findings. Situated in the wider context of pan-Iroquois resurgence, I focus primarily on the twentieth century's first major legal battle over Indian land in New York, when a St. Regis Mohawk named James Deere filed suit to eject a powerful hydroelectric company in Massena, New York, from land he contended was illegally in contravention of binding treaties. Even to reach that point of courtroom confrontation required the reconstitution of a dormant Six Nations confederacy, a task taken up by the controversial Oneida leader Laura Cornelius Kellogg. While she and the confederacy succeeded in launching a historic legal action, the effort was ultimately undermined by internal division and colonial containment. The Iroquois' "impossible" identity, neither fully within nor entirely without the settler state's sociolegal framework, had opened space for the land rights challenge only to later ensnare it.

This thesis challenges the current historiography in several respects. Historians of the "Indian problem" have mostly looked west, where the bulk of government resources and personnel were deployed to manage and assimilate indigenous populations in the aftermath of U.S. expansion.¹⁶ Few examine Indian people east of the Mississippi and their relationship to federal and state administration in the early twentieth century.¹⁷ Though not ill-intended,

¹⁶ Frederick E. Hoxie, *A Final Promise: The Campaign to Assimilate the Indians, 1880-1920* (Lincoln: University of Nebraska Press, 1984); David Wallace Adams, *Education for Extinction: American Indians and the Boarding School Experience, 1875-1928* (Lawrence: University Press of Kansas, 1995); Cathleen Cahill, *Federal Fathers & Mothers: A Social History of the United States Indian Service, 1869-1933* (Chapel Hill: University of North Carolina Press, 2011); Nicolas G. Rosenthal, *Reimagining Indian Country: Native American Migration & Identity in Twentieth-Century Los Angeles* (Chapel Hill: University of North Carolina Press, 2012).

¹⁷ A recent notable exception is Malinda Maynor Lowery, *Lumbee Indians in the Jim Crow South: Race, Identity, and the Making of a Nation* (Chapel Hill: University of North Carolina Press, 2010).

this gap contributes to a dangerous myth that Native Americans were either non-existent or altogether insignificant in eastern states following removal. There is no shortage of studies on Iroquois peoples from the sixteenth through the nineteenth century, but these works drop off precipitously following the War of 1812.¹⁸ Likewise, treatments of Native activism in the progressive and post-progressive periods tend to focus either on professional reform organizations like the Society of American Indians, which sought equal recognition by and eventual integration in white society,¹⁹ or on subtler forms of resistance to colonial management.²⁰ By contrast, Haudenosaunee activism was neither assimilatory nor subtle.

Upstate New York in the early twentieth century is an especially instructive locus to assess the settler colonial project, if only because the term “colonial” appears wholly anachronistic for the time and place under study. This aversion is grounded in a belief that colonial features which may have characterized an earlier period – domination of an independent indigenous polity, occupation of stolen land, theft of resources, etc. – were fully overcome by the twentieth century. Recent scholarship has identified this assumption as the final ideological move of settler colonialism. By “indigenizing” the settler formation on colonized land, the dominant society removes from the field of analysis its own colonial core, and by extension, the possibility for decolonization, hence the seemingly reflexive reaction to Iroquois claims to land and nationhood in the period as “delusional” or “of

¹⁸ Of the two exceptions worth noting, one is not yet published as of this writing. Laurence M. Hauptman, *The Iroquois in the Civil War: From Battlefield to Reservation* (Syracuse: Syracuse University Press, 1993); C. Joseph Genetin-Pilawa, *Crooked Paths to Allotment: The Fight over Federal Indian Policy after the Civil War* (Chapel Hill: University of North Carolina Press, 2012).

¹⁹ Hazel W. Hertzberg, *The Search for an American Indian Identity: Modern Pan-Indian Movements* (Syracuse: Syracuse University Press, 1971); Lucy Maddox, *Citizen Indians: Native American Intellectuals, Race and Reform* (Ithaca: Cornell University Press, 2005).

²⁰ Tom Holm, *The Great Confusion in Indian Affairs: Native Americans and Whites in the Progressive Era* (Austin: University of Texas Press, 2005); William Bauer Jr., *We Are All Like Migrant Workers Here: Work, Community, and Memory on California's Round Valley Reservation, 1850-1941* (Chapel Hill: University of North Carolina Press, 2009)

interest only to students of history.”²¹ “Settlers naturalize their presence on Native land as rightful, final occupants so that the question of conquest can appear to be ‘settled,’” writes Scott Lauria Morgensen.²² “Legitimacy is the central dilemma of conquest,” adds Amy Den Ouden, which “must be understood, then, as entailing varied, imbricated material and discursive processes.”²³ These processes did not simply evaporate after initial settlement but are replayed each generation anew, albeit in less conspicuous forms. At its core, the Haudenosaunee resurgence of the 1920s represented a challenge to a legitimacy built on erasure. Their politics were anything but settled.

A note on methodology is in order. Over several conversations with the historian Laurence Hauptman, he implored me to spend time in Haudenosaunee communities, not for ethnographic observation but as a prerequisite to understanding the complexities of their past, present, and relationship to the colonizing society. I regret that the truncated timetable of master’s work prevented me from doing so. Instead, this thesis relies on several weeks of research at the National Archives in Washington, D.C. and the New York State Library in Albany, the two colonial perches overseeing Iroquois affairs in the early twentieth century. These documents present several limitations. Quotations culled from newspapers are almost always framed by romanticism and condescension. Records not composed by whites tend to come from Haudenosaunee men, mostly of some stature in their communities. In confronting colonial power, these letters and petitions shed little light on inequities of class and gender on the reservations. Chronicles of internal tribal meetings are few. In a sense, this is reassuring; the colonial gaze, so fixated on rendering Indian people legible to

²¹ “The Everett Report,” 294. Lorenzo Veracini, *Settler Colonialism: A Theoretical Overview* (New York: Palgrave Macmillan, 2010)

²² Morgensen, 16.

²³ Amy E. Den Ouden, *Beyond Conquest: Native Peoples and the Struggle for History in New England* (Lincoln: University of Nebraska Press, 2005), 10-11.

administrative control, was never total. What does appear in the archive – the fragments of resistance, the confusion of bureaucrats, the persistence of uncertainties, the resurrection of basic questions long considered moot – unsettles “the imperial conceit that all was in order.”²⁴

²⁴ Ann Laura Stoler, *Along the Archival Grain: Epistemic Anxieties and Colonial Common Sense* (Princeton: Princeton University Press, 2009), 1.

CHAPTER ONE

STALEMATE

“I should say it is like Mohammed’s coffin suspended between heaven and earth and touches neither.”

Dr. R.W. Hill, New York State Indian Commission

The tangled roots of the jurisdictional crisis gripping upstate New York in first decades of the twentieth century stretch back to the earliest days of British settler colonialism. Unsure of exactly how far the continent stretched and who would ultimately govern it, the Crown granted the colonies of Massachusetts and New York overlapping charters expanding indefinitely westward. The power of the Iroquois Confederacy prevented either colony from acting on these grants until after the Revolutionary War, when most Haudenosaunee nations sided with the British, seen as a greater guarantor of independence than the land-hungry upstarts. The expulsion of Loyalists and their Indian allies to the northwestern frontiers at the war’s close, coupled with a decentralized federal government loosely organized under the Articles of Confederation, opened ample opportunity for New York elites and yeoman settlers to pursue a rapacious policy of dispossession. Beneficiaries included veterans of General John Sullivan and James Clinton’s scorched earth campaign in 1779, dispatched by George Washington under instructions to effect “the total ruinment of [Iroquois] settlements,” earning the future president a permanent label among the Onondagas as “Town Destroyer.” While carrying out this “total destruction and

devastation” – burning some 40 Iroquois villages in total – soldiers could not help but notice Iroquoia’s vast and fertile lands, and many returned as homesteaders at war’s end. Officers in Sullivan’s party began dividing the spoils before the campaign even finished.²⁵

The conflicting charters were settled at a meeting in Hartford, Connecticut in 1786. New York would exercise jurisdiction over what is now the western portion of that state while Massachusetts retained title, but not for long. Land speculation was booming in the newly expanded republic, and state governments saddled with massive war debts were eager to raise capital. Massachusetts promptly sold its title to a series of failed entrepreneurs, whereby it passed through the hands of financial titan Robert Morris, a group of Dutch businessmen, and eventually to the Ogden Land Company. These manifold transactions failed to address the central issue with the titles, namely that an independent people still resided on what distant financiers now claimed to own and consistently refused to vacate. The Massachusetts notes were mostly for Seneca lands, part of a nation that retained a modicum of strength despite the war’s devastation; the titles were thus only for “preemption,” the right of first purchase should the Seneca sell. Buyers of these preemption rights often predicated their acquisition on the former owner gaining land cessions from the Seneca, and while liquor, bribery, and violence won some sales, the future Cattaraugus and Allegany reservations remained under Indian control. The Ogden Land Company would maintain they held title to these reserves well into the twentieth century, repeatedly complicating white allotment efforts.²⁶ An Interior Department lawyer investigating the title in 1914 would complain, “Did the framers of the compact between Massachusetts and New

²⁵ Max Mintz, *Seeds of Empire: The American Revolutionary Conquest of the Iroquois* (New York: New York University Press, 1999), 114; Alan Taylor, *The Divided Ground: Indians, Settlers, and the Northern Borderland of the American Revolution* (New York: Alfred A. Knopf, 2006), 98.

²⁶ Laurence Hauptman, “Senecas and Subdividers: Resistance to Allotment of Indian Lands in New York, 1875-1906,” *Prologue* 9 (1977): 107.

York ever dream of the future difficulties being stored up when they conceived the plan divorcing the right of preemption from that of sovereignty?”²⁷

Elsewhere, New Yorkers eroded Iroquois lands to the point of sparking new hostility, a prospect the beleaguered American republic could ill afford. Shortly after the Treaty of Paris ending the Revolutionary War – which made no mention of Iroquois allies on either side of the conflict – New York proposed ejecting all Mohawks, Onondagas, Cayugas and Senecas from the state’s claimed boundaries, a dream of Albany politicians that endured well into the next century.²⁸ While this particular push failed, New York did succeed in making a series of rapid land acquisitions, undermining federal efforts to enlist Iroquois assistance in pacifying Ohio Country. Some Haudenosaunee even threatened to resume attacks on white settlements if New York persisted. To calm the restive border in New York and elsewhere, a strengthened federal Congress under the newly ratified Constitution passed the Indian Trade and Intercourse Act in 1790, a bill that reverberates through every Indian land dispute in New York to the present day. Though the Articles of Confederation had also reserved to Congress the sole right to regulate Indian affairs – so long as they were “not members of any of the States” – there existed few mechanisms of enforcement. On penalty of fine and imprisonment, the new law required the presence a federal agent, Indian consent at a representative treaty council, ratification by the U.S. Senate, and presidential signature for any purchase of Native land.

After years of facing down pushy state negotiators with little legal recourse, the act’s strategic importance was not lost on Haudenosaunee leaders. At Kanonwalohole in 1793, for

²⁷ John R.T. Reeves, Department of the Interior, to Cato Sells, Commissioner of Indian Affairs, Dec. 26, 1914, Central Classified Files, 1907-1939, Box 2, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC.

²⁸ John C. Mohawk, “The Canandaigua Treaty in Historical Perspective,” in *Treaty of Canandaigua 1794: 200 Years of Treaty Relations between the Iroquois Confederacy and the United States*, ed. G. Peter Jemison and Anna M. Schein (Santa Fe: Clear Light Publishers, 2000), 47.

instance, Oneida warrior Captain Peter waved a copy of the Trade and Intercourse Act in the face of state representatives, insisting they had no power to acquire Iroquois lands while federal officials remained on the sidelines in Washington.²⁹ The new federal policy found its most profound expression in the 1794 treaty at Canandaigua, which recognized Haudenosaunee lands and sovereignty in roughly two-thirds of the state's future territory, though treaties at Fort Stanwix and Fort Harmar in earlier years guaranteed roughly the same. These treaties would serve as legal basis for much of the activism in the early 1900s and beyond, remembered in Iroquois historical consciousness through the mnemonic device of wampum belts and revisited at tribal councils for centuries to come.³⁰ So too would many Iroquois retain a longstanding fluency in the Constitution's sixth article declaring treaties "the supreme Law of the Land."

Laws made were not laws obeyed. By 1802, New York had fully violated both the letter and the spirit of the Intercourse Act, occasionally defying its mandates through subterfuge but more often flaunting them openly. Federal treaty commissioners were no longer invited to the new, more dictatorial councils between the state and dwindling Iroquois representatives, nor were their outcomes ever submitted for Congressional approval. With the collapse of Indian resistance in the Ohio Valley following the War of 1812, the federal government had little incentive to placate the much-reduced Iroquois and rarely attempted to enforce its own laws. In any case, even proponents of the Intercourse Act privately acknowledged a shared interest with New York's more aggressive negotiators, believing that a slower but no less total absorption of Native communities was inevitable.³¹ However duplicitous its motive or paltry its enforcement, the law remains on the books to this day,

²⁹ Taylor, *Divided Ground*, 234.

³⁰ G. Peter Jemison, "Sovereignty and Treaty Rights – We Remember," *Sovereignty, Colonialism and the Indigenous Nations: A Reader*, ed. Robert Odawi Porter. (Durham: Carolina Academic Press, 2005), 105.

³¹ Taylor, *Divided Ground*, 240.

complicating (if not invalidating, as some maintain) every acquisition of Iroquois land following the 1794 treaty. Over the next decades, New York fueled its commercial ascension with the dispossession of Haudenosaunee territory. Acquiring Iroquois lands for pennies on the acre, Albany sold them at a premium. Over one five-year period, the profits from these sales amounted to half of all state revenue. New York would construct a booming mercantile corridor of canals, turnpikes and railroads through Iroquoia, making the state a center of the market revolution and a magnet for immigrants. By midcentury, fully ten percent of the entire U.S. population lived in the Empire State.³²

Laurence Hauptman and others have ably chronicled the massive fraud and illegality that hacked away at the Haudenosaunee's once expansive terrain.³³ A few incidents are nonetheless worth mentioning, as they have bearing on the story further on. The Treaty of Buffalo Creek was arguably the most egregious example of criminality in land seizure. In 1826, abetted by Indian factionalism, fatalism, and confusion, the Ogden Land Company acquired the fertile Genesee Valley and portions of the Tonawanda, Cattaraugus, and Allegheny Reservations, all within the Seneca's vast domain. As usual, the land cession was never ratified by the United States Senate or signed by the President. Emboldened by the Indian policy of President Andrew Jackson and Vice President Martin Van Buren, who had pushed for Oneida removal as Governor of New York, Ogden investors made their play for the rest of Seneca in 1838. Three Ogden Land officials, including John F. Schermerhorn, a key actor in the removal of Cherokees from the Southeast, used liquor, bribes, and threats to compel a small, unrepresentative group of Seneca chiefs to relinquish the entirety of Cattaraugus, Allegheny, and Tonawanda and depart for lands west of the Mississippi. The

³² Taylor, *Divided Ground*, 201-202; Laurence Hauptman, *Conspiracy of Interests: Iroquois Dispossession and the Rise of New York State* (Syracuse: Syracuse University Press, 1999), 213.

³³ Hauptman, *Conspiracy of Interests*; Anthony F.C. Wallace, *The Death and Rebirth of the Seneca* (New York: Vintage Books, 1969).

treaty was subject to an immediate and relentless campaign for revocation by the Seneca majority and their Quaker allies, and was amended four years later to preserve sections of the Cattaraugus and Allegheny. But the Seneca permanently lost Buffalo Creek, once the center of the Six Nations confederacy, which was now moved to Onondaga, where it remains today. The city of Buffalo rapidly encroached. Tonawanda, meanwhile, had to be “repurchased” from the Ogdens, using money originally set aside for Seneca relocation to present-day Kansas. The fallout fueled a revolution in Seneca politics in 1848, with Cattaraugus and Alleghany chartered as “The Seneca Nation of Indians” under a semi-autonomous, state-sanctioned constitution, and Tonawanda remaining under traditional leadership. Already complicated by preemption titles, illegal treaties, and federal law, “ownership” of all three Seneca reservations was further clouded by their aborted removal and return of partial sovereignty.³⁴

In the last decades of the nineteenth century, national Indian policy was dictated largely by events in the West; the Haudenosaunee were either an afterthought to these policies or excluded altogether. The Dawes Act of 1887 specifically prohibited allotment of the Senecas, the largest Iroquois landholders in New York State, as Ogden preemption rights continued to fog title. If allotted in severalty like virtually all other Indian nations with the exception of Oklahoma’s “Five Civilized Tribes,” the ambiguous and overlapping layers of formal and informal title would be reduced to one piece of paper, in fee simple, held by a Seneca individual. While the surplus would be thrown open to new buyers, the Ogden Land Company demanded acquisition of or compensation for the entire Seneca domain – a rare moment when private settler interests and allotment failed to dovetail. The Senecas were

³⁴ C. Joseph Genetin-Pilawa, “Treaty of Buffalo Creek (1838),” in *Encyclopedia of American Indian Removal*, Vol. 2, ed. Daniel F. Littlefield, Jr. and James W. Parins (Santa Barbara: Greenwood, 2011), 241-243; Hauptman, *Conspiracy of Interests*, 155-210.

thus excluded. None of the other reservations were allotted either. Though Albany hoped to eventually dissolve all communal landholding and tribal self-government, they did not care to see the Iroquois brought under other federal auspices. New York continued to claim jurisdiction on the reservations, building roads, schools and other infrastructure, pointing to such generosity whenever their power was questioned. Less generous were the arrests and political interference the state also practiced. “Were it not for the fact that we are here dealing with ‘an Indian problem’ the Federal Government would have practically nothing to do with the so-called ‘reservations’ in that state,” an Interior Department investigation would comment years later.³⁵

Yet the Iroquois were Indians, and while Supreme Court rulings and national legislation emerged out of particular circumstances far from New York, they were crafted and articulated in racial terms. The direction unequivocally pointed toward federal plenary power, a doctrine that placed major felonies, land transactions, the conferral of citizenship, and education – among other activities – under Congressional supervision, removing these functions from the purview of both individual states and Indian nations. Two years after the surprising 1883 decision in *Ex Parte Crow Dog*, when the Supreme Court recognized indigenous sovereignty in settling intertribal criminal disputes, Congress passed the Major Crimes Act, bringing the seven most significant felonies under federal jurisdiction. The same Supreme Court that accepted tribal rights in *Crow Dog* promptly approved this superseding Congressional power in *Kagama*. Plenary power was again affirmed by the Supreme Court in the 1903 decision of *Lone Wolf vs. Hitchcock*. Neither Congress nor the Supreme Court carved out special exemptions for Iroquois reservations, as had been done for allotment, yet neither

³⁵ John R.T. Reeves, Department of the Interior, to Cato Sells, Commissioner of Indian Affairs, Dec. 26, 1914, Central Classified Files, 1907-1939, Box 2, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC.

did they specifically revoke New York's competing jurisdictional power. The lines separating state and federal power were never explicitly drawn and the Six Nations hung in the balance, repeatedly pointing to treaties they believed superseded both.³⁶

At the turn of the twentieth century, the majority of Iroquois lived on an archipelago of small enclaves scattered across the wide expanse north and west of New York City referred to as "upstate." Seneca Indians predominated on four reservations in western New York, though only three held a sizeable population: Allegheny, Cattaraugus, and Tonawanda.³⁷ The Ogden Land Company maintained preemption rights to the first two, also home to the only state-sanctioned tribal justice system in New York: the Peacemakers' Court. The fourth Seneca reservation, Oil Springs, covered barely six hundred acres, but was significant for reasons indicated by its name. For centuries, a twenty-foot muddy pool bubbled crude petroleum, long used for medicinal purposes by the Seneca. The site was allegedly the first oil production witnessed by a European in North America, when the French Missionary Joseph De La Roche d'Aillon traveled through Iroquois country in 1626.³⁸ In the late nineteenth century, demand for oil increased pressure on the Seneca to lease their reservation lands. Nine miles north of Niagara Falls, the Tuscarora Reservation contained over six thousand acres, much of which was also complicated by the Ogdens, though the Tuscaroras denied their preemption rights. Their proximity to Canada would

³⁶ Vine Deloria, Jr. and Clifford M. Lytle, *American Indians, American Justice* (Austin: University of Texas Press, 1983), 40-45; Sidney L. Harring, *Crow Dog's Case: American Indian Sovereignty, Tribal Law, and United States Law in the Nineteenth Century* (New York: Cambridge University Press, 1994), 144.

³⁷ Following information is derived from "Reeves Report." John R.T. Reeves, Department of the Interior, to Cato Sells, Commissioner of Indian Affairs, Dec. 26, 1914, Central Classified Files, 1907-1939, Box 2, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC.

³⁸ R.H. Bartlett to Hubert Work, Secretary of the Interior, July 21, 1927, Central Classified Files, 1907-1939, Box 4, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC.

make the reservation a focal point of the 1920s border rights movement.³⁹ Three hundred miles to the north and east, the St. Regis (or Akwesasne) Mohawk Reservation was bifurcated by the same international divide, with roughly half its territory falling under Canadian domain. And just south of Syracuse, the Onondaga Reservation, only a few square miles, was the confederacy's center and arguably the source of the most consistent and rigid sovereignty claims. Not surprisingly, Carrington reported Onondaga as containing the highest concentration of "pagans" in the state.

Despite official efforts to define a specifically *New York* "Indian Problem," Iroquoia extended beyond the limits of upstate. A branch of the Mohawk Nation lived on a reservation south of Montreal, known as Kahnawá:ke, from which hundreds of steelworkers traveled to build New York City's towering skyline.⁴⁰ In Ontario, the Grand River Reservation was the descendant of Joseph Brant's dream of a unified Six Nations territory and by the early 1900s was the most populous Iroquois enclave. Disputes between the traditional government and Canadian officials there exceeded even the moments of greatest conflict in New York during this period, spawning the first Indian appeal to an international body in the twentieth century. Reduced to a tiny tract near Albany and overwhelmed by white settlers, most Oneidas removed for Wisconsin in the 1820s and 30s, a less violent process though ultimately no different in outcome than the more famous ethnic cleansings in the Southeast. Smaller numbers fled to Canada, moved to other New York reservations, or tended small farms in Madison and Oneida County, where title was especially unclear.⁴¹ Even in Wisconsin, Oneidas maintained a political relationship with their confederacy in the

³⁹ Kevin Bruyneel, *The Third Space of Sovereignty: The Postcolonial Politics of U.S.-Indigenous Relations* (Minneapolis: University of Minnesota Press, 2007), 111-121.

⁴⁰ Gerald F. Reid, "Illegal Alien? The Immigration Case of Mohawk Ironworker Paul K. Diabo," *Proceedings of the American Philosophical Society* 151: 1 (March 2007), 61-78.

⁴¹ Laurence M. Hauptman & L. Gordon McLester III, ed., *The Oneida Indian Journey: From New York to Wisconsin, 1784-1860* (Madison: University of Wisconsin Press, 1999).

East, joining the land rights movement in the 1920s under the controversial leadership of Laura Cornelius Kellogg. Cayugas were also scattered and many ended up in present-day Oklahoma, though a few lived on other New York reservations. Finally, in Pennsylvania descendants of the Seneca Chief Cornplanter lived on a tract bequeathed after the Revolutionary War.⁴² Even New York City harbored a small Haudenosaunee community, clustered mostly in boarding houses on Broadway and Broome Street in lower Manhattan, until a larger Mohawk community of steelworkers emerged in Brooklyn in the 1920s.⁴³

In all, Iroquois people lived across a wide terrain, moving between reservation communities, large cities, and diverse regions, expanding the traditional definition of “Indian Country.” Though small in number, the Haudenosaunee nonetheless occupied a vexing position for officials in Albany and Washington, their semi-independent reservations a “cancer in the midst of the body politic,” in the words of Phillip C. Garrett, member of the Board of Indian Commissioners.⁴⁴ To an expanding state apparatus intent on generating bureaucratic knowledge about its subjects, the Six Nations were in some ways more legible and in other ways less than Indians in the West. Surrounded by populous cities and towns in a state laced with major infrastructure, their lands were anything but the wide arid plains or inhospitable deserts of western reservations. Beginning in 1890, they appeared on census rolls, mostly with Anglicized last names passed down through several generations. And frequent contact with Euro-Americans spanning more than two centuries produced voluminous public records on which officials could draw. In other ways, the reservations were opaque. Many participated in political processes from which whites, and often

⁴² Henry Beebee Carrington, *Extra Census Bulletin. Indians. The Six Nations of New York* (Washington, D.C.: United States Census Printing Office, 1892), 6.

⁴³ Childe Cromwell, “The Indians of New York City,” *The New York Times*, September 12, 1897; Randy Kennedy, “Mohawk Memories: An Indian Community Flourished and Faded In a Section of Brooklyn,” *The New York Times*, December 28, 1996; “Iroquois Too Much for Him,” *The New York Times*, June 9, 1912.

⁴⁴ Laurence Hauptman, “Senecas and Subdividers,” 112.

Christian Indians, were explicitly excluded and for which detailed records rarely exist. Almost none were U.S. citizens, restricted from one of the only pathways toward Indian enfranchisement: allotment. The only other option required a total renunciation of tribal identity and protected land, a route attractive to few. Moreover, many vocally opposed U.S. citizenship altogether, a position unthinkable in the dominant paradigm of minority advancement; people of color might be undeserving from a white perspective but not undesirable. Finally, just who controlled Iroquois territory remained a troubling question. The reservations thus constituted a geography of jurisdictional confusion and conflicting political identities, anathema to the “search for order” embodied by the progressive-era state.⁴⁵

Two official investigations in the late nineteenth century – one state and one federal – demonstrate both the continuities and ruptures between these layers of government. In 1886, Albany officially sanctioned the longstanding but heretofore illegal practice of white land leasing on Iroquois reservations.⁴⁶ Building on this momentum, the state assembled a commission under the chairmanship of J.S. Whipple two years later following to finally “settle the matter” – an endlessly repeated phrase of official inquiries from mid-nineteenth to mid-twentieth century. Investigators traveled to each Iroquois reservation in New York, hearing testimony from Indians and non-native “experts.” The commission spent most of its time denouncing tribal “backwardness” and “paganism” rather than tracing the dictates of treaty law. Recalling their arrival in 1922, Joseph Johnson, Oneida, labeled the commission a “flying squadron.” “We saw them go by but did not know until two or three days after who they were,” Johnson remembered. “[The Commission] went on the outskirts and inquired from the white neighbors who could not give justice to the Indian and they actually reported

⁴⁵ Robert H. Weibe, *The Search for Order, 1877-1920* (New York: Hill and Wang, 1967).

⁴⁶ Laurence Hauptman, “Senecas and Subdividers,” 108.

on they learned from the white people.”⁴⁷ Disregarding the authority vested solely in Washington to transact with Indians, particularly on issues of land, the Whipple Commission recommended dramatic steps: “Exterminate the tribe and preserve the individual; make citizens of them and divide their land in severalty.” For reasons that are not entirely clear, the plan never came to fruition.⁴⁸

In 1890, as part of the first U.S. Census to collect extensive information on American Indians nationwide, the federal government made its own investigation of the Iroquois, dispatching retired general Henry B. Carrington to make “careful observations respecting their political, religious, and social meetings, their homes, health, and habits.”⁴⁹ That Carrington was assigned this anthropological task reflects the dramatic transformations of U.S. settler colonialism in the latter half of the nineteenth century. After suppressing Copperhead activity in Indiana during the Civil War, Carrington commanded a regiment defending the Bozeman Trail from determined Lakota resistance led by Red Cloud. Unpopular among both his superiors and subordinates for failure to aggressively pursue Indian raids, Carrington was unceremoniously retired after eighty of his soldiers were killed in the “Fetterman Massacre,” the deadliest battle for U.S. soldiers in the so-called “Indian Wars” until Greasy Grass. As U.S. imperialism in the West reached its apogee and waned over the following decades, Carrington returned to life as a professor and prolific author in Indiana.⁵⁰ Two decades after his retirement from fighting Indians, Carrington became their

⁴⁷ “The Everett Report,” 334.

⁴⁸ Helen Upton, *The Everett Report in Historical Perspective: The Indians of New York* (Albany: New York State American Revolution Bicentennial Commission, 1980), 54; Gerald Gunther, “Government Power and New York Indian Lands: A Reassessment of a Persistent Problem in Federal-State Relations,” *Buffalo Law Review* 8, no. 1 (1958-1959), 11.

⁴⁹ Carrington, *Extra Census Bulletin*, vii.

⁵⁰ Paul G. Pierpaoli Jr., “Carrington, Henry Beebe” in *The Encyclopedia of North American Indian Wars, 1607-1890: A Political, Social, and Military History*, ed. Spencer C. Tucker (Santa Barbara: ABC-CLIO, 2011), 132.

passive observer in New York and Oklahoma, contributing to the national census Frederick Jackson Turner would point to as evidence of the frontier's demise.

In some ways, Carrington's report was the diametrical opposite of Whipple's. Where the state found rampant lawlessness, Carrington noted, "On all the reservations crimes are few, stealing is rare, and quarreling, resulting in personal assault, infrequent." Compared to Indians in the West, "embarrassing to the national government and an eyesore to the people who desire to live there," the Iroquois never departed from their traditional "independence and sense of manhood."⁵¹ What Whipple denounced as paganism, Carrington celebrated as nobility – attitudes that reflect two sides of the same colonial coin but with different implications for Indian rights. Though Carrington dismissed any illegality in how the reservations were shrunk to their diminutive size, he nonetheless argued, "The conclusion is irresistible that the Six Nations are nations by treaty and law, and have long since been recognized as such...and an enlightened public will surely hesitate before proceeding to divest these people of long-established rights without their consent."⁵² In a veiled reference to his counterparts in Albany, Carrington suggested that "reports of late years...were evidently manufactured and given out by interested parties when legislation to affect these these Indians was pending." Despite their disparity in tone, Carrington reached a conclusion entirely dissimilar to Whipple's. "In my opinion, the proper way to civilize the Indians of New York is to secure a division of their lands in severalty, and place them in full citizenship," Carrington wrote, tempering his advice by adding, "but there are many questions and difficulties to be overcome before this can be done without injury to the rights of the Indians." The primary obstacle, he believed, remained the Ogden's lingering title.⁵³

⁵¹ Carrington, *Extra Census Bulletin*, 2.

⁵² Carrington, *Extra Census Bulletin*, 4.

⁵³ Carrington, *Extra Census Bulletin*, 83.

In the early twentieth century, jurisdictional disputes often centered on property, but always encompassed much more. Even in matters of seemingly minor significance – a few acres changing hands, a deed passed down from the deceased – judges were compelled to interpret decades of case law, centuries of colonial history, and the legitimacy of Native practices. A case from the Tonawanda Reservation was emblematic. On October 19, 1907, Thomas Skye passed away, survived by wife Martha George from Cattaraugus and daughter Phoebe Hatch. Despite the defeat of allotment several years prior, many Seneca still held deeds for small parcels they lived or worked on. Most were disposed of in a ceremony known as the “Tenth Day Feast,” when relatives and neighbors gathered ten days after the death to divide the deceased’s earthly possessions, including land, as spelled out by the Code of Handsome Lake – a practice, like many others, labeled as “pagan” by non-Native observers. Thus Skye’s land was parceled to a cast of characters in his life – an “illegitimate” son, nephews, neighbors, a lover – and not to Phoebe Hatch or her husband William, to whom Skye had apparently attempted to deed his land shortly before his death. In November, Phoebe Hatch initiated proceedings in Erie County Surrogate Court for title. William Luckman, acting on behalf of the group from the ceremony, maintained that the Court had no jurisdiction on Seneca land. The surrogate judge sided with the former, and the latter appealed to the Erie County Supreme Court. As was common for judicial opinions on Indian disputes in New York at the time, Justice J. Wheeler believed the case to be of “great importance,” involving “the whole question of the relation of the State and of its laws to Indians residing on the reservations.” He maintained, “The law of this State is supreme, and the Tonawandas, we think, can claim no sovereignty of their own superior to that of the state.” New York’s political sovereignty was “attached to every foot of the land embraced within the boundaries of the Tonawanda nation” – a total renunciation of any independence.

Furthermore, as Wheeler could not find any mention of the Tenth Day Feast in New York statutes – “it has no existence in law” – he reasoned it must not be an important custom at all. Phoebe and William Hatch recovered their parcel.⁵⁴

Believing treaties guaranteed a guardianship role for the federal government, some Iroquois and their allies attempted to convince the BIA to prevent state involvement in property disputes, often to no avail. At St. Regis in June 1914, a man named Terrance brought suit in New York State court against three Mohawk defendants – Alexander White, Moses White and Peter Gray – to settle a conflict over reservation land. The court agreed to hear the case. In January the following year, ten tribal councilors signed a letter written by Chief Thunderwater, an itinerant Sac Indian organizer based out of Cleveland, demanding the federal government “restore the legal rights that the State of New York has thus usurped...and turn the whole matter over to the only Government having jurisdiction in the matter,” the St. Regis tribal council. Bringing suit in state courts was “held to be an act of treason,” as Mohawk chiefs “are the only persons having any legal right to settle the disputes of the Indians on this reservation and have always done so up to this time.” Morris Lantry, a state Indian agent posted at Hogansburg, dismissed their protest in a letter to Assistant Commissioner E.B. Meritt, labeling the concerned parties “troublemakers of the tribe.” Without the state-sanctioned Peacemakers Courts found on Cattaraugus and Allegheny, Mohawks had no recourse but state jurisdiction in Lantry’s view. Merritt seemed satisfied, refusing at first to respond to Thunderwater at all. But the letters kept arriving. “We insist that these lawyers and Justices about the reservations have no right to meddle with the

⁵⁴ The People of the State of New York, William Hatch, and Phoebe Hatch against Cornelius Carpenter, Simon Parker, James Skye, Thomas E. Jones, and Simon George, Supreme Court of Eerie County, New York, Oct. 23, 1909, Central Classified Files, 1907-1939, Box 21, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC.

affairs of the Indians,” Thunderwater wrote in March. Finally, Meritt simply forwarded the Mohawk Council Lantry’s legal reasoning.⁵⁵

The supremacy of state jurisdiction was the dominant theory among federal and state officials in wider legal matters as well, at least until the latter half of the 1910s. In 1909, L. Everett Schneider of the Tonawanda Reservation wrote to President Taft with “a very serious question.” “We are very anxious of knowing whether the State of New York has a right to extend its laws over the Indians living within her limits,” Schneider expressed, hoping to come by a copy of a treaty that “assigned to the Indians certain boundaries, granting them certain possessions, privileges, and immunities, that the Indians should be thus far independent as to live under their own customs, etc.” Rarely receiving reply from the White House directly, to which many Iroquois nonetheless doggedly wrote, they instead received response from Acting Chief Clerk John Francis Jr. “The Office is of opinion that the Indians of New York are subject to the laws of the State of New York,” he wrote.⁵⁶ Francis drew on an occasionally cited legal theory known as the “Thirteen Original States Doctrine.” Unlike with Indians in the West, indigenous nations who treated with the earliest colonies did not fall under all federal statutes.⁵⁷ If the sentiment was widely shared in this period, the rationale was not. This letter was an exceptionally rare mention of this doctrine. More often, the simple precedent of state activity in Iroquois affairs guided federal opinion, rather than a coherent jurisprudential theory. So too did the Interior Department’s Indian

⁵⁵ Chief Thunderwater, Council of the Tribes, to Franklin K. Lane, Department of the Interior, and Cato Sells, Commissioner of Indian Affairs, Jan. 18, 1915; Maurice W. Lantry, New York State Indian Agent, to E.B. Meritt, Assistant Commissioner of Indian Affairs, Feb. 17, 1915; Chief Thunderwater to Cato Sells, Commissioner of Indian Affairs, Feb. 26, 1915; E.B. Meritt, Assistant Commissioner of Indian Affairs, to Chief Thunderwater, Mar. 18, 1915, Central Classified Files, 1907-1939, Box 24, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC.

⁵⁶ L. Everett Schneider to William Howard Taft, President of the United States, Mar. 25, 1909; John Francis, Jr., Acting Chief Clerk, Bureau of Indian Affairs, Apr. 18, 1909, Central Classified Files, 1907-1939, Box 4, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC.

⁵⁷ Jack Campisi, “The Trade and Intercourse Acts: Land Claims on the Eastern Seaboard,” in *Irredeemable America: The Indians’ Estate and Land Claims*, ed. Imre Sutton (Albuquerque: University of New Mexico Press, 1985), 338-339.

Office believe that citizenship fell under state administration. When J.C. Brennan, an educator at the Thomas Indian School at Cattaraugus, wrote to the Office Indian Affairs praising the readiness of his students to “take their places by the side of their White brothers,” Assistant Commissioner Hauke demurred, believing the question of citizenship “rests entirely with the Indians and the State of New York, and this Office, therefore, does not deem it advisable to express any opinion thereon.”⁵⁸

Criminal cases also generated jurisdictional controversy. On the evening of September 9, 1908, the Baptist Church on the Tonawanda Seneca Reservation northeast of Buffalo held an evening social. When the Church closed its doors at midnight, a number of young men and women took over the Seneca Council House for a “fiddle dance.” A Buffalo newspaper reporting on the incident the following day would point out that it was “an ordinary paleface event and not one of the ceremonial dances of the tribe.” At around 2:30 in the morning, three Seneca teenagers – Albert Strong, Asa Skye, and Ulysses Steeprock – arrived at the home of Mary Reuben, 45, who housed a young woman named Alice Billy. At first rebuffed, the teenagers returned with horse and buggy an hour later only to find Reuben and Billy waiting for them on the road with a five-foot hickory club and a heavy ax, determined to send the boys home. Reuben, “a powerful woman,” struck the horse and mangled the carriage. In the ensuing affray, a neighbor named Albert Spring struck Strong over the head with a club, chased him into the field, and beat him until he lay unconscious. The next morning, District Attorney William Coon arrived with the local sheriff and deputy to arrest a compliant and still intoxicated Spring for assault. With Spring readily admitting his guilt, the case might have been straightforward, only that Coon was unsure exactly where a

⁵⁸ C.F. Hauke, Second Assistant Commissioner of Indian Affairs, to J.C. Brennan, Thomas Indian School, Dec. 9, 1911, Central Classified Files, 1907-1939, Box 7, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC.

Tonawanda Seneca should be tried. Writing to the U.S. Indian Agent stationed in New York the day of the arrest, Coon wondered, “as to what court had jurisdiction of the offense.” Believing the assault to be in the second degree, Coon sought permission to try Spring in County Court. First-degree assaults, according to the 1885 Major Crimes Act, demanded federal jurisdiction. Coon blamed the entire affair on “an over load of bad Akron whiskey in Spring’s tank,” which, though illegal on reservations, “is bought for them by white men.”⁵⁹ It’s unclear whether the Bureau ever responded to Coon’s inquiry.

In 1914, the New York Court of Appeals issued a verdict that affirmed Coon’s interpretation, but ultimately scaled back state jurisdiction. Resulting from a 1912 arrest on the Tuscarora Reservation for assault with intent to kill, Judge J. Werner assessed whether the state could try a crime involving two Indians on a reservation. Werner reviewed the complicated division of responsibilities between federal and state, dismissing the particular background of Tuscarora as “interesting to the student of history” but with “little bearing upon the question to be decided” – a refrain leveled at advocates of land repatriation throughout the century. Acknowledging the “peculiar conditions” of Indians in New York, an “anomaly...accentuated by the state legislation and treaties,” Werner nonetheless placed them within the framework governing most indigenous people in the United States as wards of the federal, not state, government. Ostensibly bringing the Iroquois under the rubric of the 1885 Major Crimes Act, the ruling also suggested a diminished if not totally abolished role for state authority, at least until the Iroquois were made citizens.⁶⁰ Within a year, the decision was cited in the defense of George Chew, an Indian charged with murder in New York State Court, to remove the case to another jurisdiction. In addition to Werner’s

⁵⁹ William G. Coon to B.B. Weber, United States Indian Agent, Sept. 3, 1908, File includes undated newspaper clip entitled, “Indian Fight May Be Fatal”; Central Classified Files, 1907-1939, Box 22, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC.

⁶⁰ PEOPLE ex. rel. CUSICK v DALY, 212 N. Y. 183, 105 N. E. 1048

decision, Chew's lawyer presented "much evidence of a documentary character – ancient conveyances, treaties, historical letters, etc." Successfully appealing his case to the Supreme Court, Chew was nonetheless convicted and given a life sentence at the federal penitentiary in Atlanta.⁶¹

The lack of clear jurisdiction led to some uncommon legal arrangements. When Onondaga Eliza Pierce accused Simon Hemlock of raping her granddaughter, the local district attorney negotiated a settlement where the accused would wed the victim rather than pursue prosecution. George H. Ansley, the Indian Office's special agent for New York, reported to Washington, "...this compromise was made for the reason that they considered the state's jurisdiction in the matter very doubtful." As Pierce was a Christian, the tribal council afforded her little assistance. A decade prior, Pierce's mother had participated in the selection of chiefs to the tribal council, a role reserved to clan matrons. Yet assaults on tribal sovereignty hardened the lines between Christian and "pagan" over the years, and the former – always a minority at Onondaga – were ejected from the process.. Though the records are thin, the charge appears to have been for statutory rape. Hemlock, an adult of uncertain age, lived in the house of Jesse Lyons, a laborer, lacrosse player, and in the 1920s, a figure in Haudenosaunee land rights. Pierce's seventeen-year old granddaughter, Esther Cooke, visited Hemlock on several occasions, dining with Lyons and his wife, and spending the night in Hemlock's company. When Esther revealed their relationship to her grandmother, she initiated charges in Onondaga County Court. In his letter to Commissioner of Indian Affairs Cato Sells describing the complaint, Ansley took the opportunity to point out, "From what I could learn the general moral condition on the Onondaga reservation is quite

⁶¹ J. Lynn, United States Attorney, to Cato Sells, Commissioner of Indian Affairs, Apr. 1, 1915, Central Classified Files, 1907-1939, Box 22, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC.

deplorable and the law enforcement by the local authorities inexcusably lax.” The problem was human, in part. The U.S. Commissioner stationed nearby was old and sick, and the deputy U.S. marshal saw his task at the reservation as limited to issuing subpoenas. The main culprit, Ansley observed, was the shifting lines of authority, which led Onondagas to “think that they are not amenable to the law.”⁶²

The absence of legal clarity attracted some dubious characters to New York reservations in the early twentieth century, emboldened no doubt by the “lawlessness” alleged by officials. In the early 1900s, Cary W. Hartman arrived at the Cattaraugus Reservation south of Buffalo and managed to acquire a parcel of land at the Newton settlement, considered a particularly poor and “pagan” enclave by the Indian Field Office’s Special Agent, Thomas J. Murphy.⁶³ Bypassing the Seneca Council, Hartman instead acquired title from an Erie County judge who cited New York law to issue the license in contradiction to federal treaties. With the aid of his wife and daughter, Hartman founded the “Indian Association of America” in 1907 and lectured on “Indian topics” to curious white audiences. Hartman canvassed the Buffalo elite for donations to his organization, showing photographs of “huts and hovels occupied by Indians, and pictures of individuals suffering from tuberculosis, and other loathsome diseases.” One contributing member, a Buffalo lawyer named Robert J. Reidpath, later toured the reservation and found no evidence of any

⁶² George H. Ansley, Special Agent, Indian Field Service, New York Agency, to Cato Sells, Commissioner of Indian Affairs, Jun. 7, 1915; Eliza A. Pierce to Cato Sells, Commissioner of Indian Affairs, Mar. 6, 1915; *The People of the State of New York vs Simon Hemlock*, Central Classified Files, 1907-1939, Box 22, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC.

⁶³ Thomas J. Murphy, Special Agent, Indian Field Service, New York Agency, to Cato Sells, Commissioner of Indian Affairs, Jan. 20, 1914, Central Classified Files, 1907-1939, Box 22, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC

expenditure on Hartman's idea for a Seneca "Club Room." Reidpath did, however, endorse a one hundred dollar note for Hartman to "fit out an Indian show to put on the road."⁶⁴

Hartman soon angered his Seneca neighbors. A petition drafted by the Seneca Council in 1914 calling for his removal by federal authorities accused Hartman of renting out speaking halls in Buffalo to give misleading lectures about the "deplorable, starving, and vice conditions" found on the reservation. Such talks netted Hartman a considerable salary, little of which made it back to Cattaraugus to alleviate the claimed conditions. Hartman also involved himself in the prosecution of Indians who violated state law, while bailing out those he considered allies. W.C. Shongo, a Cattaraugus Seneca who took a prominent role in seeking to oust Hartman, accused him of "flourishing a revolver" and beating, cursing, and cheating his employees at show performances, "even to striking and roughly handling one of our Indian ladies who went to ask what was due her." Hartman rejected the petition as started by "some Indian or Indians that have had cause to feel the iron hand of the law at my suggestion."⁶⁵

The conflict over Hartman illustrates why many Iroquois preferred federal to state jurisdiction, if not their own tribal courts. While Hartman's ultimate fate is unclear, the Office of Indian Affairs did open an investigation into his "Indian Association of America." The federally appointed special agent of the Indian Field Office – the sole employee of the Bureau in all of New York – sided with Seneca, concluding that Hartman "is residing illegally

⁶⁴ Robert J. Reidpath to Thomas F. Murphy, Special Agent, Indian Field Service, New York Agency, Jan. 10, 1914, Central Classified Files, 1907-1939, Box 22, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC

⁶⁵ Cary W. Hartman to Thomas F. Murphy, Special Agent, Indian Field Service, New York Agency, Dec. 26, 1913, Central Classified Files, 1907-1939, Box 22, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC

on the reservation...treaties being supreme law.”⁶⁶ Meanwhile, it was a state judge who sanctioned Hartman’s presence in the first place. Hartman was even briefly considered for a more official role. In 1914, Assemblyman Horton of Buffalo sponsored a bill for a “white man and wife” to reside on each New York reservation, serving as an advisor on agriculture, industry, and “domestic science.”⁶⁷ Though Hartman unsuccessfully sought the post, there was little federal officials could do to protect Indians from such schemers. “The line of demarcation between federal and state jurisdiction over these reservations is difficult to determine definitely, and the supervision exercised by the United States during the past forty or fifty years is very little and the laws passed by New York State with regard to the Indians and their property have been very broad,” wrote Special Agent Murphy, “so much as to admit of practically no supervision by the United States.”⁶⁸

State officials were more than willing to take up this supervisory role. None was more vocal on the matter than A.C. Hill of the New York State Education Department. Beginning in 1914, he wrote the Office of Indian Affairs with dogged regularity, hoping to persuade it and Congress to finally relinquish all control over the Six Nations to Albany. He decried the “anarchy” fomented by jurisdictional uncertainty. “Murder, arson, drunkenness, immorality, to say nothing of school attendance, sanitation, etc, are either wholly neglected or but feebly looked after by government authority,” Hill complained. Rather than stemming simply from contradicting laws, Hill saw the dubious influence of unnamed forces in Congress who stood to benefit from the lack of order – exactly how, he never said. To Hill,

⁶⁶ Thomas J. Murphy, Special Agent, Indian Field Service, New York Agency, to Cato Sells, Commissioner of Indian Affairs, Jan. 20, 1914, Central Classified Files, 1907-1939, Box 22, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC

⁶⁷ W.C. Shongo to Edgar B. Meritt, Assistant Commissioner of Indian Affairs, Mar. 19, 1914, Central Classified Files, 1907-1939, Box 20, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC

⁶⁸ Thomas J. Murphy, Special Agent, Indian Field Service, New York Agency, to Cato Sells, Commissioner of Indian Affairs, Jan. 20, 1914, Central Classified Files, 1907-1939, Box 22, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC

Iroquois self-government was a “farce,” “inefficient,” and “corrupt,” based on the “meaningless fiction” that they once constituted independent nations. On the other hand, New York represented “a beneficent ruler in all its history and the highest welfare of the Indians lie in the direction of becoming part of the commonwealth.” That process of “becoming” could only be furthered by the dissolution of tribal government, the presence of state police on every reservation, and eventual full citizenship. Hill complained that this “final destiny” was being hampered by a “drifting policy.”⁶⁹

Several attempts were made to stem the drift. In 1913, Assistant Commissioner of Indian Affairs E.B. Meritt instructed John R.T. Reeves, a lawyer in the Justice Department, to “get to the bottom” of the Iroquois conundrum. “The New York Indian problems should have been history long since,” Reeves reported. “Apparently the state has waited for the Nation and the Nation for the State. Has it never occurred to either to cooperate?” The divergence caused a “needless confusion” of jurisdiction: “Thus the tribes to a large extent have been left to themselves, both by the Nation and the State insofar as police supervision and internal government is concerned.” In a drastically different assessment of conditions reminiscent of the gap between Whipple and Carrington, Reeves insisted, unlike Hill, “Nothing in the foregoing should be construed as intending to imply that these reservations are hotbeds of iniquity or corruption.” Nevertheless, Reeves saw a “crying need for reform.” For Reeves, the main culprit was undoubtedly the Ogden claim, perpetuated both by the land company and the Indians themselves, who saw the complicated title as a “blanket” protecting them from allotment and citizenship, “which they do not appear to desire.”

⁶⁹ A.C. Hill, New York State Education Department, to Cato Sells, Commissioner of Indian Affairs, Jan. 24, 1914; A.C. Hill, New York State Department of Education, to E.B. Meritt, Assistant Commissioner of Indian Affairs, Apr. 4, 1916; A.C. Hill, New York State Department of Education, to E.B. Meritt, Apr. 21, 1916; A.C. Hill, New York State Department of Education, to E.B. Meritt, Assistant Commissioner of Indian Affairs, Aug. 25, 1916; A.C. Hill, New York State Department of Education, to Cato Sells, Commissioner of Indian Affairs, Dec. 20, 1917, Central Classified Files, 1907-1939, Box 16, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC

Reeves cast this attachment as fundamentally self-serving. “As matters now stand they enjoy the full benefits accorded other residents of the State, such as adequate school facilities, excellent highways constructed within their reservations at the expense of the State, yet at the same time their property is exempt from taxation...From a personal or selfish standpoint, therefore, why should they desire a change?” Recounting the multiple attempts to extinguish the Ogden claim, Reeves acknowledged the difficult implications of doing so. The Ogden title, after all, was the extension of the 1786 pact between New York and Massachusetts, generating title to “millions and millions of dollars worth of property in western part of New York.... It is not seen how the courts could repudiate it.” Thus every attempt to rid the reservations of Ogden’s underlying claim was rejected. Yet Reeves was undeterred. Echoing Carrington’s assessment nearly twenty-five years earlier, Reeves felt the “locus of the fee” was inconsequential. Indians had long exercised a right of occupancy, regardless of where the actual title lay. Congress should simply proceed on this basis, giving power to the state to “force an effective solution.” This solution would clear up the complicated layers of ownership and occupancy, bringing Indians in line with their property-owning neighbors upstate. Reeves recommended “an accurate survey of each reservation...the present owner of each acre ascertained, the manner in which title was acquired looked into, and the general conditions studied with a view of offering the most equitable plan, both to the present holders, and the tribe at large.” Only then could officials “untie the knot.” Reeves’ report culminated in a straightforward bill, introduced in Congress by Representative John Clancy of Syracuse: “Authorizing the allotment in severalty of Indian lands in New York State, and for other purposes.”⁷⁰

⁷⁰ John R.T. Reeves, Department of the Interior, to Cato Sells, Commissioner of Indian Affairs, Dec. 26, 1914, Central Classified Files, 1907-1939, Box 2, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC

The proposal was met with immediate opposition from many Haudenosaunee. Three days after New Years 1915, Tuscarora Chief Grant Mt. Pleasant telegraphed Assistant Commissioner Meritt seeking an urgent delay of legislation. “I wish to submit certain facts and the conditions existing on the Tuscarora Reservation.” A week later, he forwarded a petition signed by every chief and seventy other tribal members, almost a third of the Tuscarora population. “The signatures of the entire Tribe are lacking only because we have not had time to obtain them,” wrote Mt. Pleasant.⁷¹ The Six Nations next convened a council at Onondaga, approving a resolution protesting Clancy’s bill. Writing to the House Committee on Indian Affairs, Secretary of the Interior Franklin K. Lane reported that the Iroquois “are uniformly opposed to the disturbance of present conditions” embodied by the legislation.⁷² A group of Senecas even traveled to Washington to meet with federal officials on the matter. Whether this compelled the bill’s defeat is difficult to discern, as Congress convened no floor debate and took no vote at all. Like many legislative attempts to settle the “New York Indian problem,” it simply disappeared from the Congressional docket.⁷³

With the federal attempt in ruins, the state next made its play. James P. Lindsay, a Niagara County law and delegate to the New York Constitutional Convention, proposed in 1915 an amendment abolishing all judicial functions held by the Six Nations and extending full state jurisdiction over their affairs. Criticizing the legal framework governing the Haudenosaunee as a “piece of patchwork,” Lindsay hoped the bill would be the penultimate step toward citizenship. *The New York Times* praised his amendment as a major advancement

⁷¹ Grant Mt. Pleasant to E.B. Meritt, Assistant Secretary of Indian Affairs, Jan. 4, 1915; Grant Mt. Pleasant to E.B. Meritt, Assistant Secretary of the Interior, Jan. 10, 1915, Central Classified Files, 1907-1939, Box 2; Records of the Bureau of Indian Affairs, Record Group 75; National Archives Building, Washington, DC

⁷² Franklin Lane, Secretary of the Interior, to John H. Stephens, Chairman, House Committee on Indian Affairs, Jan. 22, 1915, Central Classified Files, 1907-1939, Box 2, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC

⁷³ Ibid.

of civil rights, offering Indians “for the first time in [their] history equality before the law.”⁷⁴ So too did *The Southern Workman*, organ of the Hampton Institute, hail “the brighter day...dawning upon Indian reservations in New York State” with its passage.⁷⁵ Echoing a refrain oft repeated by racial theorists of the time, Lindsay praised the Indians’ past while denouncing their present, unfavorably comparing Native progress to blacks in the south. “When the American Indian in this State was an intelligent, independent, and in a measure, self-governing individual, the American negro was much lower in the scale of civilization, and was a slave.” Yet while blacks advanced by virtue of their subservience to civilized laws and proximity to white customs, the Indian was “treated as a child, left to his own devices and government, in doubt as to his allegiance and rights under our laws.”⁷⁶ Richard Henry Pratt, the founder of Carlisle Indian School who advocated similar measures for the Iroquois in the mid-1910s, felt similarly. “Thirty-five negroes for every Indian in our borders. The ‘camel’ negro swallowed, but the ‘gnat’ Indians a constant strain,” he wrote.⁷⁷ Lindsay was particularly concerned about what he considered the flippancy of Haudenosaunee marriage customs. “If I should state...that in New York State there was a divorce court which was the most liberal divorce court...in any civilized nation, you would probably be horrified,” he told the convention, referring to the Peacemaker’s Court on Seneca reservations. Lindsay produced several documents, “culled from the records of the Cattaraugus Reservation,” showing that “two ignorant Indians, called Peacemakers, may at the request of an Indian, release him from his wife, and set her adrift without provision or remedy, and without any

⁷⁴ “Lawmakers Seek Justice for Indians,” *The New York Times*, August 8, 1915.

⁷⁵ “Indian Equality Before the Law,” *Southern Workman* 44: 10 (October 1915).

⁷⁶ “Lawmakers Seek Justice for Indians,” *The New York Times*, August 8, 1915.

⁷⁷ Hazel W. Hertzberg, *The Search of an American Indian Identity: Modern Pan-Indian Movements* (Syracuse: Syracuse University Press, 1971), 93.

trial, except an informal hearing.”⁷⁸ The only solution was to bring to bear the full weight of New York law on the reservations.

That Lindsay deployed the image of a weak and abandoned Indian woman to support his proposal is somewhat ironic, as anti-sovereignty whites and a few Iroquois men frequently bemoaned the exact opposite: the disproportionate power of women within Haudenosaunee society. Clan mothers exclusively elected Chiefs of the Six Nations Grand Council, as well as sachems on the Onondaga Reservation. “The squaws are the acknowledged rulers of these ‘uncivilized’ Six Nations; and the older the squaw the greater her individual power,” the *New York Tribune* reported in 1917.⁷⁹ When Seneca Wallace Jemison wrote to the Office of Indian Affairs seeking assistance in preventing his land from being redistributed to other tribal members after death, he complained, “After a man dies his collateral relations decide where the property is to go, in making such a decision the women have more power to say than the men.” The practice, he felt, depressed ambition.⁸⁰ A similar discourse circulated nationally. When the Interior Department’s Committee of One-Hundred on Indian Affairs gathered in 1923 to discuss changes in national policy, the organizers desperately sought recommendations in “getting past the guard of the reactionary Indian women and persuading them to abandon injurious tribal customs,” a more difficult task than posed by men in their expert judgment.⁸¹

The slate of constitutional amendments considered by New Yorkers in 1915 was overwhelmingly rejected, decried by large majorities as “autocratic,” though not for its abolition of tribal courts and unilateral extension of state jurisdiction over reservations.

⁷⁸ Ibid.

⁷⁹ Robert H. Rohde, “Upstate Indian Powwow Over the Paleface Draft,” *New York Tribune*, August 19, 1917.

⁸⁰ Chief Wallace Jemison, Tonawanda Nation of Seneca Indians, to Cato Sells, Commissioner of Indian Affairs, May 1, 1916, Central Classified Files, 1907-1939, Box 16, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC

⁸¹ *The Indian Problem: Resolution of the Committee of One Hundred Appoint by the Secretary of the Interior and a Review of the Indian Problem* (Washington, DC: Government Printing Office, 1924), 23.

Rather, Lindsay's amendment was coupled with new gubernatorial powers over appointments and appropriations, anathema to the Tammany machine downstate. Reporting on the defeat, *The New York Times* made no mention of the provisions impacting Iroquois country.⁸² Nor was the Office of Indian Affairs involved in promoting the measure. While a single copy of the amendment made its way into their archives, no other related documents exist. The Bureau may have preferred the state to assume responsibility, but not enough to actively push for it. Only days later, New York Attorney General Egbert E. Woodbury furthered eroded state power over Indians, reversing decades long Albany policy by declaring that New York had no jurisdiction on reservations. Earlier in the year, two Seneca Indians, Nelson Hare and Wilford Kennedy, were arrested near their home on the Cattaraugus reservation for fishing with nets and without permits. Defended by Rochester lawyer George Decker, the case was before a district court judge when Woodbury issued his opinion. If the laws of the state governed reservations, he surmised, "the tribal organization would be speedily broken up." As this right was solely reserved to Congress, state laws must not apply.⁸³ Though Woodbury represented a short-lived break from the Albany consensus – he served only two years – the double blow of the amendment's failure and the legal opinion set back New York's quest to dissolve tribal sovereignty for years, leaving Haudenosaunee status unsettled. "The Indians are now fully aware of the conflict of jurisdiction," warned A.C. Hill a few months later, "and are taking advantage of it in some cases."⁸⁴ Commissioner

⁸² "Tammany Knives The Constitution," *The New York Times*, November 1, 1915; "Defeat of Constitution," *The New York Times*, November 3, 1915.

⁸³ "No Jurisdiction Over Indians If On Reservation," *Rochester Democrat*, November 6, 1915.

⁸⁴ A.C. Hill, New York State Department of Education, to E.B. Meritt, Assistant Commissioner of Indian Affairs, Aug. 25, 1916, Central Classified Files, 1907-1939, Box 16, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC

of Indian Affairs Cato Sells, meanwhile, viewed the developments as “a tendency on the part of the State officials to dump the entire problem on the Federal Government.”⁸⁵

The situation proceeded as such for the next several years. Neither the state nor federal government had achieved the settlement it sought, or any settlement at all. Several more attempts were made, each garnering immediate Haudenosaunee rejection, each falling victim to other political forces. In January 1918, Representative Charles D. Carter of Oklahoma introduced a bill conferring citizenship on all American Indians and severing their relationship with the federal government. “The channels of American jurisprudence, has held time and time again, that the ‘Treaties are the supreme law of the land,’ and that they should and must prevail over all legislations, in conflict with it,” wrote Chief L. Everett Snyder to President Woodrow Wilson, signing the letter on behalf of the Tonawanda Nation of Indians, “your wards.” Imposing citizenship conflicted with that sacred principle, Snyder declared, and would likely “reduce them to abject poverty,” as reservation lands came open to non-Indian purchase.⁸⁶ Nevertheless, officials in New York saw the prospect as promising. “There seems to be no good reason why the New York situation should not be disposed of at this time and in this bill,” wrote George Ansley hopefully.⁸⁷ Yet the Carter bill failed, rejected both by the entrenched federal bureaucracy it would eliminate and Indian progressives who saw its use of “competency tests” for citizenship as an insulting delay to

⁸⁵ Cato Sells, Commissioner of Indian Affairs, to A.A. Jones, Acting Secretary of the Interior, Apr. 4, 1916, Central Classified Files, 1907-1939, Box 2, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC

⁸⁶ Chief L. Everett Snyder, Tonawana Nation of Indians, to Woodrow Wilson, President of the United States, May 21, 1918, Central Classified Files, 1907-1939, Box 2, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC

⁸⁷ George H. Ansley, Special Agent, Indian Field Office, New York Agency, to Cato Sells, Commissioner of Indian Affairs, Mar. 2, 1918; Central Classified Files, 1907-1939, Box 8, Records of the Bureau of Indian Affairs, Record Group 75; National Archives Building, Washington, DC

enfranchisement. Introduced repeatedly during the next several Congressional terms, it never escaped committee.⁸⁸

U.S. involvement in World War I may have alleviated some pressure to resolve the “problem,” as it opened new discursive space for expressions of Iroquois nationhood. The press was particularly interested in an independent declaration of war on Germany by the Onondaga Nation in 1918. “This would be very interesting to include in the Indian material I am preparing,” wrote Brooklyn journalist F.J. Dowd to Cato Sells. So too did the Committee on Public Information recognize the inherent appeal, hoping to publish an article on the declaration for a foreign newspaper. They were, however, somewhat confused how such a situation could arise: “How is it possible for them to make a separate declaration of war?” In a profound understatement, Sells replied, “The question as to the jurisdictional status of the New York Indians is one that has not been definitely determined.”⁸⁹ Even the Bureau of Biological Survey hoped to find out more about this “little principality” in New York that independently joined the American cause. Ansley attempted to find a copy of the resolution for posterity, but to no avail – Onondaga Council meetings were Indian-only affairs. “Of course, it is unnecessary for me to add that a declaration of war by the Onondaga Indians would be of any consequence,” Ansley condescendingly concluded.⁹⁰ The *New York Times* nonetheless ran a major story on August 4, 1918, under the often-repeated headline, “Indians on the War Path.” They celebrated this “separate nation” taking part in the “militant Americanism” of the Great War.⁹¹

⁸⁸ Thomas A. Britten, *American Indians in World War I: At Home and At War* (Albuquerque: University of New Mexico Press, 1997), 178.

⁸⁹ Preceding correspondence quoted in George H. Ansley, Special Agent, New York Agency, United States Indians Field Service, to Cato Sells, Commissioner of Indian Affairs, Sept. 24, 1918, Central Classified Files, 1907-1939, Box 4, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC

⁹⁰ Ibid.

⁹¹ “Indians on the Warpath,” *The New York Times*, August 4, 1918.

The Onondagas had particular complaint with Germany, aside from the general war fever. In 1914, a Berlin-based circus company hired sixteen Onondagas to tour Europe in two “Wild West” troupes. When war broke out, one was abandoned without pay at Trieste, Austria, the other in Essen, Germany. Stranded for six weeks, their return was eventually negotiated by E.H. Gohl of the Society of American Indians and John R. Clancy, Congressman from Syracuse. According to Gohl, the Onondagas had suffered from lack of food, mob violence, and arrest as Russian spies during their weeks in limbo.⁹² Despite these depredations, and their formal declaration of war, the Onondagas did not evince any great eagerness to participate in the conflict. Only one willingly enlisted. Having joined the war effort as a sovereign nation, many objected to compulsory draft registration. Earl A. Bates, a Cornell professor who directed the Onondaga Indian Welfare Society, suggested to the Registration Board that the chiefs be involved more directly with raising troops, and that the enlistment office be placed on the reservation, not in nearby Syracuse. If the government refused, Bates warned, “this confusion will lead us in to serious trouble or at least endless confusion,” as reservations might become “places of discontent and pools where the germs of sedition can gain greater growth.”⁹³ An article in *The New York Tribune* even suggested that the draft imposition might spark armed Onondaga resistance. “Fantastic as it may seem and wildly improbable, but right here in New York State, a scant seven hours out of New York City...Indian trouble is brewing which may develop into something far more serious than any of the sporadic outbreaks recently reported from the ‘wild West,’” reported Robert H. Rhode. “Every brave, young and old, has arms, ammunition and a determination not to

⁹² E.H. Gohl, “The Effect of Wild Westing,” *The Quarterly Journal of the Society of American Indians* II (July-September 1914).

⁹³ Britten, 69.

be imposed upon by foreign powers.”⁹⁴ Incidentally, the only documented example of Iroquois war dissent occurred in Bethlehem Steel Company in Pennsylvania, when Frank Kennedy, a Seneca from Cattaraugus, was arrested for a “breach of the peace.” From the factory floor, he allegedly declared to his fellow steelworkers, “The Sons of Bitches started the war, now let them see it through. They knew how to free the slaves, but they did not know how to free themselves. Is this Americanism?” Threatened with lynching, Kennedy was taken into custody. “I want to say that I am the owner of an American Flag that cost me ten dollars and it is at my mother’s place on the reservation,” Kennedy wrote Sells, seeking legal assistance that never arrived.⁹⁵

Armed struggle never erupted at Onondaga. But as the Great War came to a close, an ordeal almost as disturbing to the state arrived, sparking not only more proclamations of Haudenosaunee sovereignty but actions to further it. When the majority of Oneidas were forcibly removed to Wisconsin, the “treaty” of 1842 permitted twenty-three to remain in what would become Madison County, an arrangement somewhere between allotment and reservation. Individual Oneidas held title, but the treaty also guaranteed territorial protection. In 1885, Issac Honyost, a descendant of the original twenty-three, took out a mortgage from a white lender to purchase a nearby farm. Twenty years later, after the mortgage papers changed several hands and Honyost’s family fell on hard times, Julia Boylan, who now owned the mortgage, initiated foreclosure proceedings. The Supreme Court of New York State obliged.⁹⁶ “These Indians with their families were then forcibly ejected by the sheriff of the county from this land which up to that time had from time immemorial been the home

⁹⁴ Robert H. Rhode, “Upstate Indian Powwow Over the Paleface Draft,” *New York Tribune*, August 19, 1917.

⁹⁵ Frank P. McCluskey, District Attorney, Northampton County, Pennsylvania, to Cato Sells, Commissioner of Indian Affairs, Apr. 24, 1917; Frank Kennedy to Cato Sells, Commissioner of Indian Affairs, Apr. 15, 1917, Commissioner of Indian Affairs, Sept. 24, 1918, Central Classified Files, 1907-1939, Box 23, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC

⁹⁶ *United States v. Boylan et al.* 265 Fed. 165, 171 (1920)

of these Oneida Indians and their ancestors,” George Decker wrote to E.B. Meritt in 1915, “these Indians who thereafter became wanderers.”⁹⁷ Seeking a judicial opinion that might resolve outstanding jurisdictional issues, the Department of Justice in 1915 joined the foreclosed Oneidas in suing Boylan for redress. The Bureau of Indian Affairs appears to have been unaware of federal involvement until F.J. Cregg, the Assistant U.S. Attorney tasked with the lawsuit, wrote E.B. Meritt in June 1916 seeking additional information. Cregg expressed a particular interest in the 1794 Treaty at Canandaigua, a document rarely mentioned by federal and state officials in the early twentieth century. In deploying this abrogated but no less binding compact, Cregg may have inadvertently pushed the presiding judge in directions uncomfortable to both state and federal officials.⁹⁸

In 1919, the Federal District Court for Northern New York returned the thirty-two acre parcel to the Oneidas, a decision reaffirmed by the Second Circuit of Appeals a year later. “It is only where Congress has enacted legislation controlling the disposition of property of Indian reservations that valid conveyances may be made,” Judge Manton wrote for the 2-1 majority.⁹⁹ He likely intended it to apply only to the case at hand. The original mortgage and the subsequent foreclosure were private contracts between Indians and non-Indians, expressly forbidden both by international treaties and the Trade and Intercourse Acts. In dissent, Judge Ward immediately recognized the broader significance: “But this can hardly be maintained, in view of the number of Indian treaties which the state has made without any approval of or co-operation with the United States, and upon which the title to

⁹⁷ George Decker to E.B. Meritt, Assistant Commissioner of Indian Affairs, Dec. 15, 1915, Central Classified Files, 1907-1939, Box 2, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC

⁹⁸ F.J. Cregg, Assistant U.S. Attorney, Northern District of New York, to Office of Indian Affairs, Department of the Interior, June 9, 1916, Central Classified Files, 1907-1939, Box 24, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC

⁹⁹ *United States v. Boylan et al.* 265 Fed. 165, 171 (1920)

immense areas of valuable lands depends.”¹⁰⁰ As to jurisdictional status of Haudenosaunee people, Manton’s opinion was less straightforward. “At all times the rights which belong to self-government have been recognized as vested in these Indians,” he wrote, citing the series of nation-to-nation treaties at the close of America’s revolutionary war. And yet, Manton continued, “Since the Indians exist as separate band or tribe, and therefore as a separate nation, the exclusive jurisdiction over the Indians is in the federal government.”¹⁰¹

Furthermore, individuals Indians have always been “aliens” in America, and somehow also wards under the nation’s protective care. Sovereigns, aliens, wards – Edward Everett would remark at the first session of his state commission a year later, “If I were a judge and drunk, I could excuse myself for rendering such a decision.”¹⁰²

The Haudenosaunee had a more sober assessment. Just after the Federal District’s decision, Onondagas held a conference with state officials in Syracuse. Transcripts of this meeting do not exist, but what filtered up to the Bureau indicates the immediate impact of the Boylan decision and its rejection of any state involvement in Iroquois affairs. According to Earl Bates, who worked closely with the Onondagas, a state official claimed that New York “assumed a jurisdiction without any legal right.” Furthermore, as to whites living on reservation land, “These leases were not worth the paper they were written on.”¹⁰³ On March 15, Jairus Pierce wrote Cato Sells demanding to know if he considered the Treaty of Fort Stanwix binding, as what he heard at the conference “proved that the State had no jurisdiction over the New York Indians in regulation the internal affairs.”¹⁰⁴ Sells insisted the

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² “The Everett Report,” 35.

¹⁰³ Earl A. Bates, Onondaga Indian Welfare Society, to Cato Sells, Commissioner of Indian Affairs, May 5, 1919; Central Classified Files, 1907-1939, Box 24, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC

¹⁰⁴ Jairus Pierce to Cato Sells, Secretary of the Interior, Mar. 15, 1919, Central Classified Files, 1907-1939, Box 5; Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC

conference “had no power to definitely decide or settle any questions connected with the New York Indian problem.” A month later, Chief Thomas Poodry added to the onslaught: “Tonawanda Seneca Band of Indians, wishes to inform you, that the Chiefs and warriors of said nation, that we have dropped and abolished all laws, made by the State of New York.” In response, Meritt insisted for “the Indians of New York to conduct themselves as law abiding citizens, without infraction of the State laws as much as possible.”¹⁰⁵

Yet the ground had unmistakably shifted, and the Onondagas sought to make good on their new mandate. For an uncertain number of years, the Knox family lived on the Onondaga Reservation, felling trees and quarrying stone in violation of state laws and the terms of an already legally questionable lease. The Onondaga Council repeatedly appealed in vain to the local district attorney to eject the white family. When the *Boylan* decision and subsequent Syracuse conference declared state laws null and land transactions without federal approval invalid, the Onondagas decided to take the Knox matter into their own hands. Accounts of the confrontation differ. In a letter to Attorney General Mitchell Palmer – made infamous only months later for orchestrating a dramatic suppression of dissent in what would later be known as the First Red Scare – U.S. Attorney D.B. Lucey reported that Onondaga leaders “went to [the Knox] premises armed with axes and guns...the result was that the occupant a woman with some children and small grandchildren was landed in a snow bank outside the house, and an Indian was put in possession.” James Knox later claimed the mob had blackened his eye, leading to an indictment of several Onondaga chiefs

¹⁰⁵ Chief Thomas Poodry, Tonawanda Seneca Band of Indians, to Cato Sells, Commissioner of Indian Affairs, Apr. 30, 1919; E.B. Meritt, Assistant Secretary of Indian Affairs, to Chief Thomas Poodry, June 25, 1919, Central Classified Files, 1907-1939, Box 21, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC

for “conspiracy with intent to kill” and other high crimes.¹⁰⁶ Earl Bates’ account was less dramatic. After providing the Knox’s ten days to vacate, the chiefs arrived on the eleventh armed with nothing more than crowbar. Admitting they made “forceful entry,” the Onondagas organized the foreclosure “without damage to the property and without injury to the Knox family.”¹⁰⁷ U.S. District Court Judge George W. Ray believed this latter account, releasing the group without bail.¹⁰⁸ The Knox family never returned to Onondaga.

“We have reached a peculiar stage in the New York matter,” John R.T. Reeves wrote to E.B. Meritt from his new post in Oklahoma. The jurisdictional dilemma, repeatedly addressed but never solved, deepened by *Boylan* and recent assertions of Haudenosaunee sovereignty, led Reeves to agree with Meritt “from an administrative standpoint, on the advisability of keeping away from the New York problem as much as possible.” But the crisis only intensified. “While we sit around academically discussing ‘jurisdiction, jurisdiction, whose got the jurisdiction’, cases of gross injustice are daily being inflicted on innocent individuals who, finding no relief under ‘tribal custom’ or ‘State Laws’, are now knocking at the doors of the Federal Government asking only for simple justice. Are they to knock in vain?”¹⁰⁹ Watching events unfold from Albany, A.C. Hill was, per usual, apoplectic: “A state of anarchy exists among them... Conditions are growing rapidly worse.” Clinging to the “meaningless fiction” that they constituted independent nations, the Iroquois “believe

¹⁰⁶ D.B. Lucey, U.S. Attorney, Northern District of New York, to Alexander Mitchell Palmer, Attorney General of the United States, Apr. 11, 1919, Central Classified Files, 1907-1939, Box 24, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC

¹⁰⁷ Earl A. Bates, Onondaga Indian Welfare Society, to Cato Sells, Commissioner of Indian Affairs, May 5, 1919, Central Classified Files, 1907-1939, Box 24, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC

¹⁰⁸ “Ray Paroles Indians Until Trial Starts,” *Syracuse Post-Standard*, April 11, 1919.

¹⁰⁹ John R.T. Reeves, United States Indian Service, Department of the Interior, to E.B. Meritt, Assistant Commissioner of Indian Affairs, Mar. 29, 1919, Central Classified Files, 1907-1939, Box 24, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC

themselves freed from all legal restraint.”¹¹⁰ Even more alarming, the *Boylan* decision raised territorial questions long considered dormant, safely outside the bounds of public discourse. “The Indian reservations in Western New York are engrossed with one topic of discussion,” reported *The World*, “the question of whether the Senecas and their descendants...will succeed in recovering a few hundred million dollars’ worth of land.”¹¹¹

With tension mounting, New York State once again convened a commission to investigate the “Indian problem” and finally “settle their status.” Handing chairmanship to Assemblyman Edward A. Everett, a Republican stalwart from the small factory town of Potsdam, the state hoped to break a decades-old stalemate of overlapping authority and put the matter to rest. That this particular man, remarkable only for his apparent capacity to listen, should assume the chairmanship of the New York State Indian Commission at the very moment of an Iroquois resurgence would prove dramatic.

¹¹⁰ A.C. Hill, New York State Department of Education, to Woodrow Wilson, President, United States of America, July 22, 1919, Central Classified Files, 1907-1939, Box 20, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC

¹¹¹ “Discussing Recovery on Indian Lands,” *The World*, February 11, 1920.

CHAPTER TWO

BREAKTHROUGH

“No nation of people can live and not settle their debts.”

Edward A. Everett, Chairman of the New
York State Indian Commission, August 24,
1920, Cattaraugus Reservation, Seneca Nation

Jarring news greeted *New York Times* readers on the morning of December 7, 1924. “INDIANS CLAIM HALF OF NEW YORK,” blared the headline, specters called up from a dimming collective memory, a repressed colonial past come to reckon with the present.¹¹² Their weaponry included neither tomahawk nor bow, but a “mass of legal data” and “the secrets of the wampum.” The Six Nations of the Haudenosaunee Confederacy, known popularly as the Iroquois, were not out to burn down an encroaching settlement or encircle American soldiers on the field of battle. “They do not...send out their warriors as in the old days,” reported the *Times*. “They retain lawyers.” These Indians were headed to court. “The ultimate object will be to recover...lands that belonged to the Iroquois in common in the eighteenth century.” According to a report authored by a former New York assemblyman two years prior and who now served on the Iroquois legal team, that land comprised nearly

¹¹² I borrow this concept from Jace Weaver’s discussion of NAGPRA and the fears it stirred among archaeologists, museum curators, and real estate insurers. Jace Weaver, *Notes from a Miner’s Canary: Essays on the State of Native America* (Albuquerque: University of New Mexico Press, 2010), 90.

the entire western half of the state. The *Times* valued it at \$3,000,000,000, nearly \$27 billion in contemporary worth.¹¹³

This was not the outcome state lawmakers envisioned five years earlier. In 1919, amidst a persistent jurisdictional crisis, an alarming U.S. District Court verdict returning an Oneida family's land, and renewed claims of Haudenosaunee sovereignty, Albany created the ponderously named New York State Indian Commission to Investigate the Status of the American Indian Residing in the State of New York – referred to mostly as the Everett Commission for its chairman and ultimately sole signatory, Assemblyman Edward A. Everett of Potsdam. The commission's stated purpose was to "discover the status" of Six Nations people, as if somewhere beneath layers of competing bureaucratic designations lay their real identity, waiting to be found and adjusted. Whether the commission ruled Indians under state or federal control, the next step was well understood: the abolition of tribal governments, the allotment of land, and the conferral of citizenship. Instead, the first years of the new decade witnessed a dramatic rise in Native political activity abetted by Everett himself, whose report threw the state's physical and existential boundaries into question and culminated in a massive land rights action for the repatriation of stolen land. Rather than drawing new property lines between Native families to break up the reservations – an aspiration of New York policymakers for near forty years and one of the expected outcomes of the commission – Everett and a coterie of Indian leaders retraced the boundaries of the entire Empire State, declaring that over six million acres, virtually all land north and west of Albany, still belonged to its original owners. Emboldened over the preceding decade by the continual inability of state and federal officials to solve the "problem" posed by their liminal status, independent political organizations, and communal landholding, Haudenosaunee

¹¹³ "Indians Claim Half of New York," *New York Times*, December 7, 1924.

people pushed Everett to these radical conclusions by confronting his commission with legal and historic evidence for their claims to territory and nationhood. Fortuitous, and apparently wholly accidental, was the presence of a politician from the government usually dominating the Iroquois willing to listen.

The present chapter follows the Everett Commission's transformation from a routine investigation into a vehicle for Indian nationalism. Everett's long-suppressed report, which few historians have noted let alone mined,¹¹⁴ opens a revealing window onto Haudenosaunee perspectives in the period. The Six Nations were, in general, deeply skeptical of state power, knowledgeable of treaty norms, and hostile to U.S. citizenship, at least if exclusive of their own. Over a decade before allotment was repudiated as a national policy – and many more until the emergence of Red Power – the Everett Report and its aftermath raised the possibility of indigenous land reclamation, breaking through a stalemate of deadlocked jurisdiction and setting the stage for years of intense political agitation. Exploiting cracks in the legal edifice, occasioned largely by U.S. circumvention of their own constitutional mandates, Iroquois confederates wielded the weapon of law against the settler state. The moment was only fleeting. By 1924, the ground shifted anew, as the Indian Citizenship Act and the Johnson-Reed Immigration Act redrew the boundaries of Haudenosaunee politics and territory yet again. Two years later, the judiciary developed a rationale for rejecting Iroquois land rights that would linger, “like a loaded weapon,” into the following century.¹¹⁵

¹¹⁴ So far as one exists, the standard text on the report is Helen Upton, *The Everett Report in Historical Perspective: The Indians of New York* (Albany: New York State American Revolution Bicentennial Commission, 1980). Upton should be commended for publishing the first historical writing on the Everett Report, but the work lacks much in the way of analysis and the style is prosaic. Laurence Hauptman, an eminent historian of twentieth century Iroquois politics, only mentions Everett in passing. The most recent treatment of Haudenosaunee politics in the 1920s is Kevin Bruyneel's excellent *The Third Space of Sovereignty: The Postcolonial Politics of U.S.-Indigenous Relations* (Minneapolis: University of Minnesota Press, 2007) which does not discuss Everett Commission.

¹¹⁵ Robert A. Williams, Jr., *Like a Loaded Weapon: The Rehnquist Court, Indian Rights, and the Legal History of Racism in America* (Minneapolis: University of Minnesota Press, 2005)

Chartered on May 12, 1919, the New York State Indian Commission was to include members of Albany's political elite: the attorney general, senate president, speaker and minority leader of the assembly, and various heads of state bureaucracies. In reality, few evinced much interest. With the policy outcomes preordained, the proceedings were expected to be mere formality. Thus Everett assumed the chairmanship largely by process of elimination. Four other candidates declined the position before it ended up in his lap.¹¹⁶ The job was rightly viewed as a political dead end. Indian Affairs were not considered important in Albany power politics nor did they bring the promise of electoral reward, and few besides the reservation's immediate neighbors were even aware of the "problem" posed by the Iroquois.

Even if Everett was not the first choice to lead the commission, state policymakers had little reason to suspect him of harboring any radical notions regarding Indian rights. Born 1860 into a middle class Irish American family in St. Lawrence County, Everett was educated at Albany Law School before returning to Potsdam to practice law. His biography is remarkable only for the sheer number of business endeavors in which he played some part – baking powder and dairy manufacturers, electric companies, sulphite producers, and mining outfits, to name only a few.¹¹⁷ Elected to the State Assembly in 1914, Everett frequently incurred the wrath of Christian social reformers for his business-friendly conservatism. In an increasingly fractious Republican Party, split between progressive and corporate impulses, Everett appears to have sided with the latter. In 1916, he introduced what the anti-vice Committee of Fourteen deemed "Underworld Bills," preventing the New York City Police Department from stationing officers in front of "disorderly houses" and

¹¹⁶ Upton, *The Everett Report in Historical Context*, 79.

¹¹⁷ Robert B. Shaw, "Edward Everett, Potsdam Legislator: Author of the Suppressed 'Everett Report'," *The St. Lawrence County Historical Association Quarterly* 28, no. 2 (1993), 10; "Funeral for E.A. Everett," *The Ogdensburg Republican-Journal*, December 26, 1928.

“vice resorts.” Downstate hotel proprietors searched in vain for a local sponsor before finding Everett. The legislation was considered so noxious that not a single other representative in either chamber added his name, a fate that would later befall Everett’s equally unpopular Indian report. “I have heard good businesses have been ruined by stationing policemen in uniform in front of the premises,” Everett explained.¹¹⁸ The same year, Everett cast the decisive vote in the legislature’s excise committee against an “optional prohibition referendum,” allowing for plebiscites in each municipality on the availability of liquor licenses. “Of course, Mr. Everett may have concluded that if the gratitude of the liquor traffic is sufficiently substantial he can retire from politics with this session,” accused William H. Anderson, State Superintendent of the Anti-Saloon League.¹¹⁹

Everett was a close ally and personal friend of Assembly Speaker Thaddeus C. Sweet, known for his deference to manufacturing interests and rabid antipathy to economic reform. Together they defeated an “avalanche of Socialistic and paternalistic legislation,” including a labor-backed health insurance bill in early 1919.¹²⁰ So too did they share a disdain for radicals. Just months before Everett convened the first meeting of the New York State Indian Commission, he joined a seven-to-six majority of the judiciary committee in recommending the expulsion of five socialist assemblymen from their seats, endorsing a report that accused the men of belonging to a “disloyal organization composed exclusively of perpetual traitors.” Everett’s participation cannot simply be chalked up to the hysteria of the first Red Scare. The decision was highly controversial even in elite circles, denounced by future Chief Justice of the Supreme Court Charles Evans Hughes, who five years later would

¹¹⁸ “Attacks Police Custom, Bill Prohibits Uniformed Guard Before Suspected Placed,” *The New York Times*, February 28, 1916; “‘Underworld’ Bills Doomed at Albany,” *The New York Times*, March 24, 1916; “Letters from the People: Congressman Snell and Assemblyman Everett,” *The St. Lawrence Republican*, April 19, 1916.

¹¹⁹ “Everett Is Denounced by W.H. Anderson,” *The St. Lawrence Republican*, March 29, 1916.

¹²⁰ David A. Moss, *Progressive-Era Economists and the Origins of American Social Policy* (Cambridge: Harvard University Press, 1996), 154.

ironically serve as legal counsel to New York in fending off the Six Nations land reclamation lawsuit that resulted from the Everett Report.¹²¹ Putting forward Sweet's name for New York Governor on the Republican ticket, Everett shielded his ally from criticism. "Those who think it unwise to have the name of Speaker Sweet brought out in connection with the governorship, because of his initiative in the expulsion of the Socialists, will have to reckon with me and with many others like me."¹²² Everett even attempted to run for Republican floor leader in the Assembly based on his role in the affair, declaring that his opponent sided against voters "loyal to American ideals" by not also endorsing the excommunication.¹²³ In a satirical rendition of Jean Beraud's "Vive La Commune," painter David C. Lithgow immortalized Everett's part by placing him with other anti-Socialists on the assembly rostrum, surrounded by a mob of rowdy radicals.¹²⁴

Whether these actions represented Everett's deep ideological commitments or mere political and commercial expediency is difficult to determine, as Everett's convictions were subject frequent revision. Only a year after the red purge, Everett began expressing unease about elite political influence. Responding to a magazine article on the 1921 death of Pennsylvania Senator Boies Penrose, the consummate Republican boss of the early twentieth century, Everett warned "the men of material wealth, if continued in office, will bankrupt the foundation that has been our sustaining influence in governmental affairs." Forces like Penrose, Everett believed, were bound to "wreck the ship of state," once they concluded "the salvage would be worth more to them than the continuance of government."¹²⁵ In 1922,

¹²¹ "Favor Expelling Five Socialists," *The New York Times*, March 30, 1920; "Hughes Upholds Socialists' Rights," *The New York Times*, January 10, 1920; Nicholas Confessore, "When the Assembly Expelled Socialists for Disloyalty," *The New York Times* October 21, 2009.

¹²² "Political News of the State," *State Service* 4, no. 5 (May 1920), 455.

¹²³ "Political News of the State," *State Service* 4 No. 11-2 (November-December, 1920), 771.

¹²⁴ H.W. Dodds, "Expulsion of the Socialists Reviewed," *State Service* 4, No. 6 (June 1920), 505.

¹²⁵ Edward A. Everett to Norman Haggood, Editor, Hearst's International, Date Unknown, 1921, SC20652 Lulu G. Stillman Papers, Box 7, New York State Library Manuscripts and Special Collections, Albany, N.Y.

Everett detected the hand of these “men of material wealth” in convincing his colleagues on the Indian Commission to oppose the final report. These timid co-commissioners were only representing people “whose financial interests would be interfered with were the provisions of my report to be carried into effect,” Everett wrote to a friend in Massachusetts. “You will appreciate that a conclusion of this kind necessarily creates some commotion in financial circles when this territory includes within its bounds all of the cities from Syracuse to Buffalo inclusive.”¹²⁶ Radicalized by his commission work, Everett’s politics could be as varied as his business ventures.

Everett’s awareness of or stance on Indian issues prior to the commission is also ambiguous. Nine months after he released his controversial report, Everett declared to an audience of Kahnawake Mohawks in Canada, “I have studied the Indian question for over forty years – the top of my head would indicate that I had started even seventy-five years ago.”¹²⁷ Elsewhere, he revised that number by a decade. “Permit me to say that I have been a careful student of the Indian problem for upwards of fifty years,” he wrote to a reporter, “always taking a very act part in the discovery and discussion of the peculiarities of the American Indian.”¹²⁸ There is little evidence to support this claim. Everett’s name appears nowhere in the debates surrounding the failed 1915 constitutional amendment to abolish tribal landholding, nor in any other flare-ups of the “New York Indian problem” prior to 1919. In the commission’s early days, Everett evinced a repeated ignorance of major treaties until confronted with them by Iroquois leaders. And he did not demonstrate any eagerness to take on the task of chairman.

¹²⁶ Edward A. Everett to T.G. Waller, July 3, 1922, SC20652 Lulu G. Stillman Papers, Box 1, New York State Library Manuscripts and Special Collections, Albany, N.Y.

¹²⁷ Minutes of Meeting at Caughnawaga Reservation (Mohawk), Caughnawaga, Canada, Nov. 28, 1922, SC20652 Lulu G. Stillman Papers, Box 1, New York State Library Manuscripts and Special Collections, Albany, N.Y.

¹²⁸ Edward A. Everett to T.G. Waller, July 3, 1922, SC20652 Lulu G. Stillman Papers, Box 1, New York State Library Manuscripts and Special Collections, Albany, N.Y.

The forces that shaped Everett's disposition toward Native peoples prior to his commission work are ultimately opaque, as efforts to access his personal papers have proven unsuccessful from the first attempts in 1929 to my own in 2012. One present day descendant told me Everett's stand on Indian sovereignty derived from "an ethical strain in the family" – a difficult assertion to prove.¹²⁹ One possibility, for which there are but few evidentiary shreds, was Everett's Irish nationalism. His chairmanship of the Indian Commission coincided with the three most intense years of guerilla activity carried out by the Irish Republican Army against British occupation before the Anglo-Irish Treaty, events most Irish Americans were keenly aware of.¹³⁰ When Everett made his case for Indian self-determination and restitution of territory at the commission's final hearing in February 1922, a month before divisions within the IRA would erupt in civil war, Everett compared the Irish to the Iroquois. "[England] held their ironclad heel on Ireland for 750 years. Is that an exhibition of kindness, of an attempt to better humanity? May I ask the people who may oppose my position concerning your progress and ability to tell me what tribe of Indians in any section of the United States ever held its heel on any people for 750 years?"¹³¹ That November Everett revealed to a Mohawk audience at Caughnawaga a new nickname: "The Irish always like a fight and I am styled 'the Irish Indian.'"¹³²

For whatever reason, in his role as chairman Everett was animated from the outset by three basic understandings. First, he held a highly romanticized view of the Iroquois past. "We are forcibly impressed by a careful study of the character of the Indian with the fact that in his natural state he was an honest, conscientious, reliable human being," Everett told

¹²⁹ Everett Smith, phone conversation with the author, April 2, 2012.

¹³⁰ See Chapter Four, "The IRA's Foreign Links," in Tim Pat Coogan, *The IRA* (New York: Palgrave, 1970).

¹³¹ "The Everett Report," 281.

¹³² Minutes of Meeting at Caughnawaga Reservation (Mohawk), Caughnawaga, Canada, Nov. 28, 1922, SC20652 Lulu G. Stillman Papers, Box 1, New York State Library Manuscripts and Special Collections, Albany, N.Y.

his colleagues. The Indian was “simple in his ways of living, moral in his intercourse... ignorant of the practices of the white race and thereby easily persuaded to dispose of his natural rights.”¹³³ Second, Everett felt charged with a purpose far beyond what the Legislature intended for the commission. Just before the first hearing, Everett declared in a speech at Old Forge, NY, that he sought redress for crimes perpetrated against Indian people “greater than the Germans attempted to against the French and English and would have again us.” He planned “to be a liberal with the Indian...because of my forefathers’ acts which I have to answer for as has everybody.”¹³⁴ Finally, and most importantly, in a moment when Indian Affairs were dictated by contemporary conditions and “practical” prescriptions, Everett reckoned with history. The question of Indian political status “reaches into the foundation of the integrity of government,” he believed. “We, therefore, must go back and examine carefully the attitude maintained toward the North American Indian by the first white settlers, what their policy and practice was in securing title from the Indians.”¹³⁵ This emphasis on foundational legal regimes, and departures from them, would lead Everett to radical conclusions, conclusions dismissed by more seasoned Indian policymakers as delusional, dangerous, or absurd.

If Everett was indeed new to Indian affairs, at least one of his colleagues on the commission was not. Born to a Seneca father and Scottish-English mother on the Cattaraugus Reservation in 1881, Arthur Caswell Parker descended from a prominent family that included the first indigenous Commissioner of Indian Affairs, his great-uncle Ely S. Parker. Like many children of mixed-race parents at a time of rigid social division, Arthur’s identity was always ambiguous. Because Senecas traced membership matrilineally, Parker

¹³³ “The Everett Report,” 10.

¹³⁴ Speech By Hon. Edward A. Everett at Old Forge, N.Y., June 26, 1920, SC20652 Lulu G. Stillman Papers, Box 7, New York State Library Manuscripts and Special Collections, Albany, N.Y.

¹³⁵ “The Everett Report,” 30.

would only be adopted into a clan as an adult when he returned to Cattaraugus to record Iroquois folklore. “Legalists point out that only animals, slaves, and some Indians...take their descent from the female line,” he once complained.¹³⁶ Yet it was years before Parker was a full U.S. citizen either, since the government traced citizenship from the father’s lineage. “I occupy a peculiar position in my own tribe,” Parker wrote in 1911; “I can only incur criticism, suspicion and unjust remarks.”¹³⁷ At age ten, Parker and his family moved from Cattaraugus to the New York City suburb of White Plains, where trips to the Museum of Natural History sparked his future career as archaeologist, ethnologist, and museum curator. “The shock of life in a suburb of the great metropolis after growing up in the cultural security of the reservation may have been what kindled Parker’s unending desire to interpret one way of life to the other,” writes biographer Joy Porter.¹³⁸

Parker’s interests soon extended beyond scholarship. In 1911, he cofounded the Society of American Indians, a prominent progressive organization in the early twentieth century, and would later serve as President. Parker towed a more moderate line than other SAI members like Yavapai doctor Carlos Montezuma, who called for an immediate abolition of the Indian Bureau. Parker instead promoted a tempered integration into the larger society “accompanied by the preservation of a more or less abstract native identity and pride,” a distinctly racial – rather than cultural or religious – character that cut across tribal and regional difference.¹³⁹ He often cited Tecumseh as his inspiration for this pan-Indian organization, though one wonders how the Shawnee warrior might have viewed his integrationist stance. By 1915, divisions over the Bureau’s role and the necessity of stamping

¹³⁶ Chip Colwell-Chanthaphonh, *Inheriting the Past: The Making of Arthur C. Parker and Indigenous Archaeology* (Tucson: The University of Arizona Press, 2009), 33.

¹³⁷ Hazel Hertzberg, *The Search for an American Indian Identity: Modern Pan-Indian Movements* (Syracuse: Syracuse University Press, 1971), 56.

¹³⁸ Joy Porter, *To Be Indian: The Life of Iroquois-Seneca Arthur Caswell Parker* (Norman: University of Oklahoma Press, 2001), 22.

¹³⁹ Bruyneel, *Third Space of Sovereignty*, 111.

out Native religious practice threatened to tear the SAI apart, and Parker became increasingly cloistered in his role as editor of the group's periodical, which in 1916 he renamed "A Journal of Race Ideals" to "enlarge our sphere of usefulness."¹⁴⁰ He lambasted other members as "malcontents and peyote-drug defending lawyers" for destroying the dream of a progressive, pan-Indian society. In the year before joining the New York Indian Commission, Parker stopped attending the annual SAI conventions entirely, though he remained as President.¹⁴¹

With the SAI in disrepair, Parker devoted his energies to archeological and curatorial work, where he would identify himself as Indian with decreasing frequency. Like many of his colleagues in the scientific community, Parker was an ardent eugenicist, going so far as to advocate "the preservation of racial type – that of the Aryan white man." In a speech delivered to the Albany Philosophical Society a month before Everett presented his final report, Parker warned that America's national philosophy "as expressed by our Nordic-Aryan forefathers" was under assault from "indiscriminate blood blending and inharmonious race contacts," leading to outbreaks of blindness, palsy, and leprosy.¹⁴² While Parker often exempted the Iroquois from his general social prescriptions, eugenicist logic clearly shaped his widely circulated pamphlet, "The New York Indian Complex and How to Solve It," authored on the eve of the Indian Commission's charter. Full, unencumbered citizenship, Parker believed, was the bitter pill necessary to remedy the stilted Iroquois reservations. "Those who have refused to prepare for it and those who because of the degenerating influence of tribalism have become diseased morally and physically will go the way of all created things that have been arrested in development, reverted or perverted," he wrote.

¹⁴⁰ Hertzberg, *The Search for an American Indian Identity*, 139.

¹⁴¹ Hertzberg, *The Search for an American Indian Identity*, 172.

¹⁴² Porter, *To Be an Indian*, 137.

“The law of nature is that the unfit shall be weeded out to make room for the energetic and competent. Citizenship for the New York Indians will prevent the propagation of the unfit and put a premium on the thrift of those who aspire.”¹⁴³ Though federal officials often cited these views, Parker never expressed them before Haudenosaunee audiences during commission hearings. Indeed, while Parker was one of the few appointees to travel with Everett to every reservation hearing during the two-week investigation, he rarely spoke. When he did, Everett often sharply contradicted him.

Parker’s reticence is understandable. The imposition of U.S. citizenship was widely unpopular in Iroquois communities. The months before Everett convened the commission’s first meeting witnessed growing agitation on the issue as another iteration of the Carter Bill, successfully defeated in prior legislative sessions, worked its way through Congress. On October 1, 1919, Six Nations chiefs gathered at the Onondaga longhouse for a four-day conference, where they unanimously endorsed a resolution opposing any Congressional attempt to alter their political status. “As a protest it is pointed out that the United States has no jurisdiction over the Indians of New York State, whose independence is guaranteed by treaties,” reported the *Syracuse Herald* in an article entitled “Six Nations Ask Only To be Let Alone.” In a sign that inter-confederacy divisions were widening, leaders of the Seneca Reservation at Allegheny – considered more modern for their tribal electoral system and state-sanctioned constitution – refused to send delegates, protesting the “pagan methods” by which the traditional chiefs who presided over the meeting were appointed.¹⁴⁴ Two weeks later, the Tonawanda Senecas followed the Onondagas’ lead, voting overwhelmingly against “any attempt to enfranchise the Indians.” Again, the Carter Citizenship Bill stalled in

¹⁴³ Arthur C. Parker, “The New York Indian Complex and How to Solve it,” *Researches and Transactions of the New York State Archaeological Association* 2:1 (192), 20.

¹⁴⁴ “Six Nations Ask Only To Be Let Alone,” *Syracuse Herald*, October 5, 1919.

Congress.¹⁴⁵ Thus the New York Indian Commission set about its work at a moment of heightened Iroquois political activity. This resurgence would ultimately combine with Everett's unorthodox disposition to move Native activism from rejection of deleterious legislation to affirmation of abrogated land rights and efforts for recovery.

There was little evidence of this dramatic fate at the commission's first meeting, however. Before departing on a tour of Iroquois reservations over the course of two weeks in August 1920, state investigators conferenced with the federal Board of Indian Commissioners (BIC) on July 27 at a hotel in Saratoga Springs to "settle concerns" between levels of government. Established in 1869 as part of Ulysses Grant's Peace Policy, the semi-independent Board functioned in an advisory capacity to federal policymakers, pushing a Christian-tinged reform agenda of cultural assimilation.¹⁴⁶ By the early twentieth century, their influence had significantly waned, replaced by a growing administrative bureaucracy and a coterie of academic experts. Despite their minor role in debates of the day, the BIC nonetheless reflected official attitudes in Washington, with membership culled from elite policy and philanthropic circles. Their conversation with the New York State Indian Commission is instructive both of these perspectives and how radically Everett departed from them.

For example, all besides Everett believed the entire "New York Indian Problem" could be solved in private conversations between state and federal officials, with the Iroquois – and the laws that governed the U.S. relationship with them – wholly excluded. "This commission should get together with the proper Federal authorities and find out what conflicting conditions exist, the points of conflict and of harmony and settle these points

¹⁴⁵ "Seneca Indians Against Being Enfranchised," *Syracuse Herald*, October 19, 1919.

¹⁴⁶ C. Joseph Genetin-Pilawa, "Ely Parker and the Contentious Peace Policy," *Western Historical Quarterly* 41 (Summer 2010), 199.

under the power of either the Federal or State Government,” proposed State Senator Loring F. Black.¹⁴⁷ It mattered little which. “I imagine that it is a great deal better to have that question decided, even though decided wrong, than have things continue as they are with the present uncertainty and nobody knowing where the responsibility lies,” added BIC Chairman George E. Vaux.¹⁴⁸ After a lengthy disquisition in which Everett described the “intricate international relations” that allowed the Six Nations to “maintain a separate, distinct territory and government,” Vaux responded bluntly: “Hasn’t the state of New York assumed control over these Indians?” BIC Secretary Malcolm McDowell believed they could. “Now, I talked with Judge Pollock, head of the Department of the Interior, asking if Congress by act could make all Indians of New York citizens of the United States,” McDowell informed the gathering, “and he said ‘Yes.’”¹⁴⁹ R.W. Hill of New York’s charities department looked forward to such a change, as citizenship would allow the state to finally take “control of the Indian child,” bringing them under a compulsory school attendance law. “The Indians have been unwilling to permit this to apply to Indian children and deny that the state troopers, who could be used to make them attend had any power,” Hill complained.¹⁵⁰ The best solution was to “make the status fit to the State requirement in dealing with the Indians.”¹⁵¹

Everett was the meeting’s stark outlier. While he had yet to fully develop his radical views regarding Iroquois territorial rights, he believed the commission had a far greater task to fulfill than the discussants imagined. “Hadn’t we something to attend to in relation to the Indians other than attempting to convert him into a citizen?” he begged.¹⁵² Instead, he saw the issue as bound to land. “The solving of the problem of the status of the American Indian

¹⁴⁷ “The Everett Report,” 44.

¹⁴⁸ “The Everett Report,” 17.

¹⁴⁹ “The Everett Report,” 22.

¹⁵⁰ “The Everett Report,” 25.

¹⁵¹ “The Everett Report,” 46.

¹⁵² “The Everett Report,” 27.

in the State of New York, if properly done, will settle the question of the ownership of what is now the United States at the time when the first white man landed here,” he told the commission. “We, therefore, must go back and examine carefully the attitude maintained toward the North American Indian by the first white settlers, what their policy and practice was in securing title from the Indians.”¹⁵³ Vaux offered his own ready answer to Everett’s historical inquiry. “I very seriously doubt whether as a moral or legal fact you can assert that a people wandering over a great stretch of territory have any legal right to actual ownership of that land.” Vaux instead demanded “practical solutions.” “What we want to do with the Indian shouldn’t control what the laws say we must do,” Everett maintained. “He is a human being and we have certain laws to which we adhere and in which believe.”¹⁵⁴

On this point Everett found no agreement. Indeed, nothing broadcast the consensus position clearer than BIC member Daniel Smiley’s injunction at the Saratoga meeting’s conclusion. “Mr. Chairman, I think that a bigger question than National status is that we want to do what is the right thing for the Indian more than the legal thing.”¹⁵⁵ The statement, brazen in its dismissal of the legal parameters that allegedly guided government policy, illuminates a core dynamic of Indian Affairs in the early twentieth century. Smiley was, after all, a prominent member of the Lake Mohonk Conference, the longstanding “Friends of the Indian” society aimed at grooming indigenous subjects to become “good, law-abiding citizens.”¹⁵⁶ Yet at a meeting of officials putatively bound to uphold the laws of their

¹⁵³ “The Everett Report,” 30.

¹⁵⁴ “The Everett Report,” 27.

¹⁵⁵ “The Everett Report,” 47. Italics are my own.

¹⁵⁶ “Remarks by Daniel Smiley, May 17, 1916,” in *Report of the Twenty-Second Annual Lake Mohonk Conference on International Arbitration* (Mohonk Lake, N.Y.: Lake Mohonk Conference on International Arbitration, 1916), 9-10.

government, Smiley's recommendation was met with no retort. Instead, the assembled luminaries saw the law as the greatest hurdle to achieving a condition of "normalcy."¹⁵⁷

In front of an Indian audience for the first time at Onondaga three weeks later, state officials withheld these private designs. The meeting opened with a speech by Chief Andrew Gibson in "Indian tongue," after which Chief George Thomas coolly allowed the commission to "proceed with whatever business you have on hand."¹⁵⁸ Present for the first and only time was New York State Attorney General Charles D. Newton, an ally of Everett's in the ousting of socialist legislators several months earlier. Newton admitted, "It would be idle to say to you that I have a very intimate acquaintance with the rights or alleged rights of the Indian, because I have not and few people claim to have." Nonetheless, he promised, "If I have any qualification which is commendable, it is one of fairness, perfect fairness."¹⁵⁹ Everett added a line to the lofty introductions that surely unnerved this honored guest. "My attitude is that if you did own this country when it was discovered by the white man and it was taken from you without proper and legal and just compensation, it should be returned to you." The audience of Onondagas erupted in applause.¹⁶⁰

The tone of the hearing changed markedly when Everett opened the floor to Native speakers. Immediately, Iroquois speakers confronted the commission with clearly defined positions on sovereignty, jurisdiction, and nationhood. George Thomas read a letter endorsed by other Onondaga chiefs: "It is the will of God and the people...that the Federal Government of Washington, DC be the guardian of the Indians of the State of New York and to see that the treaties of 1795 between the Five Nations of New York State be lived up to by the said government." He concluded, "We firmly believe that the State of New York

¹⁵⁷ "The Everett Report," 49.

¹⁵⁸ "The Everett Report," 53.

¹⁵⁹ "The Everett Report," 57.

¹⁶⁰ "The Everett Report," 60.

has no jurisdiction over the Five Nations of New York State.”¹⁶¹ In what would be his last public appearance, the elder Jairus Pierce asked if Everett was familiar with what Pierce deemed the invalid state treaty of 1788 relinquishing Onondaga and Oneida land. When Everett admitted he was not, Pierce instructed him, “I hold that the state has no jurisdiction and therefore all the land will have to be thrown up and you will have to clear the city of Syracuse as you said you would redeem all lands taken wrongfully.” He was skeptical Everett could deliver on such a promise. “Shall we call for a new treaty or go to the United States and say the State has taken our land wrongfully? You would be powerless, wouldn’t you?”¹⁶²

Joseph Johnson, an Oneida Indian residing on the Onondaga reservation, was the most confrontational. He scoffed at the Attorney General’s grandiloquence: “Fairness! Now, we consider if we had fairness, we would all have been satisfied.” He complained of Christian missionaries – “we have been damned by them” – and cast doubt on the usefulness of the entire commission. “We have to do something by men coming from the Capitol of New York State empty handed to investigate the status while they have any quantity of paper stacked up in Albany and Washington which they might have brought and show some light on the subject.”¹⁶³ Joking that there was “lots more room” where socialist presidential candidate Eugene V. Debs was incarcerated, Johnson worried he was “liable to spend my vacation there for the next twenty years” if he continued to make remarks against the government. “But it is a fact that the state has allowed county courts to pass opinions upon land transactions when it knew it was fraud and still upheld it.” Commission member Earl Bates, President of the Onondaga Indian Welfare Society, admonished Johnson to

¹⁶¹ “The Everett Report,” 63.

¹⁶² “The Everett Report,” 64.

¹⁶³ “The Everett Report,” 68.

temper his accusations “because it is not just to make a broad statement, so very broad and condemnatory.”¹⁶⁴

After someone revealed to the commission – the record does not state who – that Johnson was Oneida and not Onondaga, Everett promptly barred him from speaking further. The day’s hearing was dedicated to the Onondagas only, Everett explained, causing Chief Chapman Shenandoah to interject, “It looks as if you are trying to separate the tribes. It looks like some foreign country coming and trying to separate the states Pennsylvania and New York.” If Everett banned Johnson for the benefit of Attorney General Newton, whom Johnson had openly mocked, it did not work. “The Attorney-General having an appointment, was compelled to leave,” the transcript abruptly reads.¹⁶⁵ Newton is never again mentioned in the Everett Report. His absence was not unique. After Onondaga, six commissioners did not appear at a single other meeting on the reservations. The rest appeared only once or twice. The defiant tone at Onondaga was likely more than they would tolerate for unpaid work.

As Everett and his dwindling co-commissioners visited other reservations over the next two weeks, several themes emerged. Many Iroquois vehemently rejected the label “alien,” recently ascribed to them by the otherwise favorable Oneida land decision in *Boylan*. The antipathy derived from several sources. First, it was most commonly attached to recent immigrants from Southern and Eastern Europe, vilified by politicians and the popular press for their allegedly degenerating influences on American life.¹⁶⁶ Indians were not immune from this discourse. At the Tuscarora Reservation, Howard Gansworth complained that

¹⁶⁴ “The Everett Report,” 69.

¹⁶⁵ “The Everett Report,” 71.

¹⁶⁶ Matthew Frye Jacobson, *Barbarian Virtues: The United States Encounters Foreign People at Home and Abroad, 1876-1917* (New York: Hill and Wang, 2000); Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004); Margot Canaday, *The Straight State: Sexuality and Citizenship in Twentieth-Century America* (Princeton: Princeton University Press, 2009).

state officials treated him “like an Italian, Pollock and some other foreigner not born here.”¹⁶⁷ There was also aversion to the label’s implication of estrangement from the land of their birth and ancestry. Seneca lawyer John Snyder declared, “We are not aliens – we are not foreign born, we were born and raised here.”¹⁶⁸ Joe Johnson added, “I live in the same land that my father and forefathers were born in and possessed thousands of years ago and still I am classified as an alien.”¹⁶⁹ At Allegheny, a man identified only as Mr. Huff went further: “Any Court Judge who will say an Indian is an alien is not fit to be on the Bench.” No man “with a human heart” could call them such.¹⁷⁰

Moreover, the labeling of Indians as “aliens” allowed the state to restrict their hunting and fishing rights, charging them a higher, non-citizen rate to acquire a license. At every reservation, outraged Iroquois confronted the commission on this point. “They will not sell a state license because he is an alien, not a citizen,” Joe Johnson told the panel. “They said if we were citizens they could sell us a license but they [now] sell us an alien license.”¹⁷¹ Treaties were most often raised in this context. “You cannot find any treaty made between Indians where he gave up the right to game,” declared Jesse Lyons. “I don’t see why the Congress, the Assemblyman has right to pass laws to stop the Indian going out hunting.”¹⁷² At Cattaraugus, Mr. Pattison – no first name was given – echoed Lyons’ injunction. “Now, you take the old treaties, our ideas were that we had a right to hunt and fish anywhere in the United States this idea was handed down to the present day, until lately when we got in Court, and then they decided against us.” Paying upwards of ten dollars to acquire a license was not only prohibitive, but contradicted Pattison’s understanding that Indians “had a right

¹⁶⁷ “The Everett Report,” 163.

¹⁶⁸ “The Everett Report,” 202.

¹⁶⁹ “The Everett Report,” 67.

¹⁷⁰ “The Everett Report,” 268.

¹⁷¹ “The Everett Report,” 109.

¹⁷² “The Everett Report,” 108.

to hunt and fish while the grass grows and the waters run.”¹⁷³ There was also widespread complaint about the dwindling availability of game. Insisting that Indians “feel the way the Jews felt in Egypt,” Cattaraugus Seneca John Van Arnum lamented, “We can no longer hunt and fish as we used to, nor camp along our lands, lakes and rivers and fish. Our streams are polluted from factories beyond our reservation thus destroying our means of livelihood.”¹⁷⁴ Jesse Lyons accused white hunters of causing “blood [to] run down over the streets” by making “business of it.”¹⁷⁵

The meaning of guardianship was also the source of some consternation. “As I understand the guardian is like this – you take a child not of age and cannot take care of herself, then a guardian is appointed to take care of this child,” said Onondaga Livingston Crouse. He wanted to know if the commission shared this condescending interpretation: “Are we as a nation or as a child?”¹⁷⁶ During the Oneida hearing, an adopted Onondaga named Edward Gohl explained that when the Iroquois asked for federal protection, “They do not mean the word ‘guardian’ as the white man means, as an incompetent insane person.”¹⁷⁷ Yet the state unequivocally linked the meanings. The agency charged with supervising health conditions on the reservations was named the “Department of State, Alien and Indian Poor.” Among its several tasks were monitoring “the idiotic and feeble-minded patients in the State charitable institutions,” in addition to placing “destitute Indians” in almshouses, or if full, providing “temporary outdoor relief.”¹⁷⁸ A discourse of “competence” was also essential to early twentieth century Indian policy nationally, especially after passage of the Burke Act in 1906. Only those deemed “competent” by a

¹⁷³ “The Everett Report,” 261.

¹⁷⁴ “The Everett Report,” 190.

¹⁷⁵ “The Everett Report,” 108.

¹⁷⁶ “The Everett Report,” 71.

¹⁷⁷ “The Everett Report,” 107.

¹⁷⁸ New York State Board of Charities, *Annual Report for the Year 1914* (Albany: J.B. Lyon Company, Printers, 1914), 403-404.

board of Bureau officials could receive allotment and citizenship; by implication, those who remained wards were mentally or culturally deficient. Gohl offered a different theory of guardianship: “They want the United States to be their protector from the white man; but in no way to control their internal affairs and deny they are wards any more than a German, Englishman or Frenchman in France is a ward of the United States.”¹⁷⁹ The Haudenosaunee were independent but not aliens, wards but not incompetent.

For as much as Everett would ultimately reach unequivocal conclusions on sovereignty and land rights, Indians at the reservation hearings often expressed nuanced, even contradictory positions on several major issues. Some of the same figures who opposed the coercive imposition of U.S. citizenship, for instance, nonetheless affirmed their right to status within the colonizing society should they desire it. While Huff claimed that “all I depend on this day is the treaties” guaranteeing a sovereign identity, he later added: “If anyone is, the white man is an alien and the Indian a citizen of the United States, for he was the first inhabitant here.”¹⁸⁰ Many Haudenosaunee occupied what political scientist Kevin Bruyneel describes as the “third space of sovereignty,” claiming both autochthonous citizenship, predating the formation of the United States and thus giving them rights within it, as well as prioritized membership in their own, separate Native nations.¹⁸¹ Thus within the same chain of thought Joe Johnson both affirmed that Indians were “a separate government surrounded by the United States” and still concluded, “You can call me a Bolshevist or whatever you want; but I am an American.” Johnson believed Indians could maintain independent political identities while moving freely within settler boundaries. “I say, we are a separate country from the United States as long as we have treaties and yet are called aliens,”

¹⁷⁹ “The Everett Report,” 107.

¹⁸⁰ “The Everett Report,” 268.

¹⁸¹ Bruyneel, *The Third Space of Sovereignty*, 102-111.

he objected.¹⁸² At Tonawanda, Nicodemus Billy asked, “Cannot the State give to the Indians within its boundaries citizenship without affecting its tribal rights or without affecting the guardianship of the National government over these Indians?” He sought only a “political doorway” for Indians who desired citizenship to acquire it, and not to force those who did not.¹⁸³ Others were less equivocating. “My people whom I represent, strenuously object to being made citizens of this State,” Cattaraugus Seneca John Snyder declared, “and that they will take this position before Committee of Congress or whatever necessary.”¹⁸⁴

So too did Indians express a complex relationship to education. While nearly all rejected state jurisdictional control on the reservations, many nonetheless called for Albany to improve public schools. “The conditions are bad, the building poor, untidy for years,” described Van Arnum of the Thomas Indian School at Cattaraugus, the state’s oldest reservation facility. “One of my boys brought home a book this spring, an old relic, the name on the cover was a man who died about thirty years ago, so the book must be thirty years old, they are filthy, dirty in our districts.”¹⁸⁵ Complaining of the Carlisle Indian School’s recent closure, which had in any case admitted only a handful of mostly Seneca Iroquois in previous years, Tuscarora Eli Johnson asked Everett that he “see a school put up on the reservation where the children get more than they do now.” Yet Johnson also opposed state enforcement of compulsory attendance. “When hard times come along and a man has a lot of children or is sick or lives so far from the school...they can’t go or they are not strong and so excusable.”¹⁸⁶

As the Indian Commission moved from reservation to reservation across the state,

¹⁸² “The Everett Report,” 67-68.

¹⁸³ “The Everett Report,” 124.

¹⁸⁴ “The Everett Report,” 175.

¹⁸⁵ “The Everett Report,” 191.

¹⁸⁶ “The Everett Report,” 159-160.

Everett's views subtly evolved. He began to regularly acknowledge the duplicity of officials in Albany. "You are entitled to be suspicious when a white man comes claiming to be interested in your relationship and rights," Everett told the Cattaraugus hearing. "I have discovered several places where the Indians claim that the written treaty of which they are in possession differs from the county lines of the reservation and from the treaties on file in Albany."¹⁸⁷ But it was not until Everett was confronted with categorically legalistic arguments that the chairman fully grasped how wide the gulf was between treaty and reality. At Cattaraugus, John Snyder presented Everett with what he would come to view as conclusive evidence: binding international treaties. In Article 8 of the 1789 Fort Harmer treaty, the United States recognized ownership by the Haudenosaunee of "all the lands which they inhabit lying east and north of the before mentioned boundary line" – including most of western New York. The 1794 Treaty of Canandaigua assured that the Six Nations would not be disturbed 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, who have the right to purchase." And yet Haudenosaunee territory was nonetheless reduced to diminutive size. Snyder called such treaties "unquestionably constitutional," their abrogation, by extension, criminal.¹⁸⁸ Though Everett's initial response to Snyder's argument was tepid, he was clearly impressed, if highly condescending. "I want to congratulate this reservation...on the fact that you have just heard, from a member of your own tribe, the question of a legal discussion that you could hear from any court of white man."¹⁸⁹ A lawyer like Everett appreciated someone speaking his language.

Everett heard other, less decidedly legalistic accounts of criminal land seizure that also

¹⁸⁷ "The Everett Report," 174

¹⁸⁸ "The Everett Report," 177-180.

¹⁸⁹ "The Everett Report," 184.

shaped his final report. Often these narratives came from Iroquois whose English skills were tenuous but who spoke in a language of vivid metaphor. After prefacing that he was “schooled very little to the third reader book,” Cayuga citizen Louis Jimerson told the commission, “We have been stripped. It is very queer, I am standing here with clothes on for I have been stripped... Just think what a great robbery that is to sell the land for a cent or two an acre!”¹⁹⁰ Emily Tallchief, the sole woman to appear before the panel and a great-granddaughter of the legendary Seneca Chief Cornplanter, related through a translator “that agreements entered into by George Washington were binding forever as she understands it.” The transcript continues, “She told how the white man fooled her forefathers by asking for a piece of ground big enough to be covered by a deer skin and then the white man cut the deer in fine strips and covered a large piece of land but the Indian having given his word of honor sadly parted with more than he expected.”¹⁹¹ Others were more direct. “We have been robbed all the time,” stated Cayuga Chief Eddy Spring.¹⁹² Oneida Marshall John told the commission, “The white man robbed all that locality constantly moving his fence inch by inch until in reality there is nothing practically left. The only reason why he doesn’t take the whole piece is because he is a little lacking in nerve.”¹⁹³

On August 26, 1920, the New York State Indian Commission held its last reservation hearing at Allegheny, one of four Seneca enclaves in New York just north of the Pennsylvania border. It was here that Everett faced his most ardent legal challenge. Walter T. Kennedy, known on the reservation as “Boots,” was a long-time “precinct captain” of William C. Hoag, the most influential Seneca politician from the early 1880s until his death

¹⁹⁰ “The Everett Report,” 225.

¹⁹¹ “The Everett Report,” 242.

¹⁹² “The Everett Report,” 232.

¹⁹³ “The Everett Report,” 94.

in 1927.¹⁹⁴ A key figure in defeating the 1906 allotment bill, Hoag often dispatched Kennedy to Albany to lobby for Seneca autonomy. He was no novice in cajoling white politicians. Kennedy's exchange with Everett reads more like a cross examination, with Everett on the stand and Kennedy his interrogator:

Walter T. Kennedy: Do you consider the solemn pledge of the United States of any significance?

Edward A. Everett: I do.

Kennedy: Do you consider the Constitution of the United States of any significance?

Everett: I do.

Kennedy: Now, Mr. Chairman, when you say the line between two territories, can you include that territory inside.

Everett: I should say not.

Kennedy: Then these lands of the Six Nations are outside of the territorial lines of the United States according to the international law?

Everett: Yes sir... It is a solemn pledge of faith but you can't ask me to carry it out alone; but I will do my best to adjust the matter?

Kennedy: Can the lands of the Seneca Nation be considered a part of the State of New York?

Everett: No, they cannot.

Kennedy: Can you enforce the laws of the State of New York outside the territorial lines of the State of New York?

Everett: No sir.¹⁹⁵

By linking Native sovereignty to Constitutional adherence, Kennedy had backed Everett into a corner. Dismissing Haudenosaunee claims was tantamount to dismissing the Constitution, an act of treason. But Everett remained defensive: "I wish you would get it out of your minds that we are here to change anything or do anything other than find out what has been done."¹⁹⁶ He would soon change his mind.

Between this last reservation hearing and Everett's concluding presentation in February 1922, the commission was largely dormant. The few records that exist for these

¹⁹⁴ Laurence Hauptman, "Senecas and Subdividers," 109; William Fenton met "Boots" in the 1930s a few years before his death. "The old men of Iroquoia were a legalistic lot who quoted the treaties at will. I used to wonder how reliable were the memories of these old men of the Seneca nation..." William N. Fenton, *The Great Law and the Longhouse: A Political History of the Iroquois Confederacy* (Norman: University of Oklahoma Press, 1998), 623.

¹⁹⁵ "The Everett Report," 243-244.

¹⁹⁶ "The Everett Report," 245.

eighteen intervening months are mostly from Everett's increasingly frustrated co-commissioners. Robert W. Hill, Superintendent of Alien and Indian Poor, wrote to the recently elected Governor Nathan L. Miller in April 1921 that "little of real value has been accomplished...as the Chairman presented neither plans nor programs to the Commission which it might follow." Hill recommended the commissioners instead follow the lead of previous state investigations, preparing a report "dealing with the general conditions on the several reservations" and pushing for federal legislation assigning full jurisdiction to New York.¹⁹⁷ Not an official member of the commission but always an avid sermonizer on Iroquois matters, A.C. Hill of the State Education Department (no relation to Robert) sent off a series of missives to the new Harding administration the same month. "This Commission has been in existence for nearly two years," Hill wrote to E.C. Finney at the Interior Department, "and has apparently made little headway toward the solution of the real problem."¹⁹⁸ To incoming Commissioner of Indian Affairs Charles H. Burke, Hill repeated the same demands he had been making for years – the stationing of police officers on reservations, compulsory school attendance for Indian children – while predicting "that the final destiny of the Indian of New York is amalgamation with the whites."¹⁹⁹ Only resolute federal action could accelerate this inevitable fate.

If the New York Indian Commission was mostly abeyant in 1921, the Haudenosaunee were not. Intertribal conflicts over citizenship and outward efforts to prevent its imposition continued to flare. In January 1921, a Mohawk preacher at St. Regis'

¹⁹⁷ Robert W. Hill, Superintendent, New York State Department for Alien and Indian Poor, to Nathan L. Miller, Governor of the State of New York, Apr. 12, 1921, SC20652 Lulu G. Stillman Papers, Box 7, New York State Library Manuscripts and Special Collections, Albany, N.Y.

¹⁹⁸ A.C. Hill, New York State Department of Education, to E.C. Finney, First Assistant Secretary, Department of the Interior, Apr. 15, 1921, Central Classified Files, 1907-1939, Box 2, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC.

¹⁹⁹ A.C. Hill, New York State Department of Education, to Charles H. Burke, Commissioner of Indian Affairs, Apr. 4, 1921, Central Classified Files, 1907-1939, Box 2, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC.

Methodist Episcopal Church was expelled from the nation for advocating compulsory citizenship and condemning the Awkwesasne government for making the reservation a “bootlegger’s paradise.” A former minor league baseball player and graduate of the Philadelphia’s Lincoln Institute – a rare urban residential school for Indians – and later the University of Pennsylvania, Rev. Louis R. Bruce had practiced dentistry at Onondaga before returning to his native St. Regis as an ecclesiastic in 1917. Like Parker with the Seneca, Bruce’s biography made him suspect in the eyes of many Mohawks, a suspicion only deepened by his public denunciation of St. Regis’ “conditions of morale” and “lack of respect for all law.” Despite describing himself as a progressive in favor of optional U.S. citizenship, a Mohawk known as Rolling Thunder led the charge against Bruce. “It is not fair that my nation should be painted in a color that it is not,” Rolling Thunder told *The Ogdensburg Republican-Journal*. “One does not need to go far from St. Regis to find real lawlessness.” No longer welcome, Bruce would go on to denounce the Everett Commission a year later and in 1924 personally lobby for the Indian Citizenship Act.²⁰⁰ Meanwhile, Seneca leaders of the Cattaraugus and Allegheny Reservations were engaged in a persistent but unsuccessful lobbying effort to defeat the creation of a new state park appropriating part of their land. Their letters to Governor Miller quoted treaty language preserving Seneca “possession, control and enjoyment” of their territory and denying state jurisdiction.²⁰¹

Everett’s activities during this interim are unclear. Usually an active participant in assembly matters both major and quotidian, his name appears nowhere in the record during 1921, save for an undated letter, mentioned earlier in this chapter, worrying about the

²⁰⁰ “Pastor Likely To Be Ousted By Own Tribe,” *The Ogdensburg Republican-Journal*, January 21, 1921; “Editorial,” *Women’s Home Missions* 39, No. 10 (October 1922), 12; Jeffrey Powers-Beck, *The American Indian Integration of Baseball* (Lincoln: University of Nebraska, 2004), 15. Bruce’s son, Louis Bruce, Jr., was Commissioner of Indian Affairs during the occupation of the Bureau in 1972.

²⁰¹ Committee Representing the Indian Inhabitants of Allegany and Cattaraugus Reservations, to Nathan L. Miller, Governor of the State of New York, Mar. 31, 1921, SC20652 Lulu G. Stillman Papers, Box 7, New York State Library Manuscripts and Special Collections, Albany, N.Y.

corrupting influences of money in politics. When Everett finally emerged in early 1922, he had crossed the Rubicon. No longer a documentation of tribal conditions or clarification of social status, his report would be an opening salvo for reparative justice and, unintentionally, the end of a once promising political career. His hometown newspaper was the first to catch wind. “Findings by Assemblyman Edward A. Everett...which hold that the Six Nations of Indians residing within New York State have title to lands estimated at 6,000,000 acres and valued at approximately \$2,500,000,000, are being mailed to tribal chiefs throughout the state,” wrote Potsdam’s *Courier and Freeman*, oddly reporting the fact without alarm or comment. Everett’s letter of preliminary findings to the Six Nations included an invitation to what would be the New York Indian Commissions’ final gathering and an apology that the state had “refused to appropriate a sufficient amount of money to enable me to offer to reimburse the representatives which you may send to Albany.”²⁰² R.W. Hill’s lobbying to cut Everett’s funds was apparently a success. “You know my commission is about as much impoverished as the Indians,” Everett quipped.²⁰³ Twenty-eight Iroquois men and three women nonetheless arrived in Albany on a cold Albany morning on February 24, 1922. In his memoir, Tuscarora Chief Clinton Rickard would recall that Everett’s secretary and stenographer Lulu G. Stillman, who would soon take on a far larger role in Haudenosaunee politics, “recognized the financial condition of those of us who had journeyed to Albany and so she prepared sandwiches for us to take along on our return trip.”²⁰⁴ Most knew the sojourn would be well worth any monetary hardships.

As was his norm, Everett opened the meeting with a lengthy historical narrative, affirming that Indians were indeed “civilized human beings maintaining a form of

²⁰² “Everett Believes Indian Claims Good,” *The Courier and Freeman*, February 15, 1922.

²⁰³ “The Everett Report,” 292.

²⁰⁴ Clinton Rickard and Barbara Graymont, *Fighting Tuscarora: The Autobiography of Chief Clinton Rickard* (Syracuse: Syracuse University Press, 1973), 49.

government” at the time of European contact and thus retained “possession of the soil” – aboriginal title in fee simple, alienable only by purchase or conquest. The recognition of their territory and nationhood by international treaties in the years following the revolution removed both options, leaving only treaty negotiation to acquire Indian land. According to the Constitution’s sixth article, such agreements between the federal government and the Six Nations were “supreme law of the land.” The Ogden Company’s preemption rights, individual purchase, corporate leases and state seizure never exceeded this high bar. To Everett, the conclusion was thus irresistible: “I maintain that you are the owners of the all the territory that was ceded to you at the close of the Revolutionary War and unless you disposed of that property by an instrument as legal and binding and necessary as the conditions of that treaty...you are still the owners of it.”²⁰⁵ This included vast, productive agricultural lands, a highly developed transportation infrastructure, and the industrial hubs of Syracuse, Binghamton, Rochester and Buffalo, with a total non-native population numbering over two million. Finally, Everett understood U.S.-Haudenosaunee relations to be governed by an emerging framework of international relations.

R. W. Hill, who along with Arthur Parker was the only other commission members present that morning, was the first to respond. “I do not know nor have I seen the testimony upon which [Everett] bases his so-called ‘conclusions’ nor do I know the means whereby he has arrived at such ‘conclusions,’” Hill testified.²⁰⁶ Stillman included quotes around each mention of “conclusions” in the transcript, indicating his acerbic tone. Hill’s extemporaneous rejoinders presaged not only criticisms leveled by others in the immediate aftermath of Everett’s report but also judicial rulings on Haudenosaunee land rights later in the century. These criticisms fell along two lines. First, Everett’s historical exploration had

²⁰⁵ “The Everett Report,” 289.

²⁰⁶ “The Everett Report,” 292.

led him “into a swamp” and away from pressing practicality. “I do not believe that correction should be based on conditions which may have existed before Columbus visited this country, or the Vikings before him had found the Greenland coast,” Hill scoffed.²⁰⁷ Second, even raising the possibility of Native land reclamation or compensation was a “mischievous delusion,” leading only to unrest and laziness as the Indians awaited their riches. “Do not cherish false hopes that the Treasury of the State will be opened and you be given the value of millions of acres once the hunting grounds of your forefathers,” he warned the Iroquois assembly.²⁰⁸ “Are we going to say that we won’t pay our just debts because we have enjoyed the benefits of property for so long a period?” Everett countered. “I was sent out to find the man who was lost, where he was lost and not to find him in some place the least expensive.”²⁰⁹ By the afternoon session, Hill had absconded, never again to appear in the historical record of the report and its aftermath. Other than Everett, the only commissioner remaining for the final hours of this two-year long investigation was Arthur C. Parker, who the previous month had proclaimed in the very same building his eugenicist principles. Like the others, Parker never again wrote or spoke publicly of his tenure with the New York Indian Commission – except in one condemnatory November 1922 letter – likely fearing the impact on his well-cultivated reputation. Nor do either of his recent biographers make note of his participation.

When the floor finally opened to Iroquois representatives that afternoon, none expressed the outrage or shock of Everett’s co-commissioners. Most held the same understanding of their own rights and territory as Everett. Indeed, many had pushed him to those very conclusions. If anything, the attitude was one of appreciation. “You are the first

²⁰⁷ “The Everett Report,” 294.

²⁰⁸ “The Everett Report,” 297.

²⁰⁹ Ibid.

white man that I have heard say that we had legal rights, that they are entitled to somewhere near six million acres of land in New York state,” stated Frank Guilfoyle. “I arose to compliment you on your courage as I heard your associate and know your stand and what courage is necessary to make the statement that you have and I want to add my own in its humble way on behalf of the Onondagas.”²¹⁰ Jesse Lyons favorably compared Everett to George Washington for recognizing Iroquois lands and sovereignty, only to be corrected by Seneca President William Hoag. “Washington was called the ‘town-destroyer’ in our language,” Hoag reminded the audience. “I think it would be more than right to name our chairman the ‘town-constructor.’”²¹¹ He too thanked Everett for his courage: “[Everett] is not afraid of his brothers, of the political machine of the state.” Seneca lawyer John Snyder, a key figure in pushing Everett to his dramatic conclusions, noted, “We are for the first time in the history of this state that I know of...invited to a conference of this character held in the capitol.”²¹² Albany was usually considered the enemy’s seat of power. Others condemned the mendacity of Everett’s colleagues. St. Regis Mohawk Michael Solomon could “see the reason why his associates are not present.... They are looking out for the interest of the state of New York to the disadvantage of the Indian.”²¹³ William D. Cornelius from the small Oneida community in Muncey, Ontario responded to Robert Hill’s accusations, “Some said Mr. Everett was wandering in a swamp of delusion. I am glad he is of the stamina he is. He is going to get out of the swamp.”²¹⁴

Everett’s legislative colleagues were entirely less impressed. They summarily rejected the commission’s report, stripped Everett of his chairmanship, and refused to even keep a

²¹⁰ “The Everett Report,” 316.

²¹¹ “The Everett Report,” 337.

²¹² “The Everett Report,” 300.

²¹³ “The Everett Report,” 324.

²¹⁴ “The Everett Report,” 329.

copy of his findings on record. The sole existing copy of this groundbreaking document, full of Haudenosaunee voices from the early days of the modern sovereignty struggle, sat in the filing cabinet of Lulu Stillman, Everett's stenographer who went on to become an advisor to the Six Nations until her death in the 1968. In the late 1950s, Stillman handed over the report to Helen M. Upton, who made it the subject of her master's thesis before submitting it to the state archives and returning to her primary focus on the history of the Shakers. The New York American Revolution Bicentennial Commission would publish her manuscript in 1980, an ironic endorsement from an agency of the state.

In the months following Everett's declaration, the reaction outside Albany was dismissive or mute. On March 9, 1922, *The New York Times* editorialized that Everett had presented only an "illusory vision" to the Iroquois, who "saw it quickly pass as a picture on a screen." As an aside, they noted, "It must be a great relief to Mr. Everett that the clouded area extends only to the edge of the county which he represents." Drawing on an exposition in the *Columbia Law Review* by Judge Cuthbert Pound a month earlier, the editors labeled the Haudenosaunee "nationals without a nation," residing on "petty reservations" in "a zone of confused jurisdiction." The *Times* concluded that the "sensible course" would be to give full jurisdiction over Indians to the state.²¹⁵ On April 15, the federal government was alerted to Everett's conclusions in a telegraph from Earl Bates but declined to express an opinion.²¹⁶ Ten years later, the Bureau would deny any knowledge of the report.²¹⁷

Only in Everett's home district did his report immediately create as big a stir as on the reservations. "Opposition to Assemblyman Edward A. Everett of Potsdam has created

²¹⁵ "Nationless Nationals," *The New York Times*, March 9, 1922.

²¹⁶ E. A. Bates to Charles H. Burke, Commissioner of Indian Affairs, Apr. 15, 1922, Central Classified Files, 1907-1939, Box 2, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC.

²¹⁷ C.J. Rhoads, Commissioner of Indian Affairs, to Dr. E. A. Bates, Cornell University, Aug. 25, 1930, Central Classified Files, 1907-1939, Box 2, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC.

considerable comment here,” reported *The Ogdensburg Republican-Journal* on August 18, 1922. Winning comfortably in his first three reelection bids, Everett’s “defending the property rights of the New York state Indians in the face of overwhelming odds” was now “the cause of the attempt to end his career in the legislature.”²¹⁸ He made no attempt to soften his position on Indian land rights. On August 30, Everett issued a statement to St. Lawrence County voters simply summarizing the commission’s findings, adding only, “It does not seem that I should be discredited for having agreed in the law and fact with the supreme legal authority of the United States.”²¹⁹ Everett’s loyalists in Potsdam made a more convincing effort. A week before the primary, thirty-one supporters published an open letter lauding his leadership on education, taxation, infrastructure, and conservation. With a nationwide coal strike causing fuel shortages, St. Lawrence families “demand the services of men familiar with our state affairs and who will be able to give real help in the emergency.” Only the final paragraphs addressed the Indian controversy, which the authors sold as a brilliant move to save state money by shifting responsibility for Iroquois welfare to the federal government.²²⁰ Their efforts proved insufficient. On September 20, 1922, Edward A. Everett became the first politician in New York to lose an election for his stance on indigenous issues since the earliest days of the Empire State, if ever.²²¹

Meanwhile, the report had broken a stalemate. The commission did not generate nationalist views among the Iroquois, but gave them an organized framework and a fervent white ally. Over the preceding decade, Indian activism was limited to rebuffing the numerous governmental attempts to smooth out conflicting jurisdiction and finally “settle” their status within a colonial framework of legibility, docility and assimilation. Now, the

²¹⁸ “Comes to Defense of E.A. Everett,” *The Ogdensburg Republican-Journal*, August 18, 1922.

²¹⁹ “Everett Explains Position on Indians,” *The Courier and Freeman*, August 30, 1922.

²²⁰ “Pledge Support to Edw. A. Everett,” *The Courier and Freeman*, September 13, 1922.

²²¹ “W.L. Pratt Defeats Assemblyman Everett,” *The Courier and Freeman*, September 20, 1922.

summer of 1922 witnessed an incipient land rights movement. “Not in 100 years have the Indians been so worked out as they are over the claims of Everett,” wrote *The Ogdensburg Republican-Journal* in anticipation of a Six Nations gathering at the Onondaga longhouse on August 5. The same article also reported on a brewing altercation at the Six Nations Grand River Reservation in Ontario, where the fight against Canadian jurisdiction threatened a provincial military occupation and even raised the possibility of armed Native resistance.²²² Connections between the two Iroquois struggles were rapidly being forged. Over the next two years, the movement in New York would culminate in the first Iroquois land rights lawsuit of twentieth century, while a Cayuga Chief from Canada named Deskahch embarked to Geneva to present the case for Haudenosaunee sovereignty before the League of Nations.

²²² “Everett Tells Six Nations Own Half of State,” *The Ogdensburg Republican-Journal*, July 24, 1922.

CHAPTER THREE

MOVEMENT

“The basic trouble is the contention of title to the soil in what is erroneously called New York State...”

Lulu G. Stillman, Advisor to the Six Nations Confederacy

On the sweltering Saturday afternoon of August 19, 1922, several dozen Oneidas gathered four miles south of the central New York town that bore their nation’s name. Joined by guests from across Iroquoia and a number of curious onlookers lured by rumors of a “powwow,” the mood was festive. Chief William K. Cornelius of Muncey, Ontario, led an all-Indian band in “a couple of splendid selections.” Onondaga singer Harriet Green added a few more traditional songs. “How many of you know where that hymn came from?” William H. Rockwell, Secretary of the Oneida Nation, asked the crowd. “It came from your forefathers a hundred years ago. I would rather hear my people sing than to stand the results of the Jazz dances in some well decorated halls.” Though entirely unnoticed by the upstate press, the event was of no minor significance, nor the purpose solely cultural. For the first time in the twentieth century, Haudenosaunee men and women were standing on a plot of legally recovered land – a cause for celebration if ever there was one.²²³

After a series of coercive treaties expelled the overwhelming majority to Wisconsin Territory and southern Ontario in the mid-eighteenth century, Oneidas remaining in central

²²³ “Ceremony in honor of the revertal of land to the Indians,” Aug. 19, 1922, SC20652 Lulu G. Stillman Papers; Box 1, New York State Library Manuscripts and Special Collections, Albany, N.Y.

New York made little impact on the political and economic landscape surrounding them. Working mostly as day laborers and basket weavers among the rural population of Madison and Oneida counties, they rarely attracted the scrutiny state lawmakers regularly bestowed on Senecas to the west, with their independent judiciary cutting into New York's claimed jurisdiction, or Onondagas to the south, the bane of Christian missionaries generation after generation. In his exhaustive 1890 survey, Henry Carrington counted only 106 Oneidas not living on other Iroquois reservations, seven families clustered in the Orchard settlement of their namesake county, and another seven in Madison. "Visitors who ride through Windfall, the larger of the 2 villages, should understand that these are no longer Indian villages," Carrington explained, "and should not confuse any signs of general improvement with ideas of Indian thrift and progress, which do not exist." He predicted that within a generation these Oneidas would "be lost in the mass of the people."²²⁴

Like all auguries of the vanishing Indian at century's turn, Carrington widely missed the mark. Indeed, the ceremony that August afternoon in 1922 indicated an opposite trend – the Oneida land base in New York, though still diminutive, was suddenly growing. In 1919, Judge George W. Ray of the U.S. Northern District Court in New York declared that the eviction of an Oneida family four years earlier was invalid and should be reversed. Without federal supervision, the white landlord had failed to legally acquire mortgage title in the first place. State lawmakers found the decision alarming enough to create a special investigative committee, resulting in the wholly unwelcome Everett Report. After years of appeal, the Supreme Court affirmed Ray's ruling in January 1922 when it refused to hear the deposed landlord's case, bolstering Everett's contentions one month later. When the thirty-two-acre parcel was finally returned to the Oneidas that summer, they named it the Windfall

²²⁴ Henry Beebee Carrington, *Extra Census Bulletin. Indians. The Six Nations of New York* (Washington, D.C.: United States Census Printing Office, 1892), 25.

Reservation. “The ceremony today is just because of the respect we have for the carrying out of the laws of North America,” Rockwell declared. “We came here to meet in a friendly way to talk over our problems; how to solve them so that it will cause no pain or hardship to anyone.”²²⁵

Nearly as significant as the land hosting the day’s festivities was the presence of Oneidas from Wisconsin. Disunited for eighty years since removal, the Haudenosaunee resurgence of the early 1920s was rapidly rekindling old ties. The caravan from their reservation just west of Green Bay included a handful of prominent chiefs, but the afternoon’s undeniable star was Laura Cornelius Kellogg, known to most as “Minnie.” Highly educated, profoundly eloquent, and the widely published advocate of a grand if quixotic vision for independent Indian economic development, Kellogg would become the most controversial Iroquois leader of her period, both fueling and dividing the ascendant land rights movement. “In my blood, in my heart, and in my soul, these beautiful hills call forth all those tender things enjoined in the word ‘home-coming,’” she told the crowd, and welcomed a “new volume of Indian history which will be touched with beautiful treasures of the present and marked with achievement.” Kellogg concluded her remarks with a reading of Rudyard Kipling’s “Ballad of East and West.”²²⁶

While the event primarily celebrated the victory of *Boylan*, there were hints of more land battles to come. In 1915, the U.S. Department of Justice had unexpectedly joined the Oneida plaintiffs in suing the Boylan family, hoping to clear up one small point of confusion in the “New York Indian Problem” and prevent the evicted Indian family from joining the ranks of the “shiftless.” Yet the logic underlying Ray’s ruling could extend to most of

²²⁵ “Ceremony in honor of the revertal [sic] of land to the Indians,” Aug. 19, 1922, SC20652 Lulu G. Stillman Papers, Box 1, New York State Library Manuscripts and Special Collections, Albany, N.Y.

²²⁶ Ibid.

western and northern New York, where federal permission was never secured for the massive dispossessions of the early nineteenth century. William Cornelius suggested this possibility when he closed his speech: “There is one man I admire above all others, that it is in the person of Mr. Everett.” Spending much of the summer advocating legal action, Everett’s name was rapidly becoming associated with the promise of land reclamation across Iroquoia. “I think, we, representing the Six Nations today, should rally around that man who has been a true friend of the Indian,” Cornelius concluded.²²⁷ Two days after the Oneida ceremony, the Onondaga council hired Everett’s former stenographer, Lulu G. Stillman, to trace the boundary lines established by the Treaty of 1784 in anticipation a major law suit.²²⁸

If Phil Deloria explored Indians in “unexpected places,” the 1920s witnessed Indian nationalism in an unexpected time. It was period of stifling political conservatism and violent racial backlash; a powerful eugenics movement shaped national legislation, the Ku Klux Klan refashioned itself as a legitimate popular organization, and the first Red Scare chilled ideological dissent.²²⁹ Even the reform impulses of the Progressive period, problematic as they were for Indian people, waned amidst a new triumphalist ethos and the deepening calamity of Prohibition.²³⁰ The Six Nations bucked the trend. Over the next years, they would reinvigorate their moribund confederacy, gathering delegates from across Iroquoia in contentious meetings to devise plans for territorial restitution, ultimately filing a historic land rights lawsuit in 1925. Onondaga and Seneca leaders arrived unannounced at the White

²²⁷ Ibid.

²²⁸ Upton, *The Everett Report in Historical Context*, 112.

²²⁹ Lynn Dumeil, *The Modern Temper: American Society and Culture in the 1920s* (New York: Hill and Wang, 1995); Nancy MacClean, *Behind the Mask of Chivalry: The Making of the Second Ku Klux Klan* (New York: Oxford University Press, 1994); Edwin Black, *War Against the Weak: Eugenics and America’s Campaign to Create a Master Race* (New York: Four Walls Eight Windows, 2003). In 1924, the Klan burned a cross on the Eastern Pequot Reservation near Lantern Hill, Connecticut. Amy E. Den Ouden, *Beyond Conquest: Native Peoples and the Struggle for History in New England* (Lincoln: University of Nebraska Press, 2005), 32-33.

²³⁰ See Chapter 8, Frederick E. Hoxie, *A Final Promise: The Campaign to Assimilate the Indians, 1880-1920* (Lincoln: University of Nebraska Press, 1984)

House to “polish” old treaties with the president. A Cayuga chief, locked in a contentious struggle with Canada over the sovereignty of the Grand River Reservation in Ontario, traveled to Geneva in 1923 to present his case for self-determination before the League of Nations, anticipating by several generations the late-twentieth century appeal to international law for the rights of indigenous people worldwide. Three years later, Tuscarora chief Clinton Rickard formed the Indian Defense League of America “to guarantee the unrestricted passage on the continent of North America for Indian people” in response to the tightening U.S.-Canadian border that cut through Haudenosaunee territory, beginning an annual protest that continues today.²³¹

Situated in this wider context of pan-Iroquois resurgence, the effort to act on the Everett Report is my primary focus in this chapter, from the months following its presentation in February 1922 to the test case filed three years later on behalf of James Deere, a St. Regis Mohawk serving as plaintiff for his nation. The target was the St. Lawrence River Power Company of Massena, New York, a subsidiary of the powerful Aluminum Company of America (ALCOA), whom the Six Nations believed held illegal title. While the campaign was groundbreaking, setting the stage for contemporary Iroquois land battles that are among the most contentious in Indian Country, it was also short-lived, undermined both by internal division and colonial containment. The Iroquois’ “impossible” identity, neither fully within nor entirely without the settler state’s sociolegal framework, had opened space for the land rights challenge only to later ensnare it.

Notwithstanding the near unanimous praise Iroquois representatives expressed for the Everett Report at the capitol presentation on February 20, 1922, uniting the Six Nations behind its program was a difficult prospect. Everett had expected as much, writing to the

²³¹ Kevin Bruyneel, *The Third Space of Sovereignty: The Postcolonial Politics of U.S.-Indigenous Relations* (Minneapolis: University of Minnesota Press, 2007), 118.

Onondaga elder Jairus Pierce in April, “It will take a great deal of labor and time and careful research to bring to light all the things that were done which contribute to the taking away of this territory from the Indians.”²³² Even once the voluminous materials were assembled, the decision to move forward was not guaranteed. Several obstacles impeded action. First, while most Haudenosaunee cherished the idea of a confederacy linking their distinct nations, they lacked much in the way of actual federalist infrastructure. Representatives met every few years at Onondaga to adopt formal declarations or elect presiding sachems but the institution exercised no powers of taxation. Meanwhile, meager treaty annuities were spent on more immediate needs. With few lawyers in their ranks, confronting the Empire State in court required the assistance of non-Native attorneys, stretching the resources of a mostly rural people. Moreover, at a time of sharpening internal divisions and conflicting priorities, consensus decision-making proved especially frustrating. The long simmering split between Christian (often referred to but not synonymous with “Progressives”) and Longhouse Indians (“pagans,” “reactionaries”) did not necessarily predict the lines of debate. Members from both camps supported or opposed legal action, though the process was contentious.²³³ Finally, well-organized and better-financed forces arrayed against the land movement, not only from New York’s financial and political elite but also among the ranks of prominent, acculturated Iroquois.

At a November 11, 1922, meeting in Albany, the New York State Indian Welfare Society passed a resolution deploring “the failure of the Indian commission to present its report to the legislature as required by law.” Everett had attempted to do so in March, but

²³² Edward A. Everett to Jairus Price, Apr. 17, 1922, SC20652 Lulu G. Stillman Papers, Box 1, New York State Library Manuscripts and Special Collections, Albany, N.Y.

²³³ Livingston Crouse, a “progressive” Indian, who supported legal action described the difficulties in securing a research contract for Stillman. Livingston Crouse to Lulu G. Stillman, Sept. 22, 1922, SC20652 Lulu G. Stillman Papers, Box 1, New York State Library Manuscripts and Special Collections, Albany, N.Y.

without any cosponsors the document was dead on arrival. Horton G. Elms – an Oneida proponent of U.S. citizenship and founding member of the Society of American Indians²³⁴ – called for Everett to defend himself before the hearing, knowing full well Everett had informed the Welfare Society of his unavailability weeks in advance. “No one answered and an ominous silence descended on the council chamber,” Albany’s *Knickerbocker Press* wrote dramatically. Laura Cornelius Kellogg denounced the organization’s tactics. “The other Indians will know as I know, that what happened at the meeting tonight was a ‘plant,’” she told a reporter afterward. “We trust Mr. Everett and we will support him.” An Indian woman identified only as Mrs. Hill castigated the society in even starker terms: “They look smug and self-satisfied and, they go away rejoicing as though they had accomplished something great. They have accomplished nothing. They have talked and talked some more, but...wandered around the true issues of the meeting without ever grasping them.” With land recovery on the agenda, the rhetoric of progressive uplift rang hollow to Hill and others like her.²³⁵

Anti-Everett forces did not easily abate. At a “general discussion” convened by Lulu Stillman on November 12, 1922, Louis Bruce, the Mohawk baseball player turned dentist and Methodist preacher, repeated the charge first leveled by Robert W. Hill in February that Everett succeeded only in stirring up false hope and “put a lot of things back for the Indian.” Bruce was especially outraged that Everett had cautioned against U.S. citizenship, believing it would undermine treaty rights based on a sovereign-to-sovereign relationship. “At Malone he told the Indians and the whites ‘You know you Indians have been robbed,

²³⁴ An emblematic quote from his years at the SAI: “I do believe that the solution of our Indian problem is that he must identify himself with every interest and phase of American life. I do not believe in this separation... The past is dead. We cannot recall it. The past should be in the museum.” Hertzberg, *The Search for an American Indian Identity*, 65-66.

²³⁵ “Indian Pow-Wow Over Land Title Called a Fizzle,” *The Knickerbocker Press*, November 12, 1922.

they stole your land and all that’ and then when we had the citizenship debate he just BUTTED in,” Bruce complained.²³⁶ Later in November, Bruce issued a joint statement with Arthur C. Parker and Moses White – a St. Regis Mohawk and longtime advocate of New York’s jurisdictional power²³⁷ – to *The Courier and Freeman*, Everett’s hometown newspaper: “We disdain the futile possibilities of recovering billions of dollars and thousands of acres land.” They preferred “legal remedies for defective reservation conditions because those things are a million times more productive of a higher civilization than pressing of old and doubtful claims for land and money.” What appeared to proponents of legal action as a resurgent confederacy, Bruce, Parker and White labeled “a wave of discontent and confusion.” They concluded, “By spreading the million dollar idea among the Indians great harm has been done by way of discouraging the incentive to work.”²³⁸

Despite these and other public admonishments leveled by prominent Iroquois, most reservations were insulated from their influence. Bruce and Parker might have a platform to pontificate in the press, but both were viewed with some suspicion in their home communities – Bruce for advocating the imposition of U.S. citizenship and speaking ill of Mohawk morality before white audiences, Parker for his ties to acquisitive museum collectors. Known to the outside world as leaders of the Iroquois, they held little actual sway on the reservation. Indeed, over the next years several tribal councils would place outright bans on Christians and supporters of U.S. citizenship – as had already been threatened to

²³⁶ The all-caps are in the original transcript. Stillman’s stenography had a flare for embellishment. A General Discussion Regarding Position Take By Assemblyman Everett, Nov. 13, 1922, SC20652 Lulu G. Stillman Papers, Box 1, New York State Library Manuscripts and Special Collections, Albany, N.Y. There are several brief allusions to a “citizenship debate” around this time in the records, but whether this refers to a formal rhetorical duel or simply ongoing conversations is not apparent.

²³⁷ In 1948, White would join Bruce’s son and future BIA commissioner Louis Bruce, Jr. as a rare Iroquois advocate of the bill that finally assigned all tribal jurisdictions to New York State. Laurence M. Hauptman, *The Iroquois Struggle for Survival: World War II to Red Power* (Syracuse: Syracuse University Press, 1986), 55.

²³⁸ “Indian’s Don’t Expect Millions,” *The Courier and Freeman*, November 26, 1922.

Bruce at St. Regis in 1921.²³⁹ Meetings of the New York Indian Welfare Society and other regional groups were thus held at rented conference rooms in Albany or Syracuse hotels, not council houses on the reservation. Advocates of legal action, meanwhile, were given ample hearing. The prospect of land reclamation was the subject of meetings at Onondaga and Mohawk councils in late 1922, and at Oneida and Seneca councils in early 1923.²⁴⁰

Laura “Minnie” Cornelius Kellogg increasingly seized the land movement’s primary leadership. Born in 1880 into a family of relative wealth on the rapidly shrinking Oneida reservation in Wisconsin, Kellogg was by the 1920s a veteran of pan-Indian organization. After stints at several Ivy League schools and two years of European travel as a “show Indian,” she cofounded the Society of American Indians (SAI) in 1911. The group’s first assembly was planned at her large home in Seymour, Wisconsin. A year later she married Orrin Joseph Kellogg, a Minneapolis attorney who claimed distant Seneca ancestry and threw himself into Indian activism as fervently as his new wife. Elected the SAI’s first secretary, Mrs. Kellogg was at immediate odds with her more cautious colleagues. While she shared their antipathy to government paternalism, Kellogg did not champion the “emancipation” from reservation stagnancy advocated by Montezuma, Parker, and others. Blending progressive management principles with a muckraker’s critique of capitalist labor conditions and the “Mormon idea of communistic cooperation,” Kellogg instead saw reservations as a valuable resource for independent economic development if reorganized under a modern cooperative system.²⁴¹

²³⁹ “Pastor Likely To Be Ousted By Own Tribe,” *The Ogdensburg Republican-Journal*, January 21, 1921.

²⁴⁰ Upton, *The Everett Report in Historical Context*, 110-116.

²⁴¹ Hertzerg, *The Search for a Modern American Indian Identity*, 61; Thelma Cornelius McLester, “Oneida Women Leaders,” in *The Oneida Experience: Two Perspectives*, ed. Jack Campisi and Laurence M. Hauptman (Syracuse: Syracuse University Press, 1988), 109-110; Laurence M. Hauptman, *Seven Generations of Iroquois Leadership: The Six Nations Since 1800*, (Syracuse: Syracuse University Press, 2008), 143-152.

Kellogg formalized the so-called “Lolomi plan” in her 1920 publication, *Our Democracy and the American Indian*, a wide-ranging and blunt appraisal of federal Indian policy. The work shares several tenets with Marcus Garvey’s Black Nationalism, popularized in the same period by his Universal Negro Improvement Association. “By denouncing his parents, his customs, his people wholesale, and filling the vacuum they had created with their vulgar notions of what constituted civilization,” Kellogg wrote, “spirit-breaking Indian schools” had created thousands of subservient “ware-house Indians,” desperately in need of radical reorientation. “The force of the Bureau to ameliorate the sentence of its pets or to heighten the suffering of its enemies can hardly be estimated,” she wrote. Later, she would become convinced that the BIA was actively trying to subvert her Six Nations activism. Like Garvey’s, Kellogg’s solution combined racial pride with independent development, free from white exploitation and cultural decay. “The structure upon which all these things depend is the ECONOMIC one,” she emphasized.²⁴² To create the industrial cooperatives and modern villages her plan called for, Kellogg needed an ample land base, something the Oneida reservation in Wisconsin was precipitously losing.²⁴³ In *Boylan* and the Everett Report, she likely saw an opening.

Kellogg differed from the SAI membership in two other ways that would bear on her work for the Six Nations Confederacy. First, in an organization that pursued a strategy of cautious persuasion, Kellogg favored direct action. She had frequent run-ins with the law, including two arrests in the 1910s and two more while agitating for land reclamation in the

²⁴² Laura Cornelius Kellogg, *Our Democracy and the American Indian: A Comprehensive Presentation of the Indian Situation as it is Today* (Kansas City: Burton Publishing Company, 1920), 28-32.

²⁴³ The land loss sparked by allotment in Wisconsin was staggering. See James W. Oberly, “The Dawes Act and the Oneida Indian Reservation of Wisconsin,” in *The Oneida Indians in the Age of Allotment, 1860-1920*, ed. Laurence M. Hauptman and L. Gordon McLester III (Norman: University of Oklahoma Press, 2006).

1920s.²⁴⁴ Notwithstanding the inspiration suffragists drew from the example of Iroquois women,²⁴⁵ Kellogg appears not to have joined their movement. Proud of her separate Oneida citizenship, she had little use for the franchise. Her confrontational tactics nevertheless emerged during the most militant wave of women's activism nationwide, events of which the cosmopolitan Kellogg was surely aware.²⁴⁶ Second, unlike SAI leaders who mostly eschewed the traditional politics of their reservations in favor of professional careers, Kellogg was comfortable – could in fact lead – in both worlds. She quoted Franz Boas and William James as easily as Red Jacket and Handsome Lake. Historian Laurence Hauptman argues that Kellogg manifested what Fenton identified as the key characteristics of Haudenosaunee revivalist. “The prophet,” Fenton wrote, “must speak in ancient tongues, he must use old words, and he must relate his program to the old ways. He is a conservator at the same time he is a reformer. All of the Iroquois reformers have been traditionalists.”²⁴⁷ The description resonates with Kellogg's most famous aphorism of her SAI years, made at their first national assembly in 1911. “I am not the new Indian,” she declared, “I am the old Indian adjusted to new conditions.”²⁴⁸ Kellogg's fluency in several Iroquoian dialects and deep knowledge of tribal custom more than compensated for her otherwise unorthodox behavior in the eyes of many Haudenosaunee. Indeed, it is a sign of the general ferment in

²⁴⁴ The circumstances surrounding her arrests in the 1910s are ambiguous. Hauptman only notes that her “crusading and relentless agitation” led to arrests in Oklahoma in 1913 and in Colorado in 1916. Hauptman, *Seven Generations*, 148. Other brief biographical sketches do not mention the incidents at all.

²⁴⁵ In particular, Matilda Joslyn Gage, a close associated of Elizabeth Cady Stanton and Susan B. Anthony, wrote extensively about the feminist model provided by the Iroquois and opposed the imposition of U.S. citizenship on Native people, putting her at odds with other progressives who equated citizenship with social justice. Matilda Joslyn Gage, *Woman, Church and State: A Historical Account of the Status of Woman Through the Christian Ages: With Reminiscences of the Matriarchate* (Chicago: Charles H. Kerr & Company, 1893), 17-19.

²⁴⁶ Steven M. Buechler, *Women's Movements in the United States: Woman Suffrage, Equal Rights, and Beyond* (New Brunswick: Rutgers University Press, 1990), 208.

²⁴⁷ Hauptman, *Seven Generations*, 143. Fenton is not writing here only of eighteenth and nineteenth century Iroquois leaders; the description comes up in the context of mid-twentieth century chief John A. Gibson of the Six Nations reserve in Ontario. William N. Fenton, *The Great Law and the Longhouse: A Political History of the Iroquois Confederacy* (Norman: University of Oklahoma Press, 1998), 36.

²⁴⁸ Hertzberg, *The Search for a Modern American Indian Identity*, 65.

Iroquoia that a woman, whose pivotal role in traditional politics was usually obscured, assumed public leadership.

How Kellogg first learned of the Everett Report is unclear. The New York Indian Commission never traveled to Wisconsin during its two week investigation in August 1920, though Stillman eventually telegraphed Everett's conclusions to all Six Nations reserves in early 1922. In April 1923, by then deeply ensconced in the land rights movement, Kellogg recalled to a Milwaukee newspaper, "In my childhood, I remember having heard the old folks frequently refer to the great inheritance, the big claim they had left in New York state."²⁴⁹ Yet this "big claim" did not factor into her organizing prior to 1922, which tended toward pan-Indian issues. Even her wide-ranging 1920 book makes no mention of Iroquois territorial rights. With the SAI in disrepair, Kellogg was a rebel in need of a cause. Her first appearance in federal or state archives of New York Indians is at the Oneida land ceremony in August 1922. By late autumn, she was personally shepherding Everett from reservation to reservation, hoping to secure contracts for an anticipated lawsuit.

On October 10, 1922, Kellogg addressed an assembly of two hundred Indians in Wisconsin, making "an impassioned appeal for unity among the tribes in order that they may present a united front in their demands for their rights in New York State," wrote the *Fond du Lac Reporter*.²⁵⁰ Reflecting her generous conception of the confederacy – or perhaps only her desire to raise additional funds – the meeting included not only Wisconsin Oneidas but members of the Stockbridge-Munsee, Brothertown, and Oklahoma Cayuga nations. The following month, she and Everett visited the St. Regis Mohawks, whose council voted unanimously to hire Everett's nephew, Carl Whitney, of the New York City law firm Wise,

²⁴⁹ Kristina Ackley, "Renewing Haudenosaunee Ties: Laura Cornelius Kellogg and the Idea of Unity in the Oneida Land Claim," *American Indian Culture and Research Journal* 32:1 (2008), 68.

²⁵⁰ Ackley, "Renewing Haudenosaunee Ties," 70.

Whitney, and Parker, to represent the nation.²⁵¹ At Kahnawá:ke, the Mohawk reservation just south of Montreal,²⁵² Everett for the first time identified the lawsuit's eventual target. "I have been beaten for office because of the Interests that my report threw into chaos at the village of Massena," he told the Quebec gathering. "I was opposed by the influence and money in possession of the Aluminum Company because I called into question the title of the land upon which their buildings stand."²⁵³ This is the earliest mention of ALCOA, which the report does not name. Their St. Lawrence River Power Company sat on land contested by Everett, but so too did thousands of other firms. Everett's statement suggests that ALCOA orchestrated, or at least campaigned for, Everett's defeat and the lawsuit filed in retribution, but no other evidence exists. The proceedings at Kahnawá:ke are partially obscured by lack of translation, with Kellogg delivering several long speeches in Iroquoian. A contract did not immediately materialize, though Kahnawá:ke later joined the suit. In March 1923, Kellogg brought Everett to Wisconsin, where he secured another agreement for legal representation before becoming violently ill.²⁵⁴ This piecemeal approach – visiting each individual nation to secure separate contracts – concerned some confederacy-minded Iroquois. Livingston Crouse complained that Everett "has taken one tribe at a time, we have heard him speak and say no one tribe could go and demand this claim, but it would have to require a Six Nations, for Washington treated with 6 nations and not with one tribe."²⁵⁵ That moment would come at a raucous gathering at Onondaga, the confederacy's traditional center, over three days in June 1923.

²⁵¹ Upton, *The Everett Report in Historical Context*, 117.

²⁵² The common 1920s spelling was "Caughnawaga," but I opt for the contemporary version of "Kahnawá:ke."

²⁵³ Minutes of Meeting at Caughnawaga Reservation (Mohawk), Caughnawaga, Canada, Nov. 28, 1922, SC20652 Lulu G. Stillman Papers, Box 1, New York State Library Manuscripts and Special Collections, Albany, N.Y.

²⁵⁴ "Everett Visits Western Indians," *The Courier and Freeman*, March 21, 1923.

²⁵⁵ Upton, *The Everett Report in Historical Context*, 117.

Not all Haudenosaunee politics were dominated by the prospect of new land. Older battles over sovereignty and jurisdiction intensified in these years as well. With apparently no prior announcement, four traditional leaders – Jesse Lyons and Joshua Jones from Onondaga, Charles Johnson and the blind preacher Alex Clute from Tonawanda²⁵⁶ – traveled to Washington, D.C., in early December 1922. From the Capitol Hostel a few blocks southeast of the White House, they messaged President Warren G. Harding on 15 December: “We the Indians of the Iriquois Nation,²⁵⁷ wish to present to you a few articles which relates to the Treaty that was made in the year of 1784.” The accord, they held, guaranteed access to all future U.S. presidents. “At that time the agreement was made...[we] had the privilege to correspond with the President of the United States, so therefore it gives the Indians to put these matters before the President and today we the Indians of the Iriquois Nation have the Treaties in our hands and wish to live up to the Treaty Rights.” The letter concluded graciously, “[We] hope you will enter the upper World.”²⁵⁸

For years, Haudenosaunee leaders attempted to bypass the Indian Bureau and communicate directly with the President, always without success.²⁵⁹ On December 16, 1922, they tried for the first time in person, arriving at the White House gate to demand a meeting. Rebuffed, they left Harding’s personal secretary George B. Christian, Jr. – a seasoned hand

²⁵⁶ I assume that this Alex Clute is the same William Fenton remembered meeting in 1939. “The Longhouse movement was just starting at St. Regis that summer... It was a poor show in contrast to what I was accustomed to among the Senecas. But I did meet Alex Clute, a blind preacher of the Handsome Lake doctrine from Tonawanda, who was instructing the Mohawks in Longhouse ways. He complained to me of his difficulties; ‘They don’t know how to sing, they can’t dance, and they are poor speakers.’” William N. Fenton, *Iroquois Journey: An Anthropologist Remembers* (Lincoln: University of Nebraska Press, 2007), 52. The distinctly religious overtones to the letters of this Iroquois delegation in 1922 are likely attributable to Clute; in other correspondence, Joshua Jones and Jesse Lyons never speak of “upper worlds” and “great fathers.”

²⁵⁷ “Iriquois” is a rare but not entirely unheard of spelling, which the writers use throughout. I make this note rather than mark it with [sic] as the spelling appears intentional.

²⁵⁸ Ironically, Harding died suddenly eight months later. Chiefs Jesse Lyons and Joshua Jones of the Onondaga Tribe, and Warriors Alex Clute and Chas. Johnson of the Seneca Tribe, to Warren G. Harding, President of the United States, Dec. 15, 1922, Central Classified Files, 1907-1939, Box 5, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC.

²⁵⁹ See chapter one.

at shielding the president from “insignificant minutiae”²⁶⁰ – with a copy of the 1784 treaty and their address at the Capitol Hostel, where they would await the President’s audience. “As the paper does not attempt to enter into the details which are essential, and as, in any event it concerns your Bureau,” Christian wrote to Commissioner of Indian Affairs Charles H. Burke two days later, “the suggestion [was] made to the petitioners that they get in touch with you during their stay in Washington.”²⁶¹ The Iroquois committee took Christian’s advice, penning an incensed letter to Burke. “The violation of a treaty...is derogatory to the character of any nation,” they wrote. Unimpressed, Burke refused to meet the group and insisted they contact their federal guardians only through proper channels. On January 2, 1923, Burke passed along a message via George Ansley, the Indian Bureau’s special agent in New York: “The Office has no knowledge of any specific violations of the treaty to which you refer.”²⁶² The process would repeat a year later, when Joshua Jones contacted president-elect Coolidge only to be deflected again to the “so called Indian Commissioner who refused to listen to our plea and said our Treaties are too old.”²⁶³

There is no obvious reason why these four Iroquois men felt compelled to embark on an expensive journey to Washington in the dead of winter 1922. No particular legislation lay before Congress to which they might object, nor does the group anywhere mention specific treaty violations, though they were indeed frequent. Perhaps they sought to preempt future incursions on Indian sovereignty generated in backlash to the simmering land rights

²⁶⁰ John W. Dean, *Warren G. Harding* (New York: Henry Holt & Company, 2004), 38.

²⁶¹ George B. Christian, Jr., Secretary to the President, to Charles H. Burke, Commissioner of Indian Affairs, December 18, 1922, Central Classified Files, 1907-1939, Box 5, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC.

²⁶² Jesse Lyons and Joshua Jones, Chiefs of the Onondaga Nation, to Charles H. Burke, Commissioner of Indian Affairs, Dec. 23, 1922; Charles H. Burke, Commissioner of Indian Affairs, to Chief Jesse Lyons, Chief Joshua Jones and Warrior Alex Clute and Charles Johnson, Through Geo. H. Ansley, Special Agent in Charge, New York Agency, Jan. 2, 1923, Central Classified Files, 1907-1939, Box 5, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC.

²⁶³ Chief Joshua Jones, Onondaga Nation, to Calvin Coolidge, President of the United States, Dec. 24, 1923, Central Classified Files, 1907-1939, Box 5, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC.

movement, or simply to reinvigorate a dormant diplomatic tradition. That the same forces sparking a general Iroquois resurgence also dispatched these four men seems certain. Though they never allude to Everett, Kellogg, or the land movement directly in their exchanges with federal officials, the delegation's visit to Washington nonetheless alarmed Lulu Stillman. After losing her stenographic work with Everett's electoral defeat, Stillman attempted to balance a new secretarial job at Rensselaer Polytechnic Institute with archival research for the Six Nations ahead of an expected lawsuit.²⁶⁴ "What I fear is that by their going down there, they have stirred up Washington officials so that I will have more difficulty in getting access to the records I shall need," Stillman wrote her friend Mrs. Jairus Pierce. "They ought to realize that when New York state politics have ousted Mr. Everett because of his activities for the Indians that Washington officials will not be overburdened with kindness."²⁶⁵ She had little cause for concern. During the first years of the 1920s, the Indian Bureau was under constant assault, most famously for fast-tracking the transfer of Pueblo Indian reservation lands to oil interests in New Mexico. The controversy sparked widespread protest, congressional investigation, and the ascension of an idealistic reformer named John Collier – all of far greater concern for federal officials than four uninvited Iroquois brandishing eighteenth century treaties.²⁶⁶

Should they have cared to look, federal officials would have found other evidence of Iroquois nationalism in Washington those same weeks in December. Eight miles northwest of the hostel where Lyons, Jones, Clute and Johnson awaited their meeting with Harding, an Oneida-Cayuga chief claiming the mantle of Six Nations Ambassador made his case to

²⁶⁴ Upton, *The Everett Report in Historical Context*, 109.

²⁶⁵ Lulu G. Stillman to Mrs. Jairus Pierce, Oct. 30, 1922, SC20652 Lulu G. Stillman Papers, Box 1, New York State Library Manuscripts and Special Collections, Albany, N.Y. Oddly, the first name of Mrs. Jairus Pierce – wife of the Onondaga elder – is mentioned nowhere in the records.

²⁶⁶ Prucha, *The Great Father*, 798-800.

chargés d'affaires H.A. Van Karnebeeck of the Netherlands. Levi General, known mostly by his tribal title Deskaheh, traveled from the Grand River Reservation in southern Ontario to the U.S. capitol in late 1922, just as the New York delegation arrived. In the throes of an intensifying confrontation with the Dominion of Canada, Deskaheh hoped to convince the Dutch government to make a historic decision: advocate full and formal recognition of the Haudenosaunee Confederacy by the League of Nations. Before reaching the capitol, Deskaheh had stopped at the recently opened Heye Museum of the American Indian in Manhattan to retrieve a seventeenth century wampum belt for “evidence of the friendly relations that once existed between the Dutch settlers in America and the Iroquois Indians.”²⁶⁷ Deskaheh petitioned, “We are an organized and self-governing people who, on the coming of the Dutch to the valley of the Hudson in North America, entered into treaties with them and faithfully observed our promise of friendship.” He believed this centuries-old relationship would engender a favorable outcome. Within six months, Deskaheh was on a steamer to Geneva.²⁶⁸

In a story that roughly parallels events in the United States, Ottawa pushed a program of “Indian Advancement” to replace traditional governments with a system of elected officials and impose Canadian citizenship in the years following World War I.²⁶⁹ The full dimensions of the Six Nations struggle for sovereignty in Canada is beyond the scope of this project. When Joseph Brant established a second Iroquois confederacy at Ohsweken along Ontario’s Grand River in 1784, he embedded the nation in a British colonial

²⁶⁷ “Iroquois Tribe Asks Sovereign Status,” *The New York Times*, December 23, 1922. The story complicates the view that early twentieth century museums engaged only in colonial pilfer of Native patrimony. In this case, Deskaheh found the Heye center a repository for contemporary struggle. Extensive searches in the archives of the National Museum of the American Indian resulted in no further mention of this fascinating encounter.

²⁶⁸ Joëlle Rostkowski, “The Redman’s Appeal for Justice: Deskaheh and the League of Nations,” in *Indians and Europe: An Interdisciplinary Collection of Essays*, ed. Christian F. Feest (Lincoln: University of Nebraska Press, 1999), 438.

²⁶⁹ Hauptman, *Seven Generations*, 126.

framework largely distinct from the one surrounding Indians who remained on the other side of the settler's new border. Suffice it to say, the standoff at Grand River escalated far beyond anything in New York. Refusing to abdicate their council seats or accept Canadian citizenship, traditional chiefs came under increasing harassment. While Deskaheh was in Washington pushing for Dutch recognition in December 1922, the Royal Canadian Mounted Police (RCMP) invaded Ohsweken and installed a military constabulary, firing several shots in the affray.²⁷⁰ Over the next months, the RCMP erected a barracks, prohibited Indians from cutting wood for fuel, beat numerous residents, and ransacked private homes – including Deskaheh's – claiming to search for illegal stills.²⁷¹ Far from a symbolic act, Deskaheh's internationalization of the sovereignty struggle was one of the few avenues open to recalcitrant Haudenosaunee leaders. Echoing Albany's reaction to Iroquois land claims in New York, Canadian undersecretary for foreign affairs Sir Joseph Pope called the notion of Grand River nationhood "absurd." When the Netherlands granted Deskaheh's request to forward his petition to the League of Nations – of which Canada, as a British dominion, was only partial member – Pope objected to the move as "calculated to embarrass this Government in the due administration of its *domestic laws*."²⁷²

Neither Iroquois deputation directly mentions each other's presence in Washington that December, nor does Deskaheh's journey to Geneva in 1923 ever emanate in the records of the land rights movement in New York. Indirect evidence suggests at least a glancing connection, however. Accompanying Deskaheh on his diplomatic mission to Washington was veteran Rochester lawyer George P. Decker. In the 1880s and 90s, Decker helped write regulations impeding Indian hunting and fishing rights as counsel for the Old Forest Fish

²⁷⁰ Olive Patricia Dickason, *Canada's First Nations: A History of Founding Peoples from Earliest Times* (Norman: University of Oklahoma Press, 1992), 355-357.

²⁷¹ Hauptman, *Seven Generations*, 131

²⁷² Dickason, *Canada's First Nations*, 439.

and Game Commission, a role he soon came to regret. His career can be read as a drawn out version of the radicalization Everett underwent in a few short years as commission chairman, though his tangible victories far surpassed Everett's. In 1906, Decker became attorney for the Seneca Nation, fighting for the restitution of the very same fishing rights he helped seize. He later led the Oneida legal team in the landmark *Boylan* decision.²⁷³ By 1925, Decker was publishing articles that placed American Indians in the context of global imperialism, a critique even ardent anti-imperialists rarely made. One did not need to visit the Philippines to find people held in "in political bondage by Washington," Decker wrote, "We are invaders. We are Europeans, mere colonizers."²⁷⁴ Decker never appeared before the Everett Commission but did support its conclusions, even if he doubted their chances of success.²⁷⁵ In 1923, he nevertheless vied to represent the Haudenosaunee in the land rights action, losing to the firm of Everett's nephew. Decker was, in short, known widely among Indians in New York and likely shared news of Deskaheh's campaign.

Another, less concrete link is the tone of each delegation, particularly in their willingness to raise the specter of armed resistance. Whether calculated to play on the Indian warrior image or reflective of an actual tactical option, Deskaheh often suggested the Six Nations could resort to violence in defense of their sovereignty. On December 23, 1922, he told *The New York Times*, "The Iroquois warriors are lying low, to give their sachems one more chance to save the life and Six Nations sovereignty through peaceful efforts."²⁷⁶ In their letter to Charles H. Burke on the very same day, Joshua Jones and Oren Lyons predicted that the breach of U.S.-Haudenosaunee treaties might "bring on a war, if

²⁷³ Hauptman, *Seven Generations*, 128.

²⁷⁴ George Palmer Decker, "America Europeanized," *Researches and Transaction of the New York State Archaeological Association* 5:1 (1925), 5-17. 5. The entire article is remarkable for its time.

²⁷⁵ "Everett Tells Six Nations Indians Own Half of State," *The Ogdensburg-Republican Journal*, July 24, 1922.

²⁷⁶ "Iroquois Tribe Ask Sovereign Status," *The New York Times*, December 23, 1922.

satisfaction is not given. Yet such things have been done, and evil consequences have always followed.”²⁷⁷ Everett too deployed the metaphor. “The World War will seem like a pink tea compared to the legal battle the Indians are preparing for the recovery of their lands,” he remarked ahead of a confederacy meeting in June 1923.²⁷⁸ Such threats are rarely found in Haudenosaunee protests of earlier years.

The Onondaga-Seneca delegation returned from Washington in early 1923 without achieving their ends. Meanwhile, the land movement continued apace. After months of Kellogg and Everett’s piecemeal approach of securing Iroquois support, Chief Dominic Two-Axe of the Kahnawá:ke Mohawk Reservation issued a call for “all the Indians of the Six Nations throughout the American continent” to meet on June 1, 1923, at the confederacy’s center of Onondaga. An ironworker turned medicine man, Two-Axe was a central figure in the nascent Longhouse revival at Kahnawá:ke in the 1920s and 30s.²⁷⁹ He believed a conference could advance two goals. First, the Haudenosaunee would continue to their fight for uncompromised reservation sovereignty, or what Two-Axe called “the inalienable right of the Indians to mind their own business.” “We don’t want your schools and your hospitals,” he told *The New York Times*, “We don’t want you butting in on our business at all.” It was an old demand, expressed in the provocative language general to the Iroquois resurgence. Second, Two-Axe sought to move forward on the Everett Report, seeking a lawsuit not for land but money. New York had “fallen into arrears,” the debt long past due. “This is our country. Let the white man pay his rent to his Indian landlords, mind his own business and leave the landlord alone,” Two-Axe professed. “If we want schools

²⁷⁷ Jesse Lyons and Joshua Jones, Chiefs of the Onondaga Nation, to Charles H. Burke, Commissioner of Indian Affairs, Dec. 23, 1922, Central Classified Files, 1907-1939, Box 5, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC.

²⁷⁸ “6 Nations Champion Sees Bitter Fight for Property Rights,” *Syracuse Herald*, June 1, 1923.

²⁷⁹ Gerald F. Reid, *Kahnawá:ke: Factionalism, Traditionalism, and Nationalism in a Mohawk Community* (Lincoln: University of Nebraska Press, 2004), 138. The movement grew in part out of the efforts of “Chief Thunderwater” in the 1910s, discussed in chapter one of this thesis.

and hospitals we will build and run them ourselves. White men cannot teach what we Indians want to learn, anyhow.” Though Kahnawá:ke Mohawks dealt with a different colonizer in Quebec, Two-Axe contended the principles at stake in New York were no different. Only the entire Iroquois confederacy could wrestle back the twin settler states.²⁸⁰

“INDIAN POT BOILING IN STATE,” Albany’s *Knickerbocker Press* declared to its capitol district readers on May 29, 1923. Not willing to allow for much in the way of Iroquois agency, they saw “the hand” of Lulu G. Stillman in “directing the affairs of the Six Nations.” Oneida William Rockwell, superintendent of a Rochester dye works, responded bluntly to the newspaper’s appraisal: “I don’t think so.”²⁸¹ The weeks preceding the conference in June proved as chaotic and contentious as the convention itself. For reasons not entirely clear, Rockwell – a central figure in the *Boylan* fight – opposed hiring Everett and his allied firm to administer the land rights action. In early April 1923, he traveled to Wisconsin to dissuade the Oneidas from doing so, arriving just after Everett had already won the contract. “Mr. Rockwell’s speech was a great surprise to us all,” wrote a group of eleven Wisconsin Oneidas, including Kellogg, to their compatriots in New York. “Mr. Rockwell spoke against Mr. Everett; and said that if we Six Nations had a white man to lead us, we would never get anywhere. He said that he, Rockwell, had won this (Boylan) case himself and that he would take up our claim case for nothing.” Rockwell’s grandiosity was nothing new; the previous August he declared himself “one of the greatest artists that ever stepped on this Indian land” for designing a new Oneida flag.²⁸² Kellogg and company saw in Rockwell the work of “white propagandists” who had “won the simple-minded among

²⁸⁰ “Six Nations Will Frame Debate,” *The New York Times*, May 22, 1923.

²⁸¹ “Indian Pot Boiling in State, Hand of Troy Woman Seen,” *The Knickerbocker Press*, May 29, 1923.

²⁸² “Ceremony in honor of the revertal of land to the Indians,” Aug. 19, 1922, SC20652 Lulu G. Stillman Papers, Box 1, New York State Library Manuscripts and Special Collections, Albany, N.Y.

our people,” suspicions that would later intensify. Their subterfuge served to “threaten this great interest of the Six Nations in no uncertain destruction.”²⁸³

Rockwell was no Parker or Bruce, however. He was a vocal opponent of imposed jurisdiction and citizenship, viewing it “not only as an infraction of the Indians’ rights, but a violation of the principles of the United States.”²⁸⁴ In August 1922, he presided over the celebration marking the return of Oneida land in the *Boylan* case. Rockwell’s opposition to Everett stemmed instead from a difference over protocol and strategy. Jesse Lyons, recently returned from his unsuccessful Washington foray, joined Rockwell in calling for a separate confederacy meeting, believing Two-Axe’s to be a “flivver.”²⁸⁵ Mohawks, Lyons maintained, had no power to convene the Six Nations – a role reserved to the Onondagas. Instead, Rockwell and Lyons would pursue a separate land claim, one offered to the Oneidas in the early seventeenth century by John Penn, the grandson of Pennsylvania founder William Penn, in the heart of what was now downtown Philadelphia, a prospect even more unlikely than winning compensation for half of New York State. “George Washington, William Penn and Mr. Everett are apparently the central figures in Iroquois Indian politics that threaten to boil over at Onondaga reservation this week, if either or both of the councils are conducted,” *The Knickerbocker* reported.²⁸⁶

On June 1, 1923, nearly two hundred delegates from across Iroquoia poured into the Onondaga Council House five miles south of Syracuse, New York. They traveled from Allegheny, Cattaraugus, and St. Regis in New York, from Kahnawá:ke and Oka in Quebec, Muncy in Ontario, Oneida in Wisconsin, and even from the small Cayuga and Seneca

²⁸³ Oneida Indians of Wisconsin to the Chiefs of the Six Nations, Apr. 4, 1923, SC20652 Lulu G. Stillman Papers, Box 1, New York State Library Manuscripts and Special Collections, Albany, N.Y.

²⁸⁴ “Indians Split Over Citizenship Question,” *Syracuse Herald*, November 14, 1920.

²⁸⁵ Out of common usage today, Lyons likely referred to the failed experiment in individual aircraft ownership, the Ford Flivver.

²⁸⁶ “Indian Pot Boiling in State, Hand of Troy Woman Seen,” *The Knickerbocker Press*, May 29, 1923.

communities in Oklahoma. “Onondaga Reservation is beginning to look like it did hundreds of years ago when the Indian Braves gathered in war council,” wrote Rolling Thunder, a St. Regis Mohawk, for a full-page spread in the *Syracuse Herald*. “The only difference is that today not all the Indians are in their native costumes.”²⁸⁷ The three day event would include debates, religious ceremonies, public lectures – including a disquisition by Laura Cornelius Kellogg on “The Place of the Six Nations on the Continent, Historically and Politically” – and conclude with a lacrosse match between Onondaga and Allegheny.²⁸⁸ The primary purpose was to determine how to move forward on Everett’s contention, that the Iroquois were legally entitled to millions of acres in western New York, and to decide whether to hire the former assemblyman or George Decker as the confederacy’s chief litigator.

It was task made far more complicated by longstanding intertribal conflicts. While Iroquois guests of all religious affiliations arrived for the conference, the staunchly traditional Onondaga hosts “threatened to keep the padlock on the doors of the Long House unless the visiting chiefs affirmed their loyalty to the old Government and the old religion.”²⁸⁹ They apparently made good on the threat, at least for a time, as Lulu Stillman’s partial transcript makes several references to a search for alternative meeting space at Onondaga. “This is supposed to be a free country where a man can believe just as his conscience dictates,” William C. Hoag, President of the Seneca Nation and a Christian, told the assembly.²⁹⁰ On the conference’s second day, George Thomas, the presiding Tadodaho or spiritual later, mandated all further conversation be in Iroquoian. “None had more than a

²⁸⁷ Rolling Thunder, “Iroquois Tribe Seeks Billions for Land Sales,” *Syracuse Herald*, June 1, 1923.

²⁸⁸ “Brilliant Woman Works for Uplift of the Indian,” *Syracuse Herald*, June 1, 1923.

²⁸⁹ “New Split in Patched Up Six Nations Dispute,” *Syracuse Herald*, June 3, 1923.

²⁹⁰ Part of Minutes Taken on Onondaga Reservation, June 2-4, 1923; SC20652 Lulu G. Stillman Papers; Box 1; New York State Library Manuscripts and Special Collections, Albany, N.Y.

hazy notion of what a member of another nation was saying,” an attendee complained, “because of the difference in the dialects.”²⁹¹

Rockwell’s concurrent conference never materialized but the threat of one still managed to disrupt official proceedings. An unnamed Tuscarora chief avoided bringing a delegation from his reservation, for “he had been under the impression the meeting was called by William Rockwell of the New York Oneidas, who he termed an ‘agitator.’” The presence of this Tuscarora was purely by accident. “He was passing through Syracuse while the meeting was in session and stopped off,” the *Herald* reported. “The chief said he was without authority to act but was certain his nation would indorse the proposal to employ Mr. Everett.”²⁹² With the Tonawanda Senecas also absent, Amos Baird wondered if the confederacy could reach a binding decision at all. “Are you the custodian of the Fire? Have you the wampum in your possession?” Kellogg asked the Onondaga hosts. “Council Fire is right here,” George Thomas responded. “That wampum was under our care until our white brothers or sister, I forget which, wanted some for souvenirs until it finally landed in Albany.” With the council fire at least lit, Kellogg was satisfied they could indeed speak for the confederacy.²⁹³

Throughout the three-day meeting, Everett spoke in sensational terms. Though he long had a penchant for inflated rhetoric, one can detect the influence of Laura Cornelius Kellogg, with whom he was spending a good deal of time. “If you don’t want to stand up with me, for God’s sake stand up with somebody who stands as I do and emancipate yourselves,” he hectored the assembly. “You can’t live in the sleepy condition in which the white man has lulled you and recover your rights. Spend millions for justice but not one

²⁹¹ “New Split in Patched Up Six Nations Dispute,” *Syracuse Herald*, June 3, 1923.

²⁹² “Everett Sought By Claim Counsel,” *Syracuse Herald*, June 5, 1923.

²⁹³ Part of Minutes Taken on Onondaga Reservation, June 2-4, 1923, SC20652 Lulu G. Stillman Papers, Box 1, New York State Library Manuscripts and Special Collections, Albany, N.Y.

penny for tribute!” Everett saw the land rights action as “the most gigantic case ever offered to a man” and promised he “never was more sincere in a matter in my life.” He believed the case to be the culmination of his life’s work. “I will be sixty-three on Sept. 18 and every man who has been connected with public affairs has a little ambition concerning what results of his effort will be on humanity,” he admitted.²⁹⁴ Everett’s grand words likely played a smaller role in securing a contract than the more affordable price he offered. Decker, allegedly, asked for a fifty percent commission while Everett sought only six. Decker’s uncharacteristically steep sum may well have been an unfounded rumor, but the Rochester lawyer was then accompanying Deskahéh to Geneva and could not defend himself. The assembly voted to hire Edward A. Everett and the law firm of Whitney, Wise and Parker to coordinate “the biggest legal battle ever fought in an attempt to recover billions of dollars’ worth of property.” On the evening of Sunday June 4, 1923, “a caravan of motor cars” carried Oneida delegates westward from Syracuse, where they planned to stop at Tonawanda and Tuscarora before returning to Wisconsin.²⁹⁵ In the coming months, all Haudenosaunee reservations – with the exception of Grand River in Ontario, still under provincial occupation – would sign on to the contract with Everett.

The June 1923 conference began a process whereby a heretofore moribund confederacy was reinvigorated, restructured and ultimately divided. As their New York City lawyers poured over treaties and maps in preparation for a lawsuit, the Six Nations met again in January 1924 at a ten-day “secret conference” to elect a finance committee of George Thomas, Laura Cornelius Kellogg, Spencer Gordon, Mitchell Two-Axe (Dominic’s brother),

²⁹⁴ Ibid.

²⁹⁵ “Everett Sought By Indians for Claims Counsel,” *Syracuse Herald*, June 5, 1923; Rolling Thunder, “Iroquois Tribe Seeks Billions for Land Sales,” *Syracuse Herald*, June 1, 1923.

and William K. Cornelius. Another nine Iroquois men served as an executive committee.²⁹⁶ The new system, reorganized under Kellogg's management principles, grated on some traditional Haudenosaunee. At Onondaga, Joshua Jones briefly deposed Thomas as Tadodaho and withdrew the Onondaga Nation from the land rights coalition. Again, the pro-Everett camp detected "'outside influences' of an unspecified character" seeking the destruction of the Iroquois Confederacy." Gaining the support of sixteen of the twenty sachems, Thomas regained his position in July 1924 and recommitted to the lawsuit, but the split fractured Onondaga for years to come.²⁹⁷

Despite the creation of a finance committee, fundraising for the land rights claim proved anarchic. At the January 1924 meeting, Kellogg asked Carl Whitney's legal opinion as to whether the confederacy could impose and collect an assessment to raise the necessary funds to cover litigation expenses. The absence of a written code did not undermine the inherent power to levy taxes, Whitney responded, "especially among those clans, states and nations which exist and have existed for long periods of time, without written constitutions and laws."²⁹⁸ Yet they lacked any mechanism of enforcement. Instead, Kellogg solicited dues on piecemeal basis; those who contributed received a receipt proving their eligibility to partake in any settlement, those who did not were told they would be left out. "It is telling that so many pinned their hopes on the reward Kellogg and others offered," writes Oneida scholar Kristina Ackley, "and many of their descendants still retain the receipts and enrollment cards as evidence of both the land claim's continuity and Kellogg's avarice."²⁹⁹

²⁹⁶ "\$5,000,000 in Land Claimed By Indians," *The New York Times*, January 31, 1924.

²⁹⁷ "Lawyers Urge Indians to Join in Land Action," *Syracuse Herald*, July 7, 1924. Laurence M. Hauptman, *The Iroquois and the New Deal* (Syracuse: Syracuse University Press, 1981), 23.

²⁹⁸ Upton, *The Everett Report in Historical Context*, 121.

²⁹⁹ Ackley, "Renewing Haudenosaunee Ties," 69.

Kellogg used a heavy hand. At a 1923 council meeting on the Wisconsin Oneida reservation, she successfully pushed a resolution denouncing “unscrupulous and treacherous individuals among our people,” namely those who did not endorse the land rights claim. Rather than allowing the possibility that some Oneidas simply could not afford to part with their few dollars for a longshot reward, Kellogg detected “considerable and intense propaganda financed by New York politicians to defeat the solidarity and self-determination of the Six Nations.” The resolution declared “any and all Indians who under any subterfuge or another are in collusion with the unseen hand, be denounced as traitors who should be properly punished.” When a newspaper report asked Eli Skenandore, a council spokesperson, what such punishment would entail, he replied, “That is for the Six Nations Council to decide.”³⁰⁰ Kellogg also ran afoul of the law. On December 24, 1924, the inspector general of the Wisconsin post office sent a letter to Whitney, Wise, and Parker informing the New York lawyers of Kellogg’s potentially improper use of the mail to solicit funds.³⁰¹

Fixated on the land rights action and the intertribal strife it generated, Haudenosaunee leaders missed the approach of a bill one contemporary Seneca lawyer likened to genocide.³⁰² Iroquois chiefs usually kept a close eye on federal legislation affecting their status and sovereignty. When various iterations of the Carter citizenship bill came before Congress in years prior, the White House and the Indian Bureau were inundated with a flurry of letters and resolutions in protest. This time, the reaction to far more sweeping

³⁰⁰ Ackley, “Renewing Haudenosaunee Ties,” 71.

³⁰¹ R.M. Bates, Post Office Inspector, Milwaukee, Wisconsin, to Wise, Whitney & Parker, Esq., Dec. 30, 1924, SC20652 Lulu G. Stillman Papers, Box 1, New York State Library Manuscripts and Special Collections, Albany, N.Y.

³⁰² “Forcing American citizenship upon Indigenous peoples qualifies as a genocidal act under subsection (c) of the Genocide Convention because the United States ‘deliberately inflicted’ on Indigenous peoples ‘conditions of life calculated to bring about [their] physical destruction in whole or in part.’” Robert Odawi Porter, “The Demise of the Ongewhoweh and the Rise of Native Americans,” *Harvard Black Letter Law Journal* 15 (1999): 107-183.

legislation came too late. Their oversight is all the more striking given the proximity of the legislation's chief author, Homer P. Snyder of Little Falls, New York.

Representing a congressional district just east of Oneida since 1912, Snyder served as chairman of the House Committee on Indian Affairs from 1919-1925. A biography published shortly before his 1937 death attributed Snyder's interest in Native issues to a family story about a forefather kidnapped by Mohawks in the eighteenth century. "Snyder was responsible for many of the important measures adopted to uplift and benefit the American Indian," wrote Enrique Lopez-Mena. "Their Homer Peter Snyder repaid with love the evil done his direct ancestor nearly two hundred years ago."³⁰³ In reality, Snyder's Indian work was shaped by two primary impulses. A successful businessman and staunch imperialist, Snyder traveled extensively prior to running for Congress, inspecting America's newest colonies in the Pacific. "The Philippine Archipelago has progressed by leaps and bounds since American occupation," he wrote.³⁰⁴ In American Indians, he saw a similarly dependent people, crying out for civilization and discipline. Snyder also fancied himself a crusader against bloated government, and the Office of Indian Affairs was a ripe target. "Never in the history of the country did the spoils system and spendthrift bureaucracy pull together so willingly in dragging money from the pockets of the taxpayer," he charged. "The country has had lesson enough."³⁰⁵ When he authored the Indian Citizenship Act in late 1923, Snyder was motivated equally by discourses of social uplift and the desire to end the Indian's costly status as wards.

³⁰³ Enrique Lopez-Mana, *A Biography of Homer P. Snyder* (New York: Van Rees Press, 1935), 106.

³⁰⁴ Lopez-Mena, *Homer P. Snyder*, 20.

³⁰⁵ Lopez-Mena, *Homer P. Snyder*, 123.

On January 29, 1924, Snyder introduced H.R. 6355, “a bill to authorize the Secretary of the Interior to issue certificates of citizenship to Indians.”³⁰⁶ The House committee promptly accepted an amendment removing the adjective “full” from the noun “citizen,” a small semantic shift suggestive of the status Congress sought to craft. Had the bill passed in this form, it likely would have yielded the same results as after the First World War, when most Indian veterans did not avail themselves of the opportunity to apply for citizenship. But as the act passed to the higher chamber and was taken up by the Senate Indian Affairs Committee, it underwent a drastic revision. When it emerged on May 15, the optional issuance had become a decree. The committee struck the provision allowing Indians to apply for citizenship and instead declared all Indians born within America’s territorial limits “to be citizens of the United States,” provided the status did not alter property rights.³⁰⁷ On June 2, 1924, to surprisingly little fanfare for the culmination of a longstanding imperial project, President Calvin Coolidge signed the Indian Citizenship Act (ICA) into law.

The lack of political and media attention paid to the effort, a silence echoed by historians ever since,³⁰⁸ can be attributed in part to more controversial legislation enacted a week before, with equally dramatic implications for the contours of modern citizenship. On May 26, 1924, Coolidge signed the Immigration or National Origins Act, establishing “for the first time *numerical limits* on immigration and a *global* racial and national hierarchy that

³⁰⁶ 68th Congress, 1st Session, *Congressional Record* 65, pt. 1 (29 January 1924): 1669.

³⁰⁷ Gary C. Stein, “The Indian Citizenship Act of 1924,” *New Mexico Historical Review* 47:1 (January 1972), 265.

³⁰⁸ Surprisingly little is written on the Indian Citizenship Act, falling in a historiographical netherworld between the more explored periods of allotment and Indian Reorganization. Bruyneel has a brief treatment in *The Third Space of Sovereignty*, as does Hoxie in *A Final Promise*. See also, Michael T. Smith, “The History of Indian Citizenship,” in *The American Indian: Past and Present*, ed. Roger L. Nicholas 3rd edition (New York: Newbery Awards Records Inc, 1986); Rogers M. Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven: Yale University Press, 1997); Jill E. Martin, “‘Neither Fish, Flesh, Fowl, nor Good Red Herring’: The Citizenship Status of American Indians, 1830-1924,” *Journal of the West* 29, no. 3 (July 1990): 75-87.

avored some immigrants over others,” writes historian Mae Ngai.³⁰⁹ Enforcement required the tightening of borders, including the U.S.-Canadian divide that cut through Six Nations territory. In tandem, these two bills restructured the political and territorial boundaries of Iroquoia in ways that were not immediately apparent. Indeed, it took several months for Haudenosaunee leaders, ensconced in the machinations of inter-confederacy politics and the inclement land rights action, to respond at all. “A few days ago I noticed in the Newspapers that Congress has passed and the President has signed an Act making all Indians born in the United States, citizens,” George Ansley, the Indian Bureau’s special agent in New York, gently wrote his boss two weeks after passage. “I would appreciate it, if you would forward me a copy of this Act, as I am having many inquires relative to the same.”³¹⁰

The first Iroquois responses on record expressed more confusion than outrage. Tuscarora chief Clinton Rickard wrote to Snyder on August 25, 1924, about “a dispute among the Indians as to whether or not the act...applies to the Six Nations.” Citing the treaty of 1838, which “guaranteed that their lands should be secured to them and that they should establish their own form of government and administer their own laws,” Rickard believed the Iroquois were exempt. E.B. Meritt, Assistant Commissioner of Indian Affairs, disagreed. “The Court in the case of the United States v. Seneca Nation of New York Indians...expressly held that these Indians are within the territorial limits of the United States and subject to the jurisdiction of Congress,” he wrote the Snyder, after having been forwarded Rickard’s correspondence. “This Office is therefore of opinion that citizenship act of June 2, 1924, applies to all of the Indians of the State of New York to the same extent

³⁰⁹ Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2005), 3.

³¹⁰ George E. Ansley, Special Agent, New York Agency, United States Indians Field Service, to Charles H. Burke, Secretary of Indian Affairs, June 14, 1924, Central Classified Files, 1907-1939, Box 2, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC.

and with the same effect as to all other Indians involved throughout the United States.”³¹¹ A more forceful letter arrived on December 30. “The Snyder Bill is a destructive and an injurious weapon in nature and aspect to the Indians at large, individually and collectively,” wrote the Onondaga council. Citizenship would bring only “misery.”³¹² On January 6, 1925, Tuscarora chief J. Warren Brayley called the legislation “brutal and overreaching.” “We think you should at least have had our sanction to such a law before you try to stuff it down our throat,” he wrote Calvin Coolidge. “The right to vote does not mean anything to an Indian in the United States, as there are not enough Indians to make an impression at all.” All electoral participation would serve to do is “bring the State Jurisdiction upon our necks.”³¹³ In June 1925, Jesse Lyons returned to Washington, D.C., with “priceless wampum belts” commemorating the treaties he believed invalidated the ICA. “It may seem odd that natives living in the midst of evidence of the opportunities that come with American citizenship should decline – actually fight off – a privilege for which most of the newcomers clamor,” reported *The New York Times*.³¹⁴

Citizenship did not fully or immediately resolve the mess of overlapping administrations, identities, and legal frameworks known as the “New York Indian Problem.” Obstacles remained. Much of the “problem” involved clouded property rights to reservation land and the failure to allot Iroquois reservations. The ICA’s second clause – “Provided That the granting of such citizenship shall not in any manner impair or otherwise affect the right

³¹¹ The original exchange between Rickard and Snyder does not appear in the record, but is referred to in Meritt’s correspondence. E.B. Meritt, Assistant Commissioner of Indian Affairs, to Homer P. Snyder, U.S. House of Representatives, Sept. 3, 1924, Central Classified Files, 1907-1939, Box 5, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC.

³¹² Counselling Chiefs of the Onondaga Nation to Calvin A. Coolidge, President of the United States, Dec. 30, 1924, Central Classified Files, 1907-1939, Box 2, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC.

³¹³ Chief Warren Brayley, Tuscarora Nation, to Calvin Coolidge, President, United States of America, Jan. 6, 1925, Central Classified Files, 1907-1939, Box 11, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC.

³¹⁴ “Indian Magna Carta Writ in Wampum Belts,” *The New York Times*, June 7, 1925.

of any Indian to tribal or other property” – preserved the status quo ante. Furthermore, many Iroquois simply rejected the ICA outright, denying it had actually accomplished its purpose. “Our citizenship was in our own nations,” Clinton Rickard wrote.³¹⁵ It did succeed, however, in streamlining a once arduous and arbitrary bureaucratic process. Under the previous regime, Iroquois men and women desirous of citizenship had to prove their “competence” and acculturation in lengthy letters to their federal guardians. Now, the Bureau could avoid adjudicating such messy pleas. Unaware of the ICA’s passage, Alvin W. Kennedy, a Seneca from Cattaraugus working as an electrician in Vallejo, California, wrote to Commissioner of Indian Affairs Charles H. Burke in October 1924, “I have advanced in life to such a stage that the thought of being known as a ward appears ridiculous, hence my complete absence from the reservation.” After detailing his biography and several professional accomplishments, Kennedy asked for the bestowal of U.S. citizenship and a one-time disbursement of any remaining treaty payments. Assistant Commissioner Meritt, who in years previous might have solicited testimonials from teachers and business partners as to Kennedy’s alleged competence, simply enclosed a copy of the ICA in response.³¹⁶

While many Haudenosaunee viewed the citizenship act as an unwelcome imposition, their lawyers saw an opening. Access to courts had always been uneven for Indians, often prohibited outright. Most legal action required the acquiescence, if not full participation, of the federal government. The *Boylan* case, for instance, only moved forward when the Department of Justice joined the Oneida Nation as plaintiffs. With the passage of the ICA, Carl Whitney, chief lawyer pursuing the land rights claim, believed “if citizenship meant anything it included the right of access to the United States courts to enforce the rights

³¹⁵ Rickard, *Fighting Tuscarora*, 52.

³¹⁶ A.W. Kennedy to Charles H. Burke, Commissioner of Indian Affairs, Oct. 17, 1924, E.B. Meritt, Assistant Commissioner of Indian Affairs, to A.W. Kennedy, Nov. 3, 1924, Central Classified Files, 1907-1939, Box 8, Records of the Bureau of Indian Affairs, Record Group 75, National Archives Building, Washington, DC.

guaranteed them in treaties with the United States.”³¹⁷ It was an odd formulation, one that would ensnare the legal action in its illogic. Treaties, after all, were made between independent sovereigns, not a government and its citizenry. “We feared citizenship would...put our treaty status in jeopardy and bring taxes on our land,” Clinton Rickard wrote. “How can a citizen have treaty with his own government?”³¹⁸

Over three years of research and wrangling after Everett presented his report, Carl Whitney filed on June 6, 1925, an action in ejectment in the United States Court for the Northern District of New York against the St. Lawrence River Power Company, “who were occupying the land which had been illegally acquired by them from the State of New York under successive deeds.” How the law firm arrived on its target is not evident in the records. Any number of companies across New York State held contestable title and exercised less clout. The hydroelectric plant powered the nearby smelting operation of its parent, the Aluminum Company of America, a booming multinational enterprise with a dominant market share.³¹⁹ Victory against the company would ensure a massive payout but resistance was predictably stiff. The attorney’s nevertheless believed their case to be solid. Treaties in 1784 and 1796 specifically mentioned a square mile tract on the banks of the Grasse River, a tributary of the St. Lawrence, as belonging to the Mohawk Nation, defeated but not vanquished by the Revolutionary War. Congress in turn passed Indian Trade and Intercourse Act of 1790, which, according to the complaint, “inhibited any person or state from entering into any treaty with the Indians of the United States, and from acquiring title to their lands

³¹⁷ “In the Matter of the Petition of James Deere, a Citizen of the United States, and a Member of the St. Regis Band of Mohawk Indians,” [exact date unknown], 1927, SC20652 Lulu G. Stillman Papers, Box 1, New York State Library Manuscripts and Special Collections, Albany, N.Y.

³¹⁸ Rickard, *Fighting Tuscarora*, 52.

³¹⁹ George David Smith, *From Monopoly to Competition: The Transformation of Alcoa, 1888-1986* (New York: Cambridge University Press, 1988), 135.

whether they lay within or without the limits of a state.”³²⁰ Disregarding the statute, New York governor Joseph C. Yates fraudulently entreated with a group claiming to represent the Mohawk Nation in 1824. “It is now argued that the supposed representatives of the St. Regis did not act within their rights and that the transfer was wholly illegal and void,” reported the *Gouverneur Free Press*. Serving as plaintiff was James Deere, who along with “the other members of said St. Regis tribe of Indians are entitled to the immediate and exclusive possession, use and enjoyment of said land as commoners.”³²¹

If Albany believed the land rights action “absurd,” a charge repeatedly leveled since Everett went rogue in 1922, they had a strange way of showing it. New York State immediately interpleaded as a co-defendant and hired at great cost the legal services of Charles Even Hughes. Hughes had just completed a stint as U.S. Secretary of State. Only five years later, Herbert Hoover would appoint him Chief Justice of the United States. “It was a matter of much interest to us that the defendants should consider the case of such importance that it warranted them in retaining one of the foremost lawyers in the United States to contest it,” Whitney wrote to Tadodaho George Thomas. Whitney also noted “the presence in court...of the attorney for the greatest Power interests in the State of New York” – a man he chose not to name in the letter – who conferred with defense throughout the first court proceeding.³²²

Avoiding the question of illegal land seizure entirely, Hughes moved to dismiss on two grounds. First, the federal court had no jurisdiction in the matter, as both the defendants and plaintiffs were citizens of New York State, thanks to the Snyder bill a year prior.

³²⁰ “In the Matter of the Petition of James Deere, a Citizen of the United States, and a Member of the St. Regis Band of Mohawk Indians,” [exact date unknown], 1927, SC20652 Lulu G. Stillman Papers, Box 1, New York State Library Manuscripts and Special Collections, Albany, N.Y.

³²¹ “Claim That Treaty Made with St. Regis Indians in 1824 is Void and Unlawful,” *Gouverneur Free Press*, July 1, 1925.

³²² Carl E. Whitney to Chief George E. Thomas, Onondaga Nation, Nov. 23, 1925, SC20652 Lulu G. Stillman Papers, Box 16, New York State Library Manuscripts and Special Collections, Albany, N.Y.

Hughes' second reason appears to contradict the first. Though Indians were indeed citizens, they lacked the legal capacity to sue without the permission and participation of their federal guardians. "Now, it has been held I think quite conclusively that an individual Indian cannot come into Court in that way," Hughes asserted. Yet, "the mere fact the plaintiff is an Indian does not give federal jurisdiction" – New York, after all, also claimed sovereignty over their wards.³²³ As an additional disqualifier, Hughes also foreshadowed an argument against Indian land cases that persists today. The power company's title, Hughes argued, "has been too long recognized in this state to be now called in question."³²⁴ Whitney saw the hearing as a partial victory. The state did not attempt to mount a defense on merits, only technicalities. In December, Whitney lobbied the Department of the Interior to protect their Iroquois wards and join as co-plaintiffs. It was pointed out...that the State of New York in violation of the Law had entered into a treaty with an Indian tribe, had presumed to deed away the land acquired by that treaty," Whitney wrote, adding "that the present occupants of the land had no title whatsoever."³²⁵

Powerful interests had coalesced, however, relying on interpersonal networks to circumvent Whitney's appeal. Before he was elected Attorney General of New York in 1924, Albert Ottinger served as Assistant Attorney General of the United States, maintaining close ties to his former employers, who notified him of Whitney's request. Ottinger quickly dispatched New York's Assistant Attorney General Henry Manley to lobby against federal intervention. The attitude of the Department of Justice now appeared to undergo a change," Whitney later wrote. "The laches of the Indians, the undesirability of disturbing the alleged

³²³ "Holds St. Regis Tribe Can't Sue," *Ogdensburg Republican-Journal*, January 19, 1926.

³²⁴ "In the Matter of the Petition of James Deere, a Citizen of the United States, and a Member of the St. Regis Band of Mohawk Indians," [exact date unknown], 1927, SC20652 Lulu G. Stillman Papers, Box 1, New York State Library Manuscripts and Special Collections, Albany, N.Y.

³²⁵ *Ibid.*

titles of the present occupants without regard to their actual titles, and the fact that the Secretary of the Interior had made no specific request for intervention” were all cited as reasons to dismiss joining the suit. On February 13, 1926, the Attorney General John G. Sargent formally declined to join the suit. “The result was clear,” Whitney declared. “The rights of both the United States and the Indians were to be ignored and this apparently out of consideration for the patentees of the State of New York which by an admittedly lawless act had enriched itself at the expense of the United States and its neglected wards.”³²⁶

The case limped toward death. In October 1927, Judge Frank Cooper of the United States District Court of Northern New York rejected the suit, accepting Hughes’ technical arguments whole cloth.³²⁷ An amended appeal in 1928 failed again.³²⁸ Whitney brought the case to the Second Circuit Court of Appeals in 1929, where it met the same fate.³²⁹ It is not clear whether an attempt was made at the Supreme Court, but it would likely have fared no better. By then, Hughes was Chief Justice. Cornered by the legal framework they hoped to exploit, Six Nations land claims sat dormant for decades.

In that most unlikely of historical moments, the Iroquois resurgence was not limited to the Everett Report and its litigious aftermath. By the late 1920s, new struggles emerged. On December 1, 1926, Tuscarora chief Clinton Rickard formed the Indian Defense League of America, successfully fighting the arrest of Kahnawá:ke Mohawk ironworker Paul Diabo for “illegally” crossing an international border Iroquois people refused to recognize.³³⁰ In 1930, the confederacy defeated Congressman Bertrand Snell’s bill to assign full jurisdiction

³²⁶ Ibid.

³²⁷ “Indians Lose Court Action for N.Y. Land,” *Ogdensburg Republican-Journal*, October 25, 1927.

³²⁸ “Indians Lose in Litigation,” *Herald-Recorder*, October 19, 1928.

³²⁹ “Courts Still Hold Against Indians,” *Commercial Advertiser*, May 7, 1929.

³³⁰ Bruyneel, *The Third Space of Sovereignty*, 118; Gerald F. Reid, “Illegal Alien? The Immigration Case of Mohawk Ironworker Paul K. Diabo,” *Proceedings of the American Philosophical Society* 151: 1 (March 2007), 61-78.

over reservations to New York.³³¹ Four years later, the same coalition agitated against John Collier's Indian Reorganization Act, seen as yet another infringement on the sovereignty guaranteed by treaty.³³² Though the process leading up to the land rights action was fractious, it reinvigorated an abeyant confederacy, with reverberations well into the present century.

³³¹ "Indians Prefer Uncle Same," *The New York Times*, April 15, 1930.

³³² Laurence M. Hauptman, *The Iroquois and the New Deal* (Syracuse: Syracuse University Press, 1981), 23.

EPILOGUE

Beneath the sales, debts, foreclosures, and derivatives that alter the topsoil, land title is something akin to geological strata: the bedrock remains. Just what constitutes that bedrock – the lowest layer from which property rights work their way up to the present – has been the source of some consternation in the United States and other countries founded on someone else’s land. Raw violence existed as a constant potential and practice, but so too were settlers constricted by law, even if their own governments built the legal parameters.³³³ The fault lines that cut between the prerogatives of power and the limits of law have tended to remain dormant, but every so often, the bedrock quakes, the ground splits, and what feels settled and secure reveals its unstable nature.

On October 19, 2012, a few dozen members of the Onondaga Nation and their supporters gathered outside the second U.S. Circuit Court of Appeals a few blocks north of Wall Street. Holding signs that read “Treaties Don’t Have ‘Latches’” and “We Share the Onondaga Nation’s Call for Healing,” the group awaited the decision of a three-judge panel. In 2010, before evidence could even be presented, U.S. District Judge Lawrence Kahn dismissed the Onondaga’s claim to 2.5 million acres stretching from Canada to the Pennsylvania border. In his ruling, Kahn relied heavily on the rationale developed by lawyers for the defense, including the County of Onondaga, the City of Syracuse, and five private corporations responsible for turning the once pristine Onondaga Lake into a superfund site,

³³³ Stuart Banner, *How The Indians Lost Their Land: Law and Power on the Frontier* (Cambridge: Harvard University Press, 2005)

among North America's most polluted bodies of water.³³⁴ Any finding in favor of the Indians, they argued, "would disrupt settled expectations based on 200 years of non-Indian sovereignty, ownership and development." Of course the Onondaga's land rights action nowhere called for eviction, only an admission of New York's past criminality. "The chiefs recognize that the best way to resolve this is for everybody to sit down, find a solution that's best for everybody," explained Joe Heath, General Counsel for the Onondaga Nation. The Second Circuit Court of Appeals was unmoved. Refusing again to hear any evidence, they issued a brief memorandum endorsing Kahn's dismissal. The Onondagas might well have been victims of "historical injustice," but they had waited too long to do anything about it. Nothing warranted disruption of the present landowners' "justifiable expectations." "This is not justice," Heath declared at a press conference minutes after, "and this is not the end."³³⁵

³³⁴ "Onondaga Lake Superfund Site," New York State Department of Environmental Conservation, <http://www.dec.ny.gov/chemical/8668.html> (accessed November 12, 2012).

³³⁵ "NY court rejects Onondaga Nation's land claim," *The Wall Street Journal*, October 19, 2012

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