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State Regulation of Tribal Lands in New York: *City of Sherrill v. Oneida Indian Nation of New York*

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Summary

On March 29, 2005, the Supreme Court issued its decision in *City of Sherrill v. Oneida Indian Nation of New York*, a case with serious implications for the State of New York's ability to regulate tribal lands within New York. A federal appeals court had ruled that the Oneida Indian Nation could, by purchasing former reservation lands illegally alienated from the tribe, reestablish the reservation status of those lands and thereby shield them from state taxation. The Supreme Court reversed this decision, holding that the passage of time between the illegal conveyance and the claim in this case barred the Oneidas' attempt to reassert sovereignty over the land in question.

Background

The relationship between state and tribal power on tribally-owned lands has always been an uneasy one, particularly when the question of a state's ability to levy taxes on such lands arises. The Constitution vests the federal government with exclusive power with respect to Indian tribes,¹ and the Supreme Court has held that, "as a corollary of this authority, and in recognition of the sovereignty retained by Indian tribes even after formation of the United States, Indian tribes and individuals generally are exempt from state taxation within their own territory."² Consequently, while Congress can allow states to tax Indians within reservation land, this congressional intent must be expressed in "unmistakably clear" terms in order to be recognized by the courts.³

The Facts of *Sherrill*. Some dispute exists as to when the Oneida Reservation in New York was formally established. However, the federal government acknowledged the

¹ U.S. Const., Art. I, § 8, cl. 3.

² *Montana v. Blackfeet Nation of Indian Tribes*, 451 U.S. 759, 764 (1985).

³ See, e.g., *County of Yakima v. Confederated Tribes and Bands of Yakima Indian Nation*, 502 U.S. 251, 258 (1992).

existence of such a reservation in 1794 when Congress ratified the Treaty of Canandaigua,⁴ which included a promise by the federal government that “the said reservation shall remain theirs, until they choose to sell the same to the people of the United States *who have the right to purchase*”⁵ (emphasis added). Twenty years later, New York began pressuring the tribes residing within the state’s borders – including the Oneidas – to remove to the western territories, and many did so. The Oneidas sold much of their Reservation lands to New York State and to other non-tribal-members. Significantly, these purchasers bought the land without the consent of the federal government, despite the Indian Nonintercourse Act’s requirement that such consent be obtained before purchasing tribal land.⁶

This practice of removal – in essence, paying tribes to move west – picked up steam in other states, and by the 1830’s it was the policy of the federal government to encourage eastern tribes to exchange their land for lands set aside in the West.⁷ In order to facilitate the removal of the Indians still remaining in New York at the time, the United States entered into the Treaty of Buffalo Creek with the various New York tribes. In 1838, Congress ratified the treaty,⁸ in which the approximately 5,000 remaining Oneidas agreed to “remove to...[Kansas], as soon as they can make satisfactory arrangements with the Government of the State of New York for the purchase of their lands in Oneida.”⁹ The remaining Oneidas never removed to Kansas, and the last 150 years have been dotted with frequent litigation over the validity of the Oneida sales and the rights of the Oneidas vis-a-vis the original reservation land.¹⁰

In 1985, the Supreme Court ruled that the Oneidas could recover damages against several counties for violating the Oneidas’ aboriginal rights to land unlawfully conveyed to and occupied by those counties.¹¹ The Court specifically left open the question, however, of whether “equitable considerations should limit the relief available to the present day Oneida Indians.”¹² The Court’s ruling spurred more litigation concerning how much money the Oneidas and other similarly-situated New York tribes are owed. Currently, several of these tribes are engaged in settlement negotiations with the State of

⁴ 7 Stat. 44. The facts are taken from the Second Circuit’s opinion in the case. *See Oneida Indian Nation v. Sherrill*, 337 F.3d 139, 144-146 (2d Cir. 2003) (hereinafter, “Second Circuit Opinion”).

⁵ 7 Stat. 45.

⁶ The Indian Trade and Intercourse Act, better known today as the Nonintercourse Act, was passed in 1790 (1 Stat. 137). The current version is codified, as amended, at 25 U.S.C. § 177 (“No purchase...or other conveyance of lands...from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution.”).

⁷ *See* Indian Removal Act of 1830, 4 Stat 411.

⁸ 7 Stat. 550.

⁹ *Id.* at 554.

¹⁰ *See, e.g., New York Indians v. U.S.*, 170 U.S. 1 (1898); *Oneida Indian Nation of New York v. County of Oneida*, 414 U.S. 661 (1974).

¹¹ *Oneida County v. Oneida Indian Nation*, 470 U.S. 226 (1985).

¹² *Id.* at 253, note 27.

New York. Reportedly, the settlement agreements would allow these tribes to build casinos in the Catskill mountains.¹³

The particular dispute in *Sherrill* began in the 1990's, when the Oneidas started buying back parcels of former Reservation land – several in particular located in Sherrill. On two of these properties (“the Sherrill properties”), the Oneidas operated a gas station, convenience store, and textile facility. The Oneidas refused to pay property taxes or to collect sales taxes related to the Sherrill properties, arguing that the properties are within their reservation, and so are free from state and municipal taxation.¹⁴ Following the Oneidas’ refusal to pay taxes, Sherrill offered some of the properties at tax sales and instituted eviction proceedings.

The Lower Court Rulings and Possible Ramifications

The tribal and municipal parties brought their dispute to court, the essential question being: did the Oneidas’ land regain its reservation status when it was repurchased by the Oneidas, in light of the fact that the federal government never approved the original sale that alienated the land from the Oneidas? The District Court answered this question in the affirmative,¹⁵ and the municipal parties appealed to the Second Circuit Court of Appeals. The major question, according to the Second Circuit, was whether the Oneida Reservation had been explicitly disestablished by Congress. The municipal parties pointed to the aforementioned Treaty of Buffalo Creek as evincing Congress’s intent to disestablish the Oneida Reservation. In examining this argument, the court used two well-settled principles for interpreting Indian treaties: 1) Indian treaties are to be construed liberally in favor of the Indians, and ambiguous terms are to be interpreted to their benefit; and 2) congressional intent to abrogate Indian treaty rights can only be found with the help of explicit statutory language to that effect.¹⁶

With these principles in mind, the Second Circuit examined the Buffalo Creek Treaty. The court found that while certain articles of the treaty implicitly disestablished various reservations with language evincing an intent that the tribes in question would remove, the Oneidas conditioned their removal on future arrangements between the Oneidas and the Governor of New York. Because these agreements were never made, the court concluded, the Reservation was never disestablished.¹⁷ As reservation land, then, it could not be alienated without express approval of the federal government, of which

¹³ See, e.g., Associated Press, *Five Land Claim Tribes Meet* (March 31, 2005). This story can be found at [<http://www.gazetteextra.com/oneidas033105.asp>] (Last visited, March 31, 2005).

¹⁴ While Congress has granted the State of New York significant criminal and civil jurisdiction over tribal lands in New York, Congress specifically directed that “nothing herein contained shall be construed as subjecting the lands within any Indian reservation in the State of New York to taxation for State or local purposes.” 25 U.S.C. § 233.

¹⁵ *Oneida v. City of Sherrill*, 145 F.Supp.2d 226 (N.D.N.Y. 2001).

¹⁶ Second Circuit Opinion, 337 F.3d at 158. On this second point, however, the court noted that, when confronted with the question of Congress’s intent to disestablish a reservation or diminish reservation land, the Supreme Court has looked to legislative history and the circumstances surrounding the treaty in question. *Id.* at 159-160.

¹⁷ *Id.* at 162.

there was none in this case. The court held that when Indian land has, as here, been alienated in ways inconsistent with federal law, the tribe retains aboriginal Indian title to the land, and if the tribe at some point buys the land back, the land reverts to its former reservation status, largely free from state taxation.¹⁸

Potential Ramifications of the Second Circuit’s Holding: *Cayuga Indian Nation*. While the Second Circuit’s holding was limited to taxation, the rationale behind that holding – that Indian tribes can reacquire former tribal lands and thereby reestablish the reservation status of such lands – had potentially broad consequences for state regulation of tribal activities in other areas, most notably Indian gaming. This was evidenced by the federal district court ruling in *Cayuga Indian Nation of New York v. Village of Union Springs*.¹⁹

In *Cayuga Indian Nation*, the tribe made an argument nearly identical to that put forward by the Oneidas. Like the Oneidas, much of the Cayugas’ treaty land had been sold to the State of New York – without the federal government’s permission – in the late eighteenth and early nineteenth centuries. In 2003, the Cayugas reacquired some of that land, and went ahead with plans to build a bingo hall on the property. The village of Union Springs attempted to halt construction pursuant to the city’s zoning and construction ordinances, while the tribe argued that the land is part of the tribe’s reservation and, therefore, the Indian Gaming Regulatory Act (IGRA)²⁰ – not municipal regulation – governs gambling facilities on the land. Relying largely on the Second Circuit’s rationale with respect to the Oneidas, the district court held that the Cayugas’ title to the land in question could only have been legally divested by Congress. Because that never happened, the reservation never ceased to exist, and the tribes reestablished the reservation status of the land when they repurchased it.²¹ The court agreed with the tribe that the bingo hall project was “governed by IGRA, which preempts state and local attempts to regulate gaming on Indian lands.”²²

The Supreme Court’s Holding

The Supreme Court approached the facts before it in *Sherrill* from an entirely different angle from the lower courts or either of the parties. Indeed, as the Court wrote, “We resolve this case on considerations not discretely identified in the parties’ briefs.”²³ As mentioned above, in 1985 the Supreme Court found that, while the Oneidas were entitled to damages for the illegal conveyance and occupation of lands to which they held

¹⁸ *Id.* at 157.

¹⁹ 317 F.Supp.2d 128 (N.D.N.Y. 2004).

²⁰ 25 U.S.C. §§ 2701-2721; 18 U.S.C. §§ 1168. IGRA provides the legal framework for the conduct of gaming activities on Indian lands generally free from the strictures of state and local regulation. See generally CRS Report RS21499, *Indian Regulatory Gaming Act: Gaming on Newly Acquired Lands*, by (name redacted).

²¹ *Cayuga Indian Nation*, 317 F.Supp.2d at 137.

²² *Id.* at 148.

²³ *City of Sherrill v. Oneida Indian Nation of N.Y.*, 453 U.S. ___, 2005 WL 701058 (2005) (hereinafter “*Sherrill*”) (slip op., at 14, note 8).

aboriginal title, the Court explicitly left open the question of whether “equitable considerations should limit the relief available to the present day Oneida Indians.”²⁴ The Court viewed the Oneidas’ claims in *Sherrill* as a chance to answer this question. In other words, this case was not about the status of the land, as the Second Circuit thought, but rather the *type of remedy* due to the Oneidas for the wrongful occupation of that land. The Court, then, framed the Oneidas’ claim thusly: “[The Oneida Nation] seeks declaratory and injunctive relief recognizing its present and future sovereign immunity from local taxation on parcels of land the Tribe purchased in the open market, properties that had been subject to state and local taxation for generations.”²⁵

Re-casting the Oneidas’ claim as one for redress of a past wrong, the Court held that three doctrines – each related to the passage of time since the wrong was committed – prevent the Oneidas from obtaining the redress they seek, i.e., to be free from state and local taxation. First, the majority invoked the doctrine of laches, “a doctrine focused on one side’s inaction and the other’s legitimate reliance,” which bars “long-dormant claims for equitable relief.”²⁶ The Court noted that laches barred the Oneidas’ claim not only because of the passage of time between the wrong committed and the claim for relief, but also because of the intervening change in the value and character of the land in question.²⁷

The Court next ruled that, regardless of whether the original conveyance was lawful or not, the Oneidas had acquiesced over the last 200 years in the possession of the lands by other parties, creating reasonable expectations among surrounding communities regarding who has the right to exercise regulatory control over the lands in question. Consequently, the Court ruled, “Parcel-by-parcel revival of their sovereign status, given the extraordinary passage of time, would dishonor ‘the historic wisdom of repose.’”²⁸

Finally, the majority cited the doctrine of impracticality as a bar to the Oneidas’ claim, holding that allowing the Oneidas to unilaterally reassert regulatory control over former reservation lands simply by repurchasing them “would have disruptive practical consequences.”²⁹ The Court noted that both the City of Sherrill and Oneida County are “today overwhelmingly populated by non-Indians,” and that ruling in favor of the Oneidas would allow tribes to unilaterally create “a checkerboard of alternating state and tribal jurisdiction in New York State.”³⁰ The Court then pointed out that Congress had considered the practical difficulties of such an arrangement, and for that reason had

²⁴ *Oneida County v. Oneida Indian Nation*, 470 U.S. 226, 253, note 27 (1985).

²⁵ *Sherrill*, slip. op., at 13-14. The Court cast the Oneidas’ claim as one for equitable relief in another portion of the majority opinion as well: “In contrast to *Oneida I* and *Oneida II*, [the Oneidas] sought equitable relief prohibiting, currently and in the future, the imposition of property taxes.” *Sherrill*, slip. op. at 11.

²⁶ *Id.* at 17.

²⁷ *Id.*

²⁸ *Id.* at 19 (quoting *Oneida County v. Oneida Indian Nation*, 470 U.S. 226, 262 (1985)(Stevens, J., dissenting in part)).

²⁹ *Sherrill*, slip. op. at 19.

³⁰ *Id.* at 20.

created a process for taking land into trust for Indian tribes.³¹ It is this statutory procedure, the Court found, that is the Oneidas' proper avenue for acquiring lands that will be free from state and local taxation.³²

Conclusion

While the Supreme Court did not directly address *Cayuga Indian Nation*, the majority's opinion leaves little doubt that the Court was looking beyond state and municipal taxation to questions of general regulatory authority. As the Court put it, "If [the Oneidas] may unilaterally reassert sovereign control and remove these parcels from the local tax rolls, little would prevent the Tribe from initiating a new generation of litigation to free the parcels from local zoning or other regulatory controls that protect all landowners in the area."³³ The Court indicated the broad reach of its rationale at the very beginning of its opinion:

Given the longstanding, distinctly non-Indian character of the area and its inhabitants, the regulatory authority constantly exercised by New York State and its counties and towns, and the Oneidas' long delay in seeking judicial relief against parties other than the United States, we hold that the Tribe cannot unilaterally revive its ancient sovereignty, in whole or in part, over the parcels at issue. The Oneidas long ago relinquished the reins of government and cannot regain them through open-market purchases from current titleholders.³⁴

It is unlikely that *Cayuga Indian Nation* or any other opinion like it could stand against the weight of the Court's strong and clear direction with respect to New York tribes' attempts to reassert sovereignty over former tribal lands by merely purchasing them on the open market.

It does not appear that the ruling will have any effect on the various claims for monetary compensation springing from the Supreme Court's 1985 ruling. The Court seemed concerned only with tribal attempts to shield newly acquired lands from state regulatory authority.

³¹ See 25 U.S.C. § 465.

³² *Sherrill*, slip. op. at 21.

³³ *Id.* at 20. In his dissent, Justice Stevens intimated that the majority's fear of opening a Pandora's box with respect to other regulatory issues may have motivated the Court's decision. *Id.*, Justice Stevens dissent, at 5 ("I would not decide this case on the basis of speculation about what may happen in future litigation over other regulatory issues").

³⁴ *Sherrill*, slip. op. at 2.

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