Supplementary Material

Chapter 6: Civil War and Reconstruction—Federalism

The New York Indians, 72 U.S. 761 (1867)

The Seneca Tribe of Native Americans had traditionally lived in what is now western New York, and they remain the largest tribe of Native Americans in that state. Even before the adoption of the U.S. Constitution, the states of Massachusetts and New York had both claimed authority over land occupied by the tribe but had agreed to recognize the tribal land and exempt it from state and local taxation. In a series of treaties between the tribe and the United States, a reservation of land was secured for the tribe, which they could occupy until the tribe disbanded or chose to sell. In 1838, a treaty was negotiated that provided for the removal of the Seneca Tribe west of the Mississippi River and the sale of the reservation lands to the Ogden Land Company by 1845. The tribe and the land company had a falling out, however, and a new treaty with the federal government was negotiated in 1842 that provided for the tribe to stay on reserved land in western New York (while selling a portion of their land to Ogden). Meanwhile, New York passed a statute in 1840 that imposed a highway tax on the reservation land and adopted additional statutes thereafter assessing taxes to build roads on the land. The taxes went unpaid, and as a consequence county officials seized and sold the land.

The Ogden Land Company filed suit in state court seeking that that the tax sales be declared void. The New York courts held in favor of the tax officials, and an appeal was made to the U.S. Supreme Court. The Court unanimously reversed the state courts and held the tax laws and land sales to be void. The Court observed that New York was either trying to displace the Native Americans or anticipating their expected departure and the sale of the land, and the justices indicated that they were willing to adopt the more generous interpretation of the state's actions (and noted that the state later adopted a statute reaffirming that the tribal lands were immune from taxation). Nonetheless, the Court emphasized that tribal reservations within state boundaries were protected by federal treaty and immune from state and local taxation.

What is the legal basis for exempting tribal lands from generally applicable state taxes? Could the federal government authorize state taxation? Why did the 1838 treaty not open the door to state taxes? Could the tribe have passed on its immunity from local taxes to the Ogden company? Are there any limits to the ways in which the federal government could use the treaty power to exclude land within the boundaries of a state from state authority?

JUSTICE NELSON delivered the opinion of the Court.

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The eighth section [of the state statute of 1841] provides that the taxes may be assessed. levied, and collected as directed by the act, notwithstanding the occupation of the lands by the Indians. The failure to extinguish the right of the Indians, or to remove them from the possession, shall not impair the validity of said taxes or prevent the collection.

This last section furnishes, doubtless, a solution of what we must otherwise regard as a very free, if not extraordinary, exercise of power over these reservations and the rights of the Indians, so long possessed and so frequently guaranteed by treaties. . . . [The treaty of 1794], entered into at Canandaigua, New York, may be cited as a specimen. Third article, "The United States acknowledge all the land within

the aforementioned boundaries (which include the reservations in question) to be the property of the Seneca nation, and the United States will never claim the same nor disturb the Seneca nation, . . . in the free use and enjoyment thereof; but it shall remain theirs until they choose to sell the same to the people of the United States, who have the right to purchase."

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. . . . [T]he rights of the Indians do not depend on this or any other statutes of the State, but upon treaties, which are the supreme law of the land; it is to these treaties we must look to ascertain the nature of these rights, and the extent of them.

It has already been shown that the United States have acknowledged the reservations to be the property of the Seneca nation—that they will never claim them nor disturb this nation in their free use and enjoyment, and that they shall remain theirs until they choose to sell them. These are the guarantees given by the United States, and which her faith is pledged to uphold. Now we have seen that this [state] law, taxing the lands in the reservations, authorizes the county authorities to enter upon them, survey and lay out roads, construct and repair them, construct and repair bridges, assess and collect taxes to meet the expenses, and survey the lands for the purpose of making the assessments, and in pursuance of these powers the proper officers of the counties have assessed upon them large sums. . . .

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. . . . Until the Indians have sold their lands, and removed from them in pursuance of the treaty stipulations, they are to be regarded as still in their ancient possessions, and are in under their original rights, and entitled to the undisturbed enjoyment of them. . . . The time for the surrender of the possession, according to their consent given in the treaty, had not expired when these taxes were levied. The period within which the removal was to place, under the treaty of 1838, was five years from the time it went into effect. It was not proclaimed till 1840, and under that of 1842 the time did not expire till 1846. The taxation of the lands was premature and illegal.

It will be seen on looking into the general laws of the State imposing taxes for town and county charges, as well as into the special acts of 1840 and 1841, that the taxes are imposed upon the lands in these reservations, and it is the lands which are sold in default of payment. They are dealt with by the town and county authorities in the same way in making this assessment, and in levying the same, as other real property in these subdivisions of the State. We must say, regarding these reservations as wholly exempt from State taxation, and which, as we understand the opinion of the learned judge below, is not denied, the exercise of this authority over them is an unwarrantable interference, inconsistent with the original title of the Indians, and offensive to their tribal relations.

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The judgment must therefore be *Reversed*. . . .