

INDEX OF OPINIONS
NEW YORK STATE ATTORNEY GENERAL
AND
NEW YORK STATE COMPTROLLER
ON
INDIAN AFFAIRS

UNIVERSITY

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Index to Opinions
Relating to Indian Affairs

This Index was originally prepared in 1954 by
Mr. J. D. Crocker, Director of Indian Services for the State
of New York.

Because I feel that it would be helpful to have in one
publication, all opinions to date on this specialized subject,
I have added opinions which have been rendered by the Attorney
General and the Comptroller since 1954, and am reproducing
them in this pamphlet.

An excellent selected bibliography of material in the
New York State Library on the American Indian has been pre-
pared by Mr. Ernest Breuer, Law Librarian, and is appended.

In order to make more widely available what I believe
to be valuable reference material not otherwise obtainable,
copies of this document are being distributed to State Depart-
ments and Agencies and to Bar Associations and Law Libraries
in the State.

I hope that this will be of assistance to persons doing
legal research in the field of Indian Affairs in New York State.

Louis J. Lefkowitz
Attorney General

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THE AMERICAN INDIAN

A SELECTED BIBLIOGRAPHY OF MATERIAL
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THE AMERICAN INDIAN

The "Indian" problem is to invest with an adequate system of general law, whether of tribal, Federal or State origin, an Indian population estimated at 7,000 living on eight reservations in the State of New York, with a combined area of approximately 140 square miles. For more than a century and one-half confusion and uncertainty have reigned over these areas for want of a clear and comprehensive definition of Indian status and of Indian rights and responsibilities.

Many Indians as well as other students of their status, have long believed that the moving force to accomplish these reforms must come from outside the reservations. Some progress has been made. The recent litigation involving the St. Regis Tribe, The Tuscarora Nation of Indians and the Power Authority of the State of New York in connection with the taking of Indian lands for the Niagara power development has brought the Indian problem into sharp focus. The New York State Law Library has attempted to prepare a bibliography of the recent cases involving the Indians and their legal efforts to preserve their reservations and the material in the State Library relating generally to the Indian problem.

There is also appended a check-list of the opinions of the New York Attorney General and the Comptroller relating to Indians.

--The policy of Congress as expressed in House Resolution 108, 83d Congress, 1st Session, (67 Stat. B132) adopted Aug. 1, 1953, is to terminate

trust relationships with the several tribes, groups and individual Indians as rapidly as the circumstances of each tribe, group or individual Indians will permit, in order that all Indians within the territorial limits of the U. S. should be freed from Federal supervision and control and be subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States.

Although the number of Indians in the United States is very small compared to the rest of the population, the Indian tribes form an important segment of the population and their peculiar legal position often raises legal problems of major importance.

During the expansion and development of the country from a relative wilderness to urban growth, the American Indians could not keep pace with the trend of the times and remained for the most part wards of the states or the Federal Government on reservations set aside for them.

Their problem is complicated by a desire to preserve tribal culture on one hand and the recent movement to melt it down in the great cauldron of the American way of life, as evidenced by the policy of Congress, stated above, to make all Indians subject to the same laws and entitled to the same privileges as are applicable to all American citizens. The problem is further complicated because of the nature of dual Federal and state control over Indians. However, this is no longer true in New York. On September 13, 1950, the Civil Jurisdiction Law, Public Law 785, 81st Congress 2d Session (64 Stat. 845) went into effect. Subject to certain

restrictions, the Civil Jurisdiction Law in conjunction with the earlier Criminal Jurisdiction Law (Public Law 881, 80th Congress, 2d Session (62 Stat. 1224) July 2, 1948 gives Federal sanction for application of State civil and criminal laws to New York's entire Indian reservation population, numbering approximately 7,000.

In his report dated June 15, 1950 for the Senate Committee on Interior and Insular Affairs supporting the then pending Civil Jurisdiction bill, Senator Herbert H. Lehman, stated: "The Indians of New York have been classified by the Bureau of Indian Affairs as among the most advanced in the Nation and in no need of continued supervision by the Federal Government."

The problem does not exist with respect to non-reservation Indians because State jurisdiction over them has been long recognized, Plummer v. Hubbard, 207 App. Div. 29 (1923). The Criminal Jurisdiction Act of 1948 (62 Stat. 1224) and Civil Jurisdiction Act of 1950 (64 Stat. 845), both limited in application to New York Indians, served as models for Public Law 280, 83d Congress, 1st Session (67 Stat. 588) August 15, 1953 which recognized corresponding State jurisdiction in five specified states and in addition gave Federal consent to assumption of similar authority by all states. The 1953 law greatly accelerated a nation-wide movement to terminate Federal control and in certain western states aroused strong opposition due to the belief that some tribes are not prepared for release from such control. It is important to note that all such comments have been directed to Indians other than those residing

in New York State who, as long ago as 1915, were described by Franklin K. Lane, then Secretary of the Interior, as being "fully equipped from an educational, civilization and financial standpoint to stand upon their own feet." As a result, the Federal Indian Agency in New York was discontinued in 1949.

New York State has forbidden real property assessments against reservation lands for about a century (Indian Law, Section 6). Under the Act of June 2, 1924 (43 Stat. 253), U. S. Code, Title 8, Section 3, 1928 "all non-citizen Indians born within the territorial limits of the United States . . . are declared citizens of the United States . . ."

As a result of this Act of Congress, Indians were given the right to vote and exercise the other privileges of citizenship which they did not previously enjoy.

In 1959 the St. Regis Tribe achieved a significant advance in Indian Affairs by granting its women the right to vote. (See Section 17 Indian Law).

The logic and desirability of terminating Federal control were fully appreciated by former President Truman in his message to Congress, delivered October 17, 1949, in which he stated:

"Ultimate acceptance of State jurisdiction is a logical consequence of our policy of assisting Indians to develop their natural talents and physical resources in ways that will enable them to participate fully in our free, but vigorously competitive, society. In the long run, this process of adjustment to our culture can be expected to result in the complete merger of all Indian groups into the general body of our population."

The nature and extent of New York's authority over reservation Indians has been in a more or less continuous state of confusion ever since ratification of the Federal Constitution in 1787. By Article 1, Section 8 of the Constitution, New York delegated to the Federal Government the pre-eminent right to "regulate commerce . . . with the Indian tribes." Elsewhere than in New York, the Federal regulatory power has been generously invoked in ministering to the needs of Indians with correspondingly light demands upon the services of individual states.

The situation in New York has been just the reverse. New York has been active while the Federal Government pursued a general policy of passive non-interference. New York has provided schools, teachers, highways and varied social services and has passed laws for the special protection of the several tribes. New York has been a leader in the movement to increase state jurisdiction over Indians and effect gradual removal of all Federal controls.

In 1954 the New York Legislature enacted L. 1954, ch. 387 which assured education of all Indian children in public schools with other children. L. 1953, ch. 670 repealed the former immunity of certain Indians from contract liability (Section 2 Indian Law) and L. 1953, ch. 671 opened state courts to Indians (Section 5 Indian Law). Proposals for further changes in existing laws and for new legislation are being studied by the Joint Legislative Committee on Indian Affairs.

Indian affairs have been studied by the New York Legislature on several occasions. As early as 1906 the New York State Assembly by a resolution adopted May 5, 1905 appointed a special committee for Indian Affairs by which it was "authorized and directed to investigate and ascertain the extent of the powers now possessed by the State to regulate and control the affairs and property rights of the Indians; what additional legislative powers and control over the Indians should be conferred upon the State by treaty or otherwise, to what extent the several Indian tribes will consent thereto; and what legislation is demanded to meet the conditions now existing among said Indians."

In 1943 by a Concurrent Resolution the Legislature created a Joint Legislative Committee on Indian Affairs "to investigate the present status of Indian affairs in the State of New York and to report thereon." This Committee is still in existence and has issued annual reports since 1944. The Committee has studied the Indian problem and has made recommendations for State Legislation. It has also successfully advocated recent Federal Legislation mentioned above, giving the several states with Indian reservations greater control over their affairs. The reports of the committee provide good background material for anyone interested in the development of laws relating to Indians in New York State together with references to other source material and particularly the development of Federal and State laws affecting rights of Indians generally. The 1958 report of this Committee contains background information on the St. Lawrence Seaway

Appropriation of part of the St. Regis Reservation, the Barnhart Island Claim of St. Regis Indians and the New York State Power Authority Project on the Tuscarora Reservation.

The Department of Social Welfare under Section 39 of the Social Welfare Law is responsible generally for the care, relief, and support of needy Indians residing on the reservations and dependent Indians without state residence residing elsewhere in the state. Agents and attorneys for the various Indian tribes are appointed by the State Board of Social Welfare. Certain annuities are granted to the various tribes in accordance with old treaties.

On November 13, 1952 the Governor at the suggestion of the Joint Legislative Committee on Indian Affairs established an Inter-departmental Committee on Indian relations. The Committee consists of representatives of State Commissioners of Education, Health, Commerce, Social Welfare, Mental Hygiene and Conservation. It is responsible for evaluation and integration of services provided by governmental agencies. In cooperation with the Joint Legislative Committee it makes recommendations for necessary changes in the Indian Law and other Statutes.

The recent litigation involving the St. Regis tribe and the Tuscarora Nation has increased public awareness of the peculiar yet poorly defined relationships between Indians, the Nation and the State and it is encouraging to note that the Joint Legislative Committee has urged that representative Indians be invited to join with delegates of administrative departments in

seeking ways to promote common advantage. Before this can be achieved Indians must resolve to seek the new and great future that their integrity, varied talents, and intelligence assure and abandon the habit of living in the past, brooding over and too often magnifying injustices suffered by their ancestors. The Joint Committee firmly believes that the surest way to guarantee Indians the useful and expected position that awaits them is to discontinue as rapidly as their adjustment warrants all forms of protection and special privilege.

The New York State Law Library is happy to join with the Hon. Louis J. Lefkowitz, Attorney General, in publishing these checklists relating to the American Indians in New York State. The Law Library has prepared a checklist on the recent litigation and a Selected Bibliography on the American Indian - Federal and New York State.

Ernest Henry Breuer
Law Librarian
New York State Law Library

Albany, April 1961

THE AMERICAN INDIAN

A selected bibliography of material on the American Indian - Federal and New York State - in the New York State Library, compiled by Ernest Henry Breuer, Law Librarian.

St. Regis Tribe of Mohawk Indians v. State of New York.

4 Misc. 2d 110, 158 N.Y.S. 2d 540, 5 A. D. 2d 117, 168 N.Y.S. 2d 894, 5 N. Y. 2d 24, 177 N.Y.S. 2d 289, 152 N.E. 2d 411 (1958), certiorari denied 359 U. S. 910, 3 L. Ed. 2d 573, 79 S. Ct. 586 (1959), rehearing denied 359 U. S. 1015, 3 L. Ed. 2d 1039, 79 S. Ct. 1146 (1959).
5 N. Y. 2d 24 - Albany Law Rev. 23:135 (1959)

Tuscarora Nation of Indians v. Power Authority of New York, see 362 U. S. 608.

161 F. Supp. 702, 164 F. Supp. 107, 257 F. 2d 885 (1958) plaintiff's petition for certiorari denied on defendant's appeal, judgment reversed and complaint dismissed on grounds question had been rendered moot by Federal Power Commission v. Tuscarora Indian Nation (see below) (358 U. S. 841, 3 L. Ed. 2d 76, 79 S. Ct. 66 (1958)).

257 F. 2d 885 - Harvard Law Rev. 72:1372 (1959)

164 F. Supp. - Albany Law Rev. 23:135 (1959)

Federal Power Commission v. Tuscarora Indian Nation; Power Authority of the State of New York v. Tuscarora Indian Nation.

265 F. 2d 338 (1959), 362 U. S. 99, 4 L. Ed. 2d 584, 80 S. Ct. 543 (1960), rehearing denied. 362 U. S. 956, 4 L. Ed. 2d 873, 80 S. Ct. 858 (1960)

State Tax Commission v. Barnes.

14 Misc. 2d 311, 178 N.Y.S. 2d 932 (1958).

St. Regis Indians subject to New York State income tax laws; also have right to vote in national, state & local elections.

Matter of Fischer v. Tebo.

9 A. D. 2d 470, 194 N.Y.S. 2d 772 (1959).

Proceeding on application to remove defendant Tebo from St. Regis Indian reservation. Held: tribe has right to determine who is entitled to live on its reservations.

Brenner v. Great Cove Realty Co., Inc., 207 Misc. 114, 137 N.Y.S. 2d 570 (1955); 9 A. D. 2d 948, 195 N.Y.S. 2d 935 (1959); 10 A. D. 2d 717, 199 N.Y.S. 2d 441 (1960); 6 N. Y. 2d 435, 190 N.Y.S. 2d 337, 160 N. E. 2d 826 (1959). Motion to dismiss appeal granted and certiorari denied, sub nom Great Cove Realty Co. v. Brenner, _____ U. S. _____, 81 S. C. 911, _____ L. Ed. _____ (April 17, 1961)

Application of the District Attorney under Sec. 8 of the New York Indian Law on the issue of ownership of lands claimed by the Shinnecock Indian Tribe in Southampton, L. I. After a five year legal battle through the New York courts, the Supreme Court denied certiorari confirming the Indians' claim to title in the State courts. (New York Times - Real Estate Section, May 14, 1961, p. 1)

Laws of the Colonial and State Governments relating to Indians and Indian affairs from 1633-1831 with an Appendix containing the proceedings of the Congress of the Confederation and the laws of Congress from 1800 to 1830 on the same subject. Washington City, Thompson and Hamons, 1832. 250 p. Appendix 72 p.

Indian lands. New York (State) Constitution. Art. 1, Sec. 13.
McKinney's Consolidated Laws of New York Annotated Book 2;
Consolidated Laws Service (CLS).

Indian Law (New York State). McKinney's Consolidated Laws of New York Annotated. Book 25; Consolidated Laws Service (CLS).

Collection of special statutes still in force relating to the several tribes of Indians remaining in the State, with annotations of decisions and schedule of laws repealed.

See also: General Index to Consolidated Laws: Indians, Indian lands, Indian reservations, Indian schools.

_____ L. 1961, ch. 702, Approved April 17, 1961. Amends the Indian Law by inserting a new section, 78, authorizing leases and rights of way on lands within the reservations of the Seneca Nation of Indians.

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"The Attorney General begs leave to present, as a supplement to his Brief in The People ex rel. That portion of the Cayuga Nation of Indians residing in Canada v. The Board of Commissioners of the Land Office, and in the case of said Indians v. the State of New York, now before this court on appeal, the following Treaties there referred to, to which the Cayuga Nation has been in any way a party.

Those treaties, to which the United States was a party, are to be found in the Federal statutes, as cited, but it is believed that, with a single exception, the treaties contracted by the State of New York are to be found only in the engrossed records on file in the office of the Secretary of State of this State. They have been therefore printed in this form to lighten the labors of the court." (99 N. Y. 648, 1 N. E. 764, 1885)

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"Niagara Falls, N. Y., April 22 (UPI)-The Tuscarora Indian nation's fight with the Niagara Power project came to a quiet end today. The end was a line of 584 Indians who received checks from the state of New York. The Indians had fought a losing battle to save part of their reservation north of here.

The United States Supreme Court ordered New York State to pay \$863, 713 for the 550 acres used as part of the reservoir for the Robert Moses generating plant on the Niagara gorge. The Indians had used legal tactics, an 1804 treaty with the Federal government and even passive resistance in their fight for the land. The tribe's grand chief, 71-year old Elton (Black Cloud) Greene gave the checks to the Indians today. 'It was a long struggle, and we're losing our land.' he said. 'There appears little rejoicing.' "

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In addition to the items listed herein the State Library has a collection of documents relative to Indian Affairs, separate publications of Indian treaties with the several tribes of Indians in New York State, constitutions of the several tribes of Indians in New York State, as well as Laws of the Colonial and State governments relating to Indians and Indian affairs and other miscellaneous material relating to Indians in New York State.

POPULATION OF INDIAN RESERVATIONS

Enumeration of 1960

Reservations.	1960
Allegany	1,054
Cattaraugus	1,690
Oil Spring ‡
Oneida*
Onondaga	921
Poospatuck ‡
St. Regis	1,771
Shinnecock	233
Tonawanda	454
Tuscarora	1,901

Indian Reservations in New York

The ALLEGANY RESERVATION, situated in Cattaraugus county, comprises 30,469 acres.

The CATTARAUGUS RESERVATION, situated in Erie, Cattaraugus and Chautauqua counties, comprises 21,680 acres.

The ONONDAGA RESERVATION, situated near the city of Syracuse comprises 7,300 acres.

The ST. REGIS RESERVATION, situated in Franklin county, fronting on the St. Lawrence River comprises 14,030 acres.

The SHINNECOCK RESERVATION, situated near Southampton on Long Island, comprises about 400 acres. The survivors of the Poospatucks reside at Mastic.

The TONAWANDA RESERVATION, situated in the counties of Erie and Genesee, comprises 7,548 acres.

The TUSCARORA RESERVATION, situated in Niagara county, comprises 6,249 acres.

*The former Oneida Reservation was divided in severalty by Chapter 185, Laws of 1843, and the Oneida Nation is no longer existent as a tribe in the state. The Cayuga Nation also has no reservation, having sold their lands as early as 1807. A few members of both tribes still reside with their friends on the present reservations.

‡ Oil Spring Reservation still exists as a tribal holding, although no persons reside there. Poospatuck, also tribal ownership.