
Federal Indian Policy and the Brotherton Indians

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In June 1839, the *Wisconsin Enquirer* editorialized on congressional legislation authorizing citizenship for the Brotherton tribe, an action it viewed as unprecedented. Referring to removal, it addressed their fear of being compelled to leave their homes and improvements and remove further west, as they supposed it to be the policy of the government to get them off the land they then occupied. Characterizing this policy as an evil that doubtless had a dampening effect on their enterprise, the journal neglected to state candidly that, due to this evil, the Brothertons found themselves constrained to take citizenship as the only means by which they might remain in Wisconsin. In this regard, within the context of Federal-Indian relations, the Brothertons as a tribal group are a historically unique people whose significance stems from the fact that in terms of the government's early 19th-century nascent assimilationist policy and its attendant components of allotment and citizenship, they became the original experimental prototype whereby the government, utilizing the device of citizenship, first succeeded in unilaterally abrogating most of its obligations to a tribal entity, since such obligations were seen at that time as incompatible with citizenship.

Failing to obtain a tract of land in Indiana for the Brotherton Indians, then resident in Brothertown, New York, War Secretary John Calhoun strongly urged them to join the Six Nations in removing to the vicinity of Green Bay, Wisconsin. As early as 1820, federal officials sanctioned their relocation to this region. Michigan Territorial governor Lewis Cass, for

example, advised that the wisdom of the policy of permitting them to do such could not be doubted. He expressed the conviction that it was very desirable to place them in that part of the country since their habits and their strong financial ties which bound them to the United States would ensure their fidelity and act as a check upon the more intractable Indians at the frontier areas.

Subsequently the 1821 and 1822 treaties with the Menominees, the Six Nations, and the Stockbridge Indians originally from Massachusetts provided for the purchase of a considerable portion of land, of which the Fox River valley became a focal point, within and beyond the Green Bay region. Although President James Monroe approved these arrangements with the stipulation that the lands conveyed were to be held in the same manner as previously held by the Menominees, he reduced by approximately half the amount of territory ceded in the second agreement. Concerning these negotiations, the Six Nations and the Stockbridge Indians intended that interested parties who desired a share of the lands could acquire that privilege by paying a specified sum agreed upon by the Nations interested in the last purchase. Seizing this opportunity, the Brothertons asked to become proprietors with their New York confreres.

In 1824, the Stockbridge Indians, failing to raise the full amount of their share of the purchase price, approached the Brothertons concerning their willingness to acquire, for the proper consideration, a section of that area especially designated for the former. The Brothertons readily consented to this proposal, an agreement they fully consummated in September. For their \$950, they received a common interest in the lands procured by the 1822 treaty and obtained a portion of the tract specifically reserved to the Stockbridge people. Located in the state of Wisconsin in the general vicinity of present-day Kaukauna and Wrightstown and situated on the southeast side of the Fox River, the Brothertons' new domain measured 240 square miles, equivalent to 153,600 acres.

While these negotiations were taking place, the Menominees abjured their cessions of 1821 and 1822, alleging that none of their principal chiefs were in attendance. They also protested that, in any case, they had no land to sell. Therefore, would the President be good enough to prevent the New York

Indians, as the Brothertons, the Six Nations, and the Stockbridge Indians were collectively known, from coming into their country? The Brothertons and their New York brethren reported in 1825 that in actuality French and other white settlers residing in the vicinity of Green Bay had endeavoured to persuade the Menominees to have animosities against them, and had tried with their utmost influence to prevent the Menominees from taking the goods brought to them by the Brothertons. Lest their hopes and expectations in situating themselves at Green Bay be "blasted", they petitioned the President to protect their interests. That the Brothertons had yet to receive satisfaction two years later is evident in their January 1827 memoir which petitioned President John Quincy Adams not only to confirm their land purchase, but also to extinguish any claim or right the Menominees might have to reside on the tract in question, since the Menominees had reserved to themselves the privilege of residing in common with the Six Nations and the Stockbridge Indians on the lands originally purchased by the latter tribes.

Prompted by such importunities, the government finally intervened in this protracted Menominee-New York Indian land dispute. In March, War Secretary James Barbour instructed Cass and Thomas McKenney to investigate this matter. Should they deem it appropriate to consent to the removal of the New York Indians to the Green Bay region, they were to devise a plan for their settlement so as to guard against future ruptures between them and the Menominees, and to prevent renewed discontents among the white settlers in the area. At the August conference in Butte des Morts, attended by the Brotherton delegates, Menominee representatives insisted that the New York Indians had procured only the right to hold the contested land in common with them. Arguing against this position, Thomas Dean, agent for the Brothertons, the Six Nations and the Stockbridge Indians, submitted documentation supporting the validity of their land purchase from the Menominees. Other than obtaining from the Menominees the territory inhabited by Anglo and French residents, Cass and McKenney, as authorized by the Menominees, submitted to the president for his resolution the various points of contention between them and the New York Indians such that equitable and just boundaries might be established between these tribes.

Referring to the aforementioned Anglo and French inhabitants, the Brothertons and their New York fellows, in a communication to President Adams in 1828, alleged a sellout by the government. Consequently they not only demanded that the late proceedings be rejected, but also called for the appointment of commissioners who were to lack the power to sell New York Indian lands to white settlers, but were fully authorized to assist them in fixing the boundaries of their several locations and to confirm the same to them and their descendants forever. Their protests had some effect. In February 1829, Adams proclaimed an amended Treaty of Butte des Morts which contained a Senate proviso stipulating that it "shall not impair or affect any right or claim which the New York Indians have to the lands mentioned therein."

Desiring to effect a final resolution to this controversy, War Secretary John Eaton appointed a commission to select a suitable country within the limits of that held by the Menominees, and establish boundaries for the accommodation of the New York Indians. It suggested that the Brothertons retain 20,000 acres situated on the east side of the Fox River. President Andrew Jackson agreed and promised to recommend to the Senate their continuance upon the tract. Because this tribe's advanced state of "improvement" made it likely that they would soon become citizens, it was probable that this consideration had weight both with the president and the commissioners in so assigning their lands. Still, describing the commissioners as parsimonious, the Brothertons requested an additional 41,440 acres.

Actually, their recommendations satisfied none of the interested parties. Consequently, in January 1831, all rushed delegates to Washington to plead their respective cases. In a February treaty negotiated with the Menominees by Eaton and Samuel Stambaugh, this tribe ceded to the United States, for the use of all the New York Indians, 500,000 acres located on the west side of the Fox River. When this agreement was presented to them, the Brotherton, Stockbridge, and Six Nations representatives all rejected it, objecting to the provisions which affected their tribes.

Despite this stalemate, Stambaugh proceeded to Green Bay in July and examined the lands set aside for the Brotherton Indians. Declaring this tract more than sufficient for their needs,

he reported that the government's interests now required that they be located together on the west side of the Fox River. After all, if the Menominees were stripped of the largest portion of their country by the New York tribes, they would have no more land to sell. Hence this extensive, fertile and delightful country, worth several millions of dollars, would be lost to the government, its rich prospects of soon becoming a flourishing agricultural and commercial country entirely "blighted". Of the Brothertons, Stambaugh wrote in November that 20 of them had settled on the east side of the Fox River. Advising them to locate on the land set apart for them by the treaty, he told them that their conduct constituted direct opposition to the provisions of the treaty. Such conduct would be construed as a disregard for the government's authority, and might be prejudicial to their interests. Determined to stand their ground, the Brothertons replied that they would settle where they pleased on the land they had purchased.

By late December, the Brotherton representatives hastened to Washington and entered into spirited negotiations with Michigan Territorial governor George Porter. He first insisted that their tribe remove to the northwest side of the Fox River. Later modifying this position, Porter said the government might consent to grant them a small tract of land somewhere along the eastern shore of Lake Winnebago. Thomas Dean, in January 1832, obtained from Porter an additional concession which stipulated that the government would grant this land to the Brothertons in fee simple by letters patent without the power of alienation except by the President's consent. Yet, omitting this agreement and lacking Brotherton signatories, the Senate amendment to the 1831 Menominee treaty, ratified during the early summer of 1832, provided that the Brothertons would receive 23,040 acres located on the east side of Lake Winnebago. On October 27, Porter obtained Brotherton, Stockbridge, Six Nations, and Menominee consent to these arrangements.

Although the Senate ratified this accord in 1833, from the Brothertons' perspective the matter of receiving fee simple patents to their lands had yet to be resolved. Tribal officials petitioned Jackson concerning this in April 1834. Shortly thereafter, the Indian Affairs commissioner asked the General Land Office to issue the Brothertons their land patents. Still, this request remained in limbo.

It soon became evident why the government ignored their entreaty. In September 1835, John Schermerhorn, Jackson's emigration emissary, arrived in the Green Bay country and attempted to convince the New York Indians to exchange their holdings there for lands in present-day Kansas. War Secretary Cass said that the sooner they remove to that region the better, as it was not possible, from the current of emigration which was flowing into the country west of Lake Michigan, that they could remain and improve where they were then. Accordingly, in August 1836, Wisconsin Territorial governor Henry Dodge journeyed to Green Bay for the purpose of discussing this proposition with them.

The council was convened on August 30; Brotherton attendance was conspicuous by its absence. Dodge demanded their immediate appearance. Presenting themselves the next day, the Brotherton delegates said that their tribe required time to consider further the government's proposition. On September 1, they gave Dodge a written response. Their desire to remain in Wisconsin is evident in his reply. Since "they had lost their language," said Dodge, "they could perhaps be incorporated with their white brethren." Later that month, Schermerhorn concluded the removal treaty proceedings. As its principal inducement, this agreement, never ratified by the Senate, stipulated that the New York Indians would receive, through conveyance by the patent from the President as much land in the Indian Territory west of the state of Missouri as they might cede to the United States.

Although the Brotherton representatives had attended the Duck Creek proceedings, this treaty lacked Brotherton signatories. Cutting Marsh, the Stockbridge missionary, expressed serious doubts that the Brothertons would accept it. He observed that a number of them would choose to become citizens rather than remove to lands located southwest of the Missouri River. As Marsh suspected, the Brotherton Nation as a whole not only refused to accede to Schermerhorn's treaty, but also became more and more determined to remain where they were. Accordingly, in December 1837, they petitioned Congress to become United States citizens, and again requested that fee simple patents be issued for their reservation on Lake Winnebago.

In April 1838, War Secretary Joel Poinsett referred their

patent request to Attorney General Benjamin Butler for an opinion which held that

Indians have not been conceded the natural capacity to hold absolute title to lands, except in cases specially provided by treaty; wherefore, the title of the Brothertown Indians to the land secured to them by the treaties with the Menominees is not a fee-simple, but only such right of occupancy as was previously possessed by the Menominees themselves.

Indeed, in the January 1838 Treaty of Buffalo Creek, the government held out inducements similarly proffered in 1836. It further provided that lands secured by patents shall never be included in any state or territory. Although not involved in the negotiations, the Brothertons were included under its provisions. Aware of this arrangement, they again, in October, pressed for citizenship as the means by which they might obtain fee simple patents. Petitioning for both, they insisted that, at the time they received their Lake Winnebago reservation, it was understood that the government would secure it to them by issuing a good and sufficient title of a permanent nature. This had not been done.

Referring to the novel nature of their request, the House committee that reviewed the Brothertons' request duly noted that by adopting the manners, customs, and habits of "enlightened" nations, they became not only civilized, but their considerable progress also rendered them an uncommonly well-ordered and respectable agricultural community. Yet regarding the title issue, they were to be treated as savages. Judging their situation as anomalous, the committee viewed citizenship and fee simple patents as the only effectual means of "civilizing" the Indians. Hence, if this experiment was to succeed, as the committee believed it would, results highly beneficial to the Brothertons could then be expected. Under the circumstances, this committee unanimously recommended that the Brothertons' prayer be answered.

Accordingly, Congress granted their request on March 3, 1839. In the context of having United States and Wisconsin territorial jurisdiction extended over them, the Brothertons would receive citizenship under the provision which stipulated that their power to make or execute their own laws, usages, or customs should cease. Fee simple patents would be issued by the President after a Brotherton commission transmitted

to him, by January 1, 1840, its recommendations concerning a division of land among tribal members. Once this board filed its report, the Brothertons would then become United States citizens. Thereafter, with the exception that they would not be deprived of the right to any annuity due them from the United States, their rights as a nation would end — a condition unanticipated by them, and one which constituted a unilateral abrogation by the government of most of its responsibilities to this tribe.

Inherent in the preceding is the fact that the Brothertons found themselves constrained to become citizens. Hampered in their efforts to maintain an otherwise tenuous hold on their Lake Winnebago lands by a federal policy the first priority of which decreed an accommodation of white agrarian interests that viewed Indian title as a right of occupancy subject to extinguishment, the Brothertons had first sought, in 1832, fee simple patents as a means of not only strengthening their position, but also of preventing any further westward removal. Although the Brothertons were highly acculturated, the government denied their request, ironically enough, on the grounds that Indians lacked "the natural capacity to hold absolute title to lands" — unless, of course, they relocated to present-day Kansas. Citizenship, therefore, became the basis upon which the Brothertons might protect their land base and remain in Wisconsin. Indeed, the government grudgingly permitted them to take lands on Lake Winnebago only because, as early as 1830, officials predicted that due to their advanced state of "improvement" they would soon become citizens, a standing which posed no threat to the aforementioned policy priority. Hence, their accelerated level of acculturation caused them as a tribe to become, unwittingly, the original experimental prototype whereby, in an unprecedented action, the government utilized the device of citizenship to unilaterally abrogate its obligations to that tribe. These governmental obligations were thought incompatible with citizenship. All of this constituted a further irony since the Brothertons never anticipated that, by this measure, the government intended to reduce sharply its responsibilities to them. Nevertheless, the Brothertons deemed continued maintenance of federal obligations vital to their interests. Belatedly discovering the degree to which their new status had become a detriment in its actuality, the Brothertons

rejected the government's position of diminished responsibilities and periodically importuned it to place them on an equal footing with other tribal groups.

In this connection, although the statute providing for Brotherton citizenship stipulated that their rights as a nation would cease, it is silent on the issue of whether such cessation of rights constituted an actual dissolution of the Brotherton tribe, especially since Congress failed to state explicitly that their tribal character would become extinct also. Obviously, as seen by the aforesaid importunations, the Brothertons never believed this to be the case. Indeed, in 1885, the Wisconsin Supreme Court declared that the Brothertons' tribal character remained intact. Furthermore, the provision which permitted the Brothertons to retain their right to receive annuities due them from the United States in effect actually continued the government's relationship with them. Of particular interest in this regard is that, contrary to the government's theory that the assumption of citizenship by a particular tribe permitted it to unilaterally abrogate most of its responsibilities to Indians so electing this status, the United States Supreme Court held in 1916 and again in 1921 that tribal existence and continued guardianship were not incompatible with citizenship. The import of this suggests that the Brothertons' position regarding these issues was on solid ground. Viewed in terms of the federal government's early 19th-century nascent assimilationist policy and its attendant components of allotment and citizenship, the Brotherton experience is not only highly significant, but also sheds additional light on federal Indian policy as it operated during the Jacksonian era.

