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The Haudenosaunee Cayuga Nation Land Claim: *Cayuga Nation v. New York*

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ESSAY

The Haudenosaunee Cayuga Nation Land Claim: *Cayuga Nation v. New York*

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The Haudenosaunee are defined as the People of the Longhouse. The Longhouse is a way of life that does not separate "church and state." The Longhouse thus includes both the Council of Chiefs and the rituals of thanksgiving. Only the traditional governments of the Haudenosaunee, as the inheritors of the governments that negotiated the treaties, and as the inheritors of the sovereignty that was manifested by the Great Law of Peace, have the right to negotiate land claims and treaty rights of the Mohawk, Oneida, Onondaga, Cayuga, Seneca and Tuscarora Nations.

Land is the flesh of our Mother Earth. The land is a living entity that contains a sacred spirit to assure our survival. There is no rationale for selling our Mother, the Earth. We find it difficult to understand how some of our people agreed to sell land in the past. There are some actions of the past we cannot reverse no matter how much we would like to. However, the Haudenosaunee firmly believe that a viable claim can be made for land that was taken from our ancestors in violation of the federal laws meant to protect our safe and free use of our land.

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† Heron Clan Representative of the Cayuga Nation. The following Essay is based on a speech delivered on March 21, 1998 at the *Buffalo Law Review* Symposium on Law Sovereignty, and Tribal Governance: The Iroquois Confederacy.

The negotiated treaties of peace and friendship called for the "ceding" of certain lands to the United States, and the Haudenosaunee agreed to these actions. The United States pledged to protect the Haudenosaunee in the safe possession of their remaining territories. However, the State of New York, land speculators and corrupt officials sought to obtain Haudenosaunee lands despite the treaty obligations of their own country.

From the signing of the Fort Stanwix Treaty in 1784[1] to the formal implementation of the Constitution of the United States in 1789, New York State acted quickly to negotiate a series of so-called "treaties" whereby some Onondagas, Cayugas and Oneidas agreed to cede most of their territories to the State. These actions resulted in the first "reservations" for our people. The status of the land that was taken under these agreements remains clouded by the conflicting laws of the United States and the State of New York, as well as our concerns that our own laws were violated. We believe that these lands still belong to the Haudenosaunee and we will continue to make a rightful claim for their restoration.

On February 25, 1789, the State of New York and some Cayugas signed a so-called "treaty" ceding three million acres of aboriginal lands.[2] This left a 64,000 acre reservation plus two other smaller tracts referred to as "Rychman Square Mile" and "Cayuga Ferry Square Mile."

In 1790, the Indian Trade and Non-Intercourse Act forbade states to make treaties with Indians.[3] Four years later, the Canandaigua Treaty was signed between the Six Nations and United States President George Washington.[4] This treaty reaffirmed the lands guaranteed to the Cayugas.

On June 13, 1795, Israel Chapin Jr. wrote to Timothy Pickering, Secretary of War, to tell him that interpreter

1. Treaty With The Six Nations at Fort Stanwix, Oct. 22, 1784, 7 Stat. 15 [hereinafter Treaty of Fort Stanwix].

2. Treaty With The Cayugas, Feb. 25, 1789, New York-Cayuga Nation, *in* REPORT OF THE SPECIAL COMMITTEE TO INVESTIGATE THE INDIAN PROBLEM OF THE STATE OF NEW YORK, APPOINTED BY THE ASSEMBLY OF 1888, at 47 (1889) [hereinafter WHIPPLE REPORT]

3. Trade and Intercourse Act, ch. 33, 1 Stat. 137 (1790) (current version at 25 U.S.C. § 177 (1994)).

4. Treaty With The Six Nations at Canandaigua, Nov. 11, 1794, 7 Stat. 44 [hereinafter Treaty of Canandaigua].

Jasper Parrish was then at Buffalo Creek to bring the State and the Cayugas and Onondagas together to make a treaty.[5] Three days later, United States Attorney General William Bradford told Pickering that no sale of land by any Indian tribe was valid unless it was entered into by the federal government. However, on July 27, 1795, the New York State "treaty" with the Cayugas gave up lands bordering Cayuga Lake except two square miles where Union Springs is located and one square mile known as the "Mine Reservation."[6] Parrish signed as interpreter. Chapin Jr. signed, but there is no indication in what capacity. The State received $247,609.33 more than it paid.

On July 29, 1795, Pickering wrote to Chapin, on behalf of Washington: "I have now to instruct you, besides giving no countenance to this unlawful design of the New York Commissioner . . . you are to tell those tribes of Indians that any bargain they make at such a treaty will be void."[7] Chapin Jr. wrote to Pickering on July 31, 1795, telling him he had not received Pickering's letters until after he had returned from the treaty signing. "I have endeavored not to interfere in the business as I supposed the commissioners were fully authorized by the United States . . . " Chapin Jr. said he attended as a private individual only and had signed as a witness of signatures.

Pickering replied to Chapin Jr. approximately one month later that purchases from the Indians such as the commissioners made were invalid. Nevertheless, on November 1, 1796, Simeon Dewitt, State Surveyor-General, began the sale of Cayuga Reservations land. On February 26, 1807, the Cayugas ceded all remaining land to New York, some 3200 acres for $4800—$1.50 an acre. Parrish was appointed to succeed Chapin Jr., who signed as interpreter and witness.

From 1970 through 1976, the Cayuga Nation researched treaties, deeds and current landowners. The Nation gathered documents from the New York State Museum, the Smithsonian and the federal government.

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5. *See* Cayuga Indian Nation of N.Y. v. Cuomo, 730 F. Supp. 485, 487 (N.D.N.Y. 1990).

6. *See* Treaty With The Cayugas, July 27, 1795, *in* WHIPPLE REPORT, *supra* note 3, at 224.

7. *See* Cayuga Indian Nation of N.Y. v. Cuomo, 730 F. Supp. 485, 491 (N.D.N.Y. 1990) (quoting letter of Pickering which characterizes New York's treaties with Indians as "repugnant to the law of the United States").

The Cayuga Nation and the State of New York worked out a settlement offer between the years of 1977 and 1980. This led to the proposal of H.R. 6631, which was defeated by a 3-2 vote.

In December 1980, the Cayuga Nation filed a lawsuit against 11,000 New York State defendants for 64,000 acres of land and $350 million in damages. Since 1981, the Cayuga Nation land claim lawsuit has been argued in front of U.S. District Judge Neal P. McCurn of the Northern District of New York in Syracuse, New York. Judge McCurn ruled in favor of the Cayugas on all issues, such as laches, statute of limitations and the validity of state treaties.[8] In 1982, the United States federal government allowed the Seneca-Cayuga tribe of Oklahoma to enter the case as a plaintiff-intervener.

Ten years later, the United States intervened as a plaintiff-intervener on behalf of the Cayuga Nation. This enabled the Cayuga Nation to sue the State of New York.

In March 1996, lawyers of all four governments involved in the case agreed that Howard Bellman of Madison, Wisconsin was an acceptable choice for a mediator. In September of that year, Arthur J. Gajarsa was nominated by President Clinton to be a federal appeals judge. His confirmation was put on hold until after the presidential election. Finally, Arthur J. Gajarsa was appointed a federal appeals judge in November of 1997.

On April 18, 1998, the Cayuga Nation selected Martin Gold of Gold, Farrell & Marks of New York City. The Cayuga Nation court hearing took place on July 9, 1998 in federal district court in front of Judge Neil P. McCurn. The Judge ruled on current motions made by Seneca and Cayuga Counties. These motions were denied.

From September 16 through September 18 that same year, the issue of remedy for the hardships suffered by the Cayuga Nation and People was tried.

The Haudenosaunee believe that the elective governments and other administrative mechanisms have no authority to file land claims as they are instrumentalities of

8. The lengthy lawsuit of *Cayuga Indian Nation of N.Y. v. Cuomo* has generated many reported decisions. *See* 89 F.R.D. 627 (N.D.N.Y. 1981); 544 F. Supp. 542 (N.D.N.Y. 1982); 565 F. Supp. 1297 (N.D.N.Y. 1983); 667 F. Supp. 938 (N.D.N.Y 1987); 730 F. Supp. 485 (N.D.N.Y. 1990); 758 F. Supp. 107 (N.D.N.Y. 1991); 762 F. Supp. 30 (N.D.N.Y. 1991); 771 F. Supp. 19 (N.D.N.Y. 1991).

the United States, Canada or the State of New York. On the contrary, the Traditional Council of Chiefs remains the sovereign authority over those lands. The Haudenosaunee have consistently stated that if a land claim on behalf of the Confederacy or its member Nations is to be filed, the land is to be restored to Haudenosaunee possession. As a result of conspiracy, fraud, duplicity and coercion among some the perceived and selectively recognized leaders, our territories became divided in violation of the Great Law of Peace, the philosophic traditions of the Haudenosaunee and federal treaties that pledged that our lands would remain ours.

The land claims test the honor of the United States and Canada to keep their word, to abide by the treaties that are the Supreme Law of their own lands. Any arguments to the contrary simply provide a rationale for the theft of land from Indians. The Haudenosaunee believe that the time has come to rectify this appalling situation. Does the solemn word of the United States, as expressly written in our treaties, mean nothing? Do the promises made by President George Washington to our leaders mean nothing? The Haudenosaunee call upon the State of New York, the Government of the United States, the Provinces of Ontario and Quebec and the Government of Canada to stand proud and honor the words and promises of their ancestor governments to the Haudenosaunee. If the obligations of the past are not kept, how can these governments expect their people to respect their visions for the future?

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