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The Grand River Cayugas and International Arbitration, 1910–1926

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The efforts of the Hodinöhsö:ni´ (Iroquois Confederacy/Six Nations) to bring international attention to violations of its treaty rights are not recent, nor did they begin in 2007 with the passage of the United Nations Declaration on the Rights of Indigenous People.[1] In the early 1920s, Levi General, a Cayuga Bear Clan sachem from the Six Nations Reserve who held the official title of "Deskaheh," brought his people's grievances against Canada to the League of Nations in Geneva, Switzerland. As a representive of the Iroquois Confederacy Council (a council different from the one based at Onondaga in central New York), Deskaheh brought complaints about the Dominion government's interference in the internal affairs of the Six Nations and its failure to abide by the commitments made by Great Britain dating back to 1784. His goal was to convince the League's delegates to allow the Hodinöhsö:ni´ to be recognized internationally as a nation with the right to bring their case against the Ottawa government before the Permanent Court of International Justice at The Hague.[2]

Historians have failed to see how Deskaheh's lobbying efforts before the League are connected to the contemporaneous Grand River Cayuga treaty case before the American–British Claims Arbitrational Tribunal operating from 1910 to 1926.[3] It was no coincidence that these cases overlapped in time. Indeed, before abandoning his efforts in Europe and leaving Geneva in 1924, Deskaheh proclaimed his support for international arbitration: "the said Six Nations as peace-loving and law abiding, [an] autonomous and independent state are desirous of availing themselves of the

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Figure 1: *Deskaheh and Decker at the League of Nations, 1923 with their supporters, members of the International Office for the Protection of Native People. First row center: Levi General wearing buckskin, a shell sash, and a Plains headdress. First row left: attorney George P. Decker holding a wampum belt. An unknown man on the right appears to be displaying the Two Row Wampum Belt. Photograph courtesy of the Indigenous Peoples' Centre for Documentary Research and Information, Geneva, Switzerland.*

Hague Convention of 1899 (1) and 1907 (2) for the pacific settlement of international disputes." He added that his Indigenous peoples would "adhere to the rules and regulations now made or to be made under the auspices of, and by virtue of, the said conventions."[4]

These two efforts were part of a larger Iroquoian nationalist resurgence in the decades before, during and after World War I.[5] Although Deskaheh's activism was directed toward condemning Canadian authorities' interference in Hodinöhsö:ni´ self-rule and the tribunal dealt with the failure of New York State to pay treaty annuities to the Grand River Cayugas, both were attempts to gain recognition of treaty rights in the international arena. Moreover, in both instances, the Grand River Cayugas first appealed to the British Crown, hoping that its government would intervene and help resolve the matter; George P. Decker, a prominent Rochester, New York attorney, played a major role in each case.[6]

On August 18, 1910, United States Secretary of State Philander Knox and British Ambassador to Washington James Bryce signed an accord establishing the American–British Claims Arbitrational Tribunal whose aim was to adjudicate longstanding controversies between the two nations. On July 19, 1911, the United States Senate approved the creation of this tribunal and agreed to submit outstanding pecuniary

claims between the two countries before it.[7] Subsequently, Severo Mallett-Prevost, a distinguished Mexican American international attorney who had served as an arbiter on the Venezuelan–British Guiana boundary arbitration tribunal of 1890, was appointed counsel for the United States delegation to the tribunal; he was soon replaced by Robert Lansing, later secretary of state. Serving as the tribunal's first president was M. Henri Fromageot, professor of law at the University of Paris, counsel to the French Foreign Ministry, early promoter of the League of Nations, and later a jurist at the Permanent Court of International Justice at The Hague. At the opening session held in Washington, DC on May 13, 1913, Fromageot proclaimed, in high-sounding words, "Today the United States Government and the Government of His Britannic Majesty give another example of the same confidence in the law and the pacific method of adjusting their claims as it is really proper between civilized nations."[8]

After this opening session, three others were held, in Ottawa on June 9, 1913, in Washington, DC from March 9 to May 1, 1914, and in London, from October 15, 1924 to December 1925, just before Christmas.[9] This tribunal was to adjudicate one hundred pecuniary cases, divided into four categories, affecting nationals and companies of the two nations. Class I claims were based on denial of real property rights, which included the British claim against the United States on behalf of the Grand River Cayugas and United States claims related to British citizens' property in Fiji. Class II claims were related to acts by both governments in regard to shipping and alleged wrongful collection or receipt of customs duties or other charges. Included here were Canadian claims of unfair duties on their hay exports and United States fishing claims against the British for Newfoundland's interference with New Englanders' fishing rights. Class III were claims that resulted from military and naval operations or the negligence of civil authorities in both countries. In this category, Great Britain claimed damages that affected four of their companies during the Aguinaldo Insurrection in the Philippines, and United States claimed damages to the Union Bridge Company during the Boer War and to the Home Missionary Society in the British protectorate of Sierra Leone. Class IV involved British claims for United States violations of contracts that included one with a Canadian lumber company in the Yukon. The tribunal's Grand River Cayuga case, despite being the oldest unsettled claim on the docket, was the very last to be adjudicated.[10]

The Origins of the Grand River Cayuga Claim, 1789–1849

At the time of contact with Europeans, the Cayuga homeland encompassed what today is the region around Cayuga and Owasco Lakes in central New York, a territory which lay between the Onondaga in the east and the Seneca in the west. Their fishing and hunting territory was much larger, probably extending to Lake Ontario in the north and south into Pennsylvania along the Susquehanna River.[11]

With the coming of the American Revolution, the Cayugas attempted to remain neutral, with many, but not all, eventually being drawn into the conflict on the side of the British, led by their famous war chief Fish Carrier. During the Sullivan-Clinton expedition of 1779, the Continental army destroyed the Cayuga villages on the east

Figure 2: *Guy Johnson Map presented to William Tryon, Royal Governor of New York Colony. Source: New York State Library.*

side of Cayuga Lake; Colonel Henry Dearborn's force destroyed the villages on its west side. As a result, Cayugas fled to the Niagara frontier, many taking refuge at British Fort Niagara.[12]

Cayuga refugees soon established themselves as a community along Cayuga Creek at the extreme northern edge of what became the Senecas' Buffalo Creek Reservation. After the Senecas were dispossessed of this reservation in the federal removal Treaty of Buffalo Creek in 1838, Cayugas there resettled forty miles south on the Cattaraugus Reservation, although some were enticed to migrate to Kansas, then part of Indian Territory. After the American Revolution, fearing reprisals and getting British assurances of protection and land, some Cayugas under the influence of Mohawk war chief Joseph Brant moved to Canada, establishing themselves on what became the Six Nations Reserve along the Grand River in Ontario. On these lands, they reestablished their own Iroquois Confederacy. Later, after a series of state treaties from 1789 onward, in which they were dispossessed of their lands, other Cayugas under the leadership of Fish Carrier migrated to Canada from western New York.[13] The descendants of this second migration of Cayugas first brought their case for justice before the American–British Claims Arbitration Tribunal.

In the years before, during, and after the War of 1812, state and federal policymakers believed that the Six Nations had to give way to what was "required" for the state's future and their own personal wealth. Their idea of "progress" did not include the Six Nations remaining on their lands. For example, worried about the presence of British forces on its northern border, state officials pushed the Hodinöhsö:ni´ to make land cessions from 1785 onward. These lands were seen as an essential piece in building a transportation network to the Great Lakes. Land speculators—including prominent state legislators and members of the New York State Board of Canal Commissioners—acquired these same lands at auction, which, after canals and turnpikes were built, attracted increasing numbers of Americans and became more valuable, resulting in rising profits.[14] Similarly, on February 25, 1789, New York State officials concluded the first of several treaties with the Cayugas. The Cayugas reserved a tract around the northern end of Cayuga Lake of one hundred square miles, while the state acquired a vast tract of land extending from Lake Ontario to the border of Pennsylvania. The Cayugas living at Buffalo Creek strongly objected to this sale. However, after they received an annuity, they approved the 1789 treaty with all its stipulations on June 22, 1790, including ceding to the state all claims, interest, and rights in land east of the so-called "Line of Cession" set forth by New York and Massachusetts in the Hartford Convention of 1786.[15]

This 1790 state treaty, it must be noted, was ratified only one month before Congress enacted the first Trade and Intercourse Act, which forbade such Indian land sales either to persons or to states, except "at some public treaty, held under the authority of the United States."[16] On March 1, 1793, Congress enacted a second Trade and Intercourse Act clearly stating that treaties with the Indians had to be "held in the presence, and with the approbation, of the commissioner or commissioners of the United States, appointed to hold the same." The preceding clause of this act specified, "any purchase of land was of no validity unless made by "treaty or convention entered into pursuant to the Constitution."[17] As was true of all treaties, they had to be brought before the United States Senate and approved by a two-thirds vote in order to be binding. The next year, on November 11, 1794, the United States made its third postwar treaty with the Six Nations at Canandaigua, New York. In Article II, the United States specifically acknowledged the lands reserved to the Cayugas in treaties previously made with New York, and made the commitment that these lands would be undisturbed and remain in Cayuga hands "until they choose to sell the same to the people of the United States, who have the right to purchase."[18]

Nonetheless, a few months later, on July 27, 1795—with no federal Indian commissioner present to supervise and watch over the proceedings—Albany commissioners "negotiated" the Treaty of Cayuga Ferry with the Cayugas, by which New York State "bought" 64,015 acres around Cayuga Lake. After the treaty, the Cayugas retained only two parcels on the east side of Cayuga Lake, one consisting of two square miles and the other, one.[19] The state-acquired lands were sold at public auction. Simeon De Witt, the surveyor-general of New York, later indicated in 1801 that after the Cayuga Reservation lots were purchased from the Cayugas for $.50 per acre in 1795, the lots then sold at auction for an average of $6.25 per acre![20]

In a subsequent illegal action, in 1807 New York State "bought" the two small tracts on the east side of the lake outright, without an added provision for annuities. This treaty likewise had no authorized federal Indian commissioner present and never was ratified by the US Senate.[21] In 1841, New York "bought" the last remaining Cayuga lands in the state—the one-square-mile parcel at Canoga reserved for Fish Carrier in the Treaty of Cayuga Ferry in 1795.[22] After 1809 officials in Albany stopped making New York State's required treaty annuity payments to Cayugas at Grand River, although they continued making payments to those on the American side of the border. This failure to honor these annuities motivated the Grand River Cayugas to bring their case before the American–British Claims Arbitration Tribunal.

For the next two hundred years, both the Cayugas residing on the Seneca reservations in western New York and those on the Six Nations Reserve on the Grand River in Ontario claimed to be the rightful successors of the Cayugas who had signed the state treaties from 1789 to 1795. Each, however, have had two distinct concerns. The Cayugas who were mostly residing on the Cattaraugus Reservation sought land or monetary compensation to purchase land back in western New York; their kin residing across the international boundary line at the Six Nations Reserve, who were much more numerous, sought the treaty annuities from Albany that had not been paid to them since 1809. Importantly, the two bands of Cayugas found themselves on opposite sides during the War of 1812. According to historian Carl Benn, the war "largely confirmed the divided relationships between the Six Nations living across the white border from each other. He added, "It was almost unthinkable that the separate league council fires which had burned at Buffalo Creek and on the Grand River could now be united, chiefly because so much bitterness had developed between the Canadian- and American-resident Iroquois, but also because they lived under the suzerainty of two different white powers."[23] Although there were immediate postwar attempts to rekindle the relationship, the bitterness has lingered even into the twenty-first century.

After the war, New York State used the excuse that the Grand River Cayugas had forfeited their treaty annuities by allying themselves with the British military against the United States. Instead, state officials distributed treaty annuities to only those Cayugas residing in New York. This punishment went against the wording in the Anglo–American Treaty of Ghent of December 24, 1814 that was intended to end the war. Article IX provided that once the Indians desisted from hostilities against American citizens, the United States would "restore to such Tribes or Nations respectively all the possessions, rights, and privileges which they may have enjoyed or been entitled to in one thousand eight hundred and eleven previous to such hostilities."[24] Although the Cayugas living on Seneca reservations in New York frequently brought their complaints about the state treaties to both Albany and Washington officials, the Grand River Cayugas waited to petition for relief until after the loss of the last Cayuga property, the Fish Carrier parcel along their Cayuga Lake homeland in 1841.

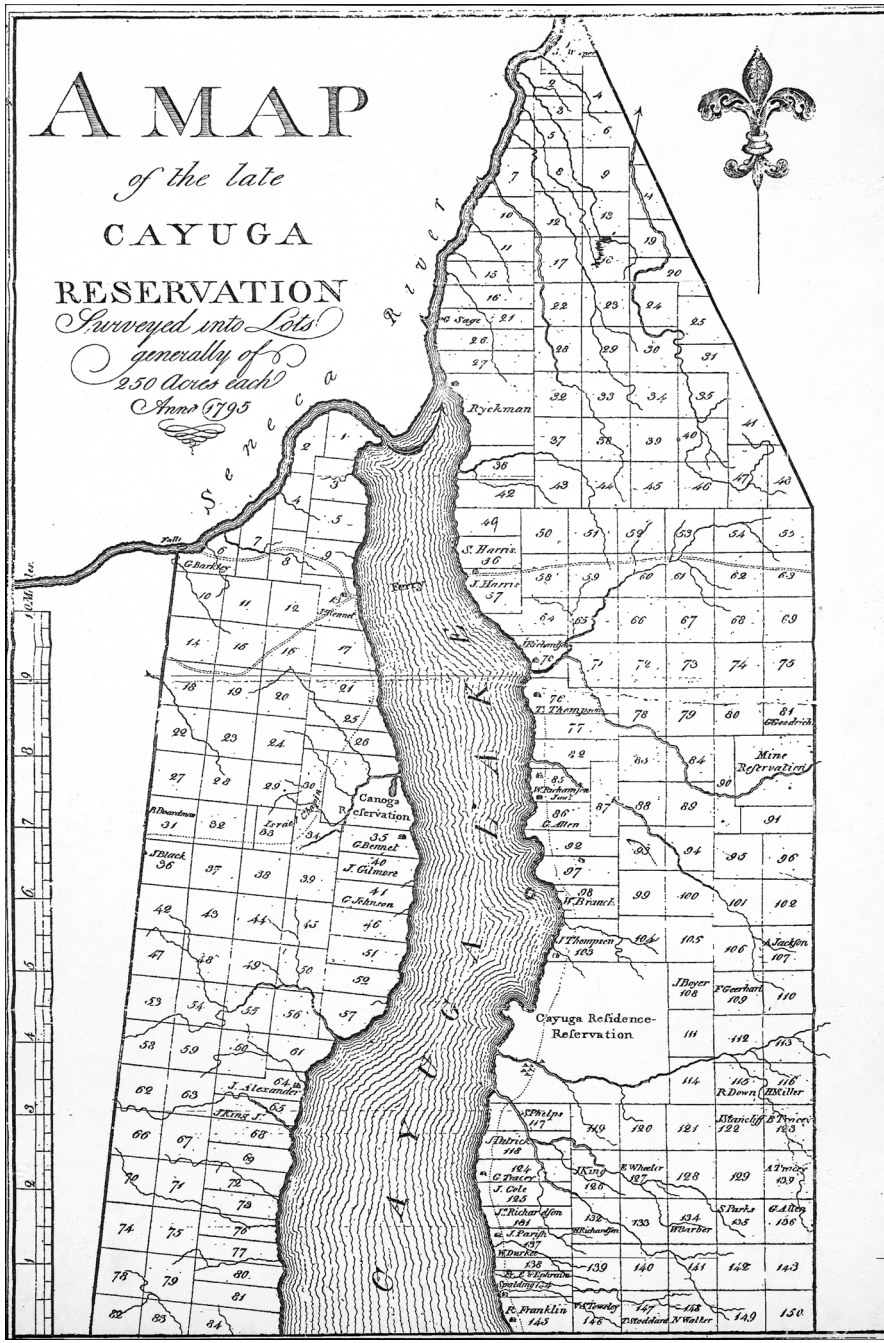

Figure 3: *Lots for Auction of the Cayuga Reservation under the New York State Treaty of Cayuga Ferry, July 27, 1795. Source: New York State Archives.*

First Efforts, 1849–1896

Eight years after this last tract was lost, twenty-seven "Chiefs and Principal Men of the Canadian Branch of the Cayuga Nation," who included Allan Cayuga, Joseph Monture, Silversmith, and William Fish Carrier, filed a petition before the New York State Legislature claiming that the state had deceived them by not paying them their treaty annuities since 1809. The chiefs concluded, "[Albany officials] have gotten from us all our lands, and have refused to pay us the monies which they have promised to do as the consideration thereof."[25] Eleven years later at a meeting at the Cayuga Council House at Caledonia on the Six Nations Reserve, nineteen petitioners, who included Chiefs Joseph and George Monture and John Fish Carrier, petitioned the governor-general of Canada to help them secure their treaty annuities from New York State.[26]

In 1882, a delegation of Grand River Hodinöhsö:ni´ headed by the grandson of Fish Carrier hired James Clark Strong, a prominent Buffalo attorney, to take up their case. Strong, a Civil War hero permanently disabled in the conflict, was working for the Seneca Nation at the time. To show their nation's standing was legitimate, the Cayuga delegation brought with them the silver peace medal given to Fish Carrier by President Washington in 1792 and the parchment of the 1795 New York State Treaty with the Cayugas.[27] In serving Fish Carrier's Canadian descendants, Strong was to argue that the Grand River Cayugas were transnational peoples who had residual treaty rights in New York State. He insisted that because of the state's failure to pay them their treaty annuities, they were entitled to an amount of $2,300 per year for the past seven decades. The claim wended its way through state agencies; however, Strong's argument was stymied repeatedly by the words and actions of Denis O' Brien, the state's attorney general. Strong then sought relief in state courts. In 1885, the New York Court of Appeals rejected the claim, deciding that these Hodinöhsö:ni´ had no official standing to bring the suit.[28]

Strong, however, did not give up the fight. Breveted a brigadier general, he used his political and military connections to get a bill introduced into the New York State Legislature in 1886 and lobbied for passage for the next three years. In 1888, the legislature finally established a commission to determine whether there was merit to hearing the claim with Herbert Bissell, a leading Buffalo attorney, appointed to head it. His commission heard testimony from, among others, the aged widow of Cayuga Chief George Monture, William Henry, Fish Carrier's grandson, and Onondaga Sachem John Buck, who held the title of Wampum Keeper of the Iroquois Confederacy, a position in which he served as its official archivist and historian. Accepting attorney Strong's arguments, the Bissell commission concluded that: the Grand River Cayugas were legitimate heirs to the Cayugas who made treaties with New York between 1789 and 1795; the state had no equitable right to allocate treaty annuities only to the 276 Cayugas who resided in Seneca territory in New York given that approximately 900 others resided in Canada; and the Treaty of Ghent of 1814 had restored Grand River Cayuga treaty rights.[29]

At the same time as the Bissell hearings, also taking testimony was the state assembly committee on Indian Affairs, headed by James S. Whipple of Salamanca,

New York. Instead of addressing the annuity question, the Whipple Committee was blatantly racist as it slandered Hodinöhsö:ni´ cultural and religious practices and promoted the allotment of reservation lands in fee simple title. As a result, state legislators increasingly began to question the need to settle the Cayuga annuity question when the current federal and state policy priorities were to divide up reservations and extend United States citizenship to the Indians.[30]

On April 15, 1891, a three-member state legislative committee stonewalled Strong's efforts on behalf of the Grand River Cayugas. The committee concluded that when the Canadian Cayugas left the United States "and sought protection and the bounty of the English government prior to the War of 1812," they "ceased to be members of the Cayuga nation which was recognized and acknowledged by this State." Its report added, "by such emigration said Canadian Cayugas surrendered all claim for interest in the annuity funds and property of said Cayuga nation of Indians." Also dismissing Strong's arguments about the Treaty of Ghent, the committee went even further and recommended that the state cease paying the annuity altogether and withdraw formal recognition of the Cayuga Nation within its borders.[31]

The Road to Arbitration, 1896–1910

The push for the resolution of the claim was directly affected by Great Britain's growing relationship with the United States in the two decades prior to World War I. After Strong retired from practicing law in 1896 and moved to Los Gatos, California, the Grand River Cayugas once again turned to Great Britain for help. In characteristic fashion, they appealed to the British Privy Council to intervene, emphasizing their past service as allies of the crown, a long-time strategy they had employed since the American Revolution. In 1897, Julian Pauncefote, the British ambassador to the United States, and Richard Olney, the American secretary of state, had negotiated a treaty to lessen international tensions and prevent a conflict over the Venezuelan boundary line. The two then negotiated "a general obligatory treaty to arbitrate pecuniary and territorial disputes for a five-year period" that would exempt matters such as territorial integrity, vital interests, or concerns about national honor. The treaty was rejected by the United States Senate by a mere three votes, but did not stop the push for arbitration of the Grand River Cayuga claim.[32] On April 21, 1898, in a major speech at Mansion House in London, the newly appointed Secretary of State John Hay characterized the United States' new relationship with the British government as "a partnership in beneficence."[33] Three years later, this growing cooperation led to the Hay-Pauncefote Treaty in which the British gave the United States permission to build an isthmusian canal on its own.

On June 9, 1898, Pauncefote wrote to the US Department of State urging that the longstanding Grand River Cayuga claim be finally resolved: "After the War of 1812, payment of the annuity to the Canadian Cayuga was declined on the ground that they forfeited their rights by siding with Great Britain. That refusal is, however, clearly untenable, since article 9 of the Treaty of December 24, 1814, expressly provides that the United States shall restore to Indian Tribes with which they were then at war

all possessions, rights or privileges which they may have enjoyed or been entitled to, previous to such hostilities."[34] The British ambassador then recommended that the matter be dealt with by an international arbitrational tribunal, a proposal rejected by Governor Theodore Roosevelt who referred to the claim as having "doubtful validity," since it had already been denied by the state legislature and by the courts.[35] The Grand River Cayugas then appealed to Gilbert John-Elliot-Murray-Kynynmound, the fourth Earl of Minto, the British governor-general of Canada, and later member of the queen's privy council.

In 1902, some fifteen Grand River Cayugas chiefs in council accepted the idea of arbitration, and began pushing the crown to take up their cause and arbitrate their annuity claim with the United States, which it finally did in 1910.[36] The movement for arbitration of international disputes gained more and support in the international community, resulting in the convening of a second international conference at The Hague in 1907, one attended by more than 250 delegates representing forty-four nations.[37] On March 22, 1910, at a time when Great Britain and the United States were in negotiations to conclude another treaty, President Taft addressed the American Peace and Arbitration League in New York City and insisted that all disputes between nations be settled through arbitration.[38]

Even before the second Hague conference, Rochester attorney George Decker was busily calling into question Albany's past Indian policies, as well as its treaties with the Hodinöhsö:ni´. Between 1905 and 1926, Decker represented four Hodinöhsö:ni´ nations, both elected and traditional councils, as well as the Iroquois Confederacy Council along the Grand River. Despite his stints in state government serving as deputy attorney general and counsel for the state conservation commission (Decker also ran for a seat in Congress twice, in 1910 and 1912), he challenged policies in and out of court at a time when most non-Indians saw Native Americans as a "vanishing race" and tribal sovereignty was increasingly coming under attack. Much of his work was invisible to the public, done behind the scenes as a researcher preparing legal briefs or as a lobbyist. Upon Decker's death in 1936, the *New York Times* observed that he was a "recognized authority on Indian treaties and champion of the red man in controversies with the Federal and State Governments."[39]

Although most of his legal efforts on behalf of Hodinöhsö:ni´ ended in losses and were subsequently criticized by some prominent members of the Six Nations, nevertheless attorneys have used Decker's extensive treaty research for the past half-century as part of the struggle for the recognition of Indian sovereignty, and protection and return of lands.[40] In 1905, Decker agreed to work on behalf of the Cayugas, after the death of their lawyer John Van Voorhis, a former distinguished congressman from Rochester. At the time, Van Voorhis' firm was busily working for the Seneca Nation in their fight against allotment of its reservations. When the deceased congressman's two sons, attorneys Charles and Eugene Van Voorhis, became overly strapped by their lobbying efforts for the Senecas, they decided to contract out some of their work to Decker.[41]

On behalf of their clients—Cayuga Chiefs David Warrior, Ernest Spring, and Elon Eels—Decker and Charles Van Voorhis filed a memorial, "In the Matter of the

Cayuga Nation of Indians," with the New York State Commissioners of the Land Office on February 14, 1906. The memorial stated that as a result of a treaty in 1789 and despite provisions of protection in the treaty, the state made enormous profits and allowed white settlers to overrun Indian lands. The memorial also challenged the state treaty with the Cayugas of 1795, which occurred even though the legislature in Albany already had passed "An Act for the better support of the Cayuga Nation."[42] For the next four years Governor Charles Evans Hughes rejected this effort and subsequent appeals by Cayuga Chief Smoke Fish Carrier.[43] In 1911, Thomas Carmody, the newly elected New York state attorney general, also rejected the claim. He insultingly referred to the Grand River Cayugas as "aliens" from Canada, questioned their assertion that they were descendants of Fish Carrier, and stressed that the state's purchase of Cayuga lands was constitutional and that treaties made by New York State were never covered by the federal Trade and Intercourse Indian Act of 1793.[44]

Despite the setback, Decker considered a new route to challenge the New York State—Cayuga treaties. Since the United States did not make an effort after the Treaty of Ghent of 1814 to get New York to restore the Grand River Cayuga annuities, Decker insisted the federal government should be held responsible also. Decker and Herbert Menzies, who had joined him as law partner in 1909, now shifted their primary attention to pursuing this argument.[45]

The Tribunal

The tribunal's first session was convened in Washington, DC and Ottawa, Canada, in the spring of 1913. Decker inquired about the tribunal promptly that summer, undoubtedly because he saw its formation as a viable way to call into question these state treaties and obtain some compensation for his clients.[46] He apparently also drew on contacts he previously gained in state government to push for an appointment to the US delegation. Undoubtedly, his longtime loyalty to the Democratic party and his friendship with Thomas Mott Osborne, the first chair of the Public Service Commission, a conservationist and leading prison reformer, as well as Franklin D. Roosevelt, then a state senator and later assistant secretary of the Navy, proved especially helpful in opening doors in Washington.[47] In August, Decker was invited to meet with Secretary of State William Jennings Bryan and the department's senior counsel Robert Lansing, later secretary of state in 1915. At this meeting the Rochester attorney informed the federal government representatives that these Cayugas had not received their treaty annuities since before the War of 1812 and for more than six decades had sent formal protests to Albany. In August of 1913, Bryan appointed Decker, then considered to be the leading authority on Hodinöhsö:ni´ treaties, "special assistant in the work of preparing the answer of the United States in the claim of the Cayugas of Grand River."[48]

Decker frequently corresponded about the claim with Lansing, a fellow Democrat and formerly an upstate New York attorney, discussing the research that had to be undertaken and the impediments involved in the case. Decker then undertook much of the research on Cayuga history and federal and state treaties, as well as the War of

1812 and the Treaty of Ghent. In order to explain to members of the US delegation the reasons for the separation of the two bands living in the United States and Canada, he collected copies of relevant documents, books, correspondence, and legal opinions. Decker also had to identify the Cayugas who signed the state treaties; Hodinöhsö:ni´ customary law, including rules about tribal enrollment; the role the Six Nations played on both sides of the international boundary in the War of 1812; the background to and meaning of Article IX of the Treaty of Ghent; and past efforts to challenge the nonpayment of annuities.[49]

Herbert Bissell's extensive report for the state legislature in 1889 had favored a fair settlement for the Grand River Cayuga.[50] Decker then conducted his own research at the Library of Congress and at the National Library of Canada in Ottawa and later requested copies of documents and books from their holdings, in addition to holdings at the New York State library. During his extensive research, Decker made contact with J. N. B. Hewitt, Tuscarora and the leading Iroquoian scholar at the Bureau of American Ethnology at the Smithsonian; Frank Severance, the secretary of the Buffalo Historical Society and noted historian of western New York; and the American consul in Ottawa, who helped him secure materials not available in the United States.[51] He also asked for and received affidavits supporting the Cayuga case from prominent Hodinöhsö:ni´, such as William C. Hoag, the longtime president of the Seneca Nation of Indians, and Arthur C. Parker, the archaeologist and museologist at the New York State Museum, who at the time was one of the officers of the Society of American Indians. He and Menzies would then send the affidavits and documents collected to Arthur McKinistry, a Wall Street attorney serving as the counsel and archivist for the United States delegation. Much of Decker's research was included in the appendices of the report.[52]

Decker also corresponded with Lansing about the impediments involved in resolving the case. One problem arose at the beginning. As a member of the American delegation, Decker was required to cooperate with all stakeholders. They included present and former New York officials, including attorney general Carmody and James S. Whipple, who now interjected himself into the delegation's business by claiming that he was the attorney for the Cayugas residing in northeastern Oklahoma.[53] Unlike his associates in the United States delegation, Decker saw arbitration as the only way to obtain a financial payout for the Grand River Cayugas. It is also clear that he viewed it as a means to stress the importance of abiding by treaties, even old ones made by New York State with the Cayugas, as well as international ones made by the United States and Great Britain. In contrast, his fellow attorneys on the delegation gave priority to insulating the United States from its legal and financial responsibilities under the Treaty of Ghent. Indeed, Decker believed that by not enforcing Article IX of the Treaty of Ghent for a century, both the United States and Great Britain had cast aside its trust responsibilities to the Hodinöhsö:ni´ and had allowed New York State to run roughshod over the Cayugas. Thus, a decade before Deskaheh's appeals to the League of Nations, Decker was hoping to set a precedent, trying to get Indigenous grievances heard and adjudicated equitably before an international forum.

Decker's most important role, that of researcher, came to an end with the outbreak of war in June 1914. World War I and the pandemic that followed led to a long delay in the work of the tribunal and cooled down the prewar enthusiasm for arbitration. After the war, Albany officials resumed their longtime efforts to get Congress to transfer criminal and civil jurisdiction over the Hodinöhsö:ni´, while in Washington, officials advocated US citizenship for American Indians. In Canada, policymakers focused on pushing forward an elective system of government to replace Iroquois Confederacy sachem rule at Six Nations, one that ultimately occurred by force in 1924.[54] Working with Deskaheh in this people's protests against the Canadian government, Decker advised the sachem and the Confederacy Council not to agree to a Canadian proposal to take all Hodinöhsö:ni´ grievances before an arbitrational panel composed only of three Ontario jurists.[55]

Still hoping to influence the American-British Claims Arbitration Tribunal, Decker turned to making speeches and writing articles in order to sway opinion. In a remarkable address in Buffalo in November, 1921, Decker focused on Six Nations' nationhood that, to him, precluded state efforts to restrict Hodinöhsö:ni´ sovereignty:

> A Six Nations Iroquois never calls himself a New York Indian. And we should not, for he is not a New York Indian. He lives in his own country, not in New York, even if we surround it. Failure on our part to respect the proprieties in this matter, contribute insidiously to a misunderstanding of the true relation between these people and their white neighbors, and one which becomes daily more difficult to dispel.[56]

Two years later, Decker wrote that despite specific guarantees set forth in treaties, later

> governments of these colonizers, regretting no doubt, that their ancestors had so bound them, have sought to rewrite those treaties, but without consent of the other parties and to rewrite them so as to change the obligation to protect against encroachments into a right of general guardianship under which cover they may coerce these tribes in their homes. This end is sought to be accomplished through elaborate Indian Departments exercising over-lordship.[57]

The Tribunal Resumes Work, 1920–1926

The American–British Claims Arbitration Tribunal reassembled in Paris in December 1920 and met with full attendance in Washington, DC, in November 1921. However, the Cayuga claim had been given less priority and remained last on the agenda. The next year, the US State Department assigned Fred Kanelm Nielsen its solicitor and lead counsel for the US delegation to the tribunal. Holding views far different from those of attorneys Strong or Decker, Nielsen was to become the single most important person arguing against the Grand River Cayuga claim. He had been hired by the State Department after his graduation from Georgetown law school. Nielsen was also part of the United States delegation who attended the Versailles Conference of 1919.[58] After his appointment as chief counsel on the tribunal, Nielsen attempted "to fix the

deck" by filling a seat on the tribunal with a person primarily concerned with United States financial liability—even though Nielsen was likely to make his case before the new arbiter.

To replace the departing Chandler Anderson, who had accepted another appointment as a commissioner dealing with German war reparations, he tried to recruit Roscoe Pound, dean of the Harvard University School of Law, the foremost philosopher of the law in the United States and a leading legal scholar.[59] To convince Pound, Nielsen discussed the past and present work of the tribunal and indicated that, if appointed, Pound would be part of a distinguished panel of arbiters. Without any ethical concerns, Nielsen told Pound that he would recommend him to President Harding to fill the vacancy on the tribunal. In trying to convince Pound, Nielsen told him that unless "the United States has a representative who is a resourceful and scholarly judge, I feel that he will count for little in deliberations with two other men." Nielsen then stated that the position of arbiter had a salary of $1,200 per month plus travel expenses.[60] Two weeks later, Nielsen wrote Pound indicating he was still pushing the Harding administration for the Harvard dean's appointment to the tribunal.[61]

However, before his sudden death on a trip to Alaska, Harding instead offered the position to Robert Edwin Olds, on the recommendation of Senator Frank Kellogg, later the secretary of state.[62] Soon Olds was appointed undersecretary of state, however, and Pound was then appointed an arbiter in his place. On November 23, 1923, Nielsen wrote Pound that he was especially pleased about his appointment, since he now had an arbiter protecting "our Treasury's assets."[63] Other than Pound, the two arbiters selected were Charles Fitzgerald of Canada and Alfred Nerincx of Belgium, who chaired the hearings. Nerincx was professor of international law at the University of Louvain, officer at the Carnegie Endowment for World Peace, former mayor of the city of Louvain, and a member of the Belgian parliament. Fitzgerald had formerly been a member of the Canadian parliament, solicitor general and minister of justice, chief justice from 1906 to 1916, and finally, lieutenant governor of Quebec. Fitzgerald was the only member of the tribunal with any previous contact with Indigenous communities, having served unsuccessfully as the trial attorney for Louis Riel, the Métis leader executed for his involvement in the North West Rebellion in 1885.[64]

The fourth session of the tribunal hearing Class IV cases began in London on October 15, 1923. Cecil J. B. Hurst, a prominent London attorney and senior adviser on international relations for the British Foreign Office, represented the crown before the tribunal. He emphasized the United States commitment made in Article IX of the Treaty of Ghent to restore past obligations to Indian nations that had sided with the British. C. C. Robinson, a prominent Toronto attorney, represented the Grand River Cayugas before the tribunal, mostly interjecting comments about the obligations of New York State under the Treaty of Cayuga Ferry of 1795 and insisting that his clients' rights had been violated by the United States' failure to carry out Article IX of the Treaty of Ghent.[65]

From the start it was clear the tribunal was more focused on promoting Anglo-American amity than providing justice for the Cayugas. Two of the opening remarks set the tone. In one address, a member of Parliament and British undersecretary of

Foreign Affairs, Ronald McNeill, referred to the Grand River claim, noting that at least one of the pending cases went back a century in time and now needed to be finally adjudicated. He expressed the hope that the proceedings would be carried out according to "the principles and ideals of the Anglo-Saxon judiciary."[66] Nielsen then responded by calling the arbitrational tribunal the result of "the success of this enlightened policy on the part of two great Powers" that had been derived from English common law.[67]

In 1924, tensions between the Iroquois Confederacy Council and the Canadian government at the Six Nations Reserve came to a head and shattered any hopes of the Grand River Cayugas obtaining a satisfactory hearing or a just award. Despite Deskaheh's direct appeal to King George V, the British backed Canadian interference in Six Nations' governance. On September 17, Prime Minister William Lyon Mackenzie King and Governor General Lord Byng of Vimy signed an Order-in-Council mandating the replacement of the Six Nations Confederacy council at Ohsweken with an elected band council under the Canadian Indian Act. Without formal notice, on October 7, Colonel C. E. Morgan, the local superintendent for Indian affairs, read an order removing the Confederacy sachems from power and announced the first elective vote for council. The Royal Canadian Mounted Police then invaded the council house and seized the wampum used to sanction council meetings and proceedings. They then posted an order announcing the date and procedures of the first reservation election.

In Europe, meanwhile, Deskaheh's efforts in Geneva had stalled.[68] Another shock wave occurred for the Grand River Cayuga even before the final testimony was taken before the American–British Claims Tribunal. Exhausted and ill after his return from Europe, the fifty-two-year-old Deskaheh died of a pulmonary hemorrhage on June 27, 1925, at the home of Chief Clinton Rickard on the Tuscarora Reservation.[69] Some Hodinöhsö:ni´ were to blame Deskakheh's death on British obstructionism at Geneva and Canadian officials' preventing the chief from returning home to Grand River Territory. The Hodinöhsö:ni´ felt betrayed, particularly after Six Nations' heroic military service in World War I in the Canadian Expeditionary Force, and there was even some talk of withdrawing their treaty annuity claim. However, the Grand River Cayuga chiefs decided not to pull the plug on their long-sought effort.[70]

The American–British Claims Arbitrational Tribunal finally resumed its work on the Grand River Cayuga annuity claim in the late fall of 1925. Nielsen's filed report relentlessly hammered away in denying the Grand River claim. He referred to the Hodinöhsö:ni´ as part of "the so-called Six Nations" and their agreements with New York State as "so-called treaties."[71] He then denied the British contention that Article IX of the Treaty of Ghent had "any relation whatever to rights such as were created by treaties of cession from the Indians of New York." To him, the treaty annuity question was "purely a domestic matter of no concern to the British Government." At the same time, he argued that Great Britain had no standing to bring the claim, "before this tribunal or any other international tribunal to call the Government of the United States to account with regard to the fulfillment by the State of New York of obligations under certain *contracts* entered into by the State with a tribe of Indians

under the protection of the State, or with a tribe under the protection of any other state." Although arbiter Pound had pointed out that New York State had violated the federal Trade and Intercourse Act, Nielsen denied "that there was a record of an obvious fraud, an obvious outrage, an obvious wrong, but that the record does reveal an exhaustive, honorable effort on the part of the State of New York."[72]

Nielsen repeatedly cited Article V of the Anglo–American Convention of 1853, claiming it had set a precedent for wiping out all previous debts owed to each country. Article V read:

> The High Contracting Parties engage to consider the result of the proceedings of this Commission as a full, perfect and final settlement of every claim upon each other's Government arising out of any transaction of a date prior to the exchange of the ratifications of the present Convention and further engage that every such claim, whether or not the same may have been presented to the notice of, made, preferred, or laid before the said Commission shall, from and after the conclusion of the proceedings of the said Commission, be considered and treated as finally settled, barred, and thenceforth inadmissible.[73]

To him, the passage had not the slightest trace of ambiguity and its interpretation was clear and precise. Nielsen included a brief listing of arbitrations that the United States carried out after 1853, further evidence to him of the importance of this article.[74] In reply, Hurst, the counsel representing the British government, referred back to United States obligations under the Treaty of Ghent, arguing that Article IX "operated merely to restore the status of the claim in so far as it may have been prejudiced by reason of the war, and that the Convention of 1853 was not intended to affect the operation of this article."[75]

During the month before Christmas in 1925, the arbiters finally heard Nielsen's oral arguments. Most of his lengthy oral testimony involved interchanges with arbiter Pound. At the outset, on November 27, he referred to the case as a "most unusual one" involving two pleadings by the British government—the American violation of the Treaty of Ghent, and the United States' "obligations under certain contracts for the sale of land entered into by a State of the Union, the State of New York, more than a century ago."[76] Right away, Nielsen took exception to calling formal Indian agreements with states as treaties, since a state, he insisted, "does not make treaties with Indians in the sense that the term 'treaties' is understood in the language of international relations."[77] Nielsen indirectly made reference to the United States Supreme Court decision in *Lonewolf v. Hitchcock* (1903), maintaining that Indian affairs was a "domestic matter" and that the United States had "plenary sovereign jurisdiction" over the Indian nations.[78] Nielsen's oral testimony continued on November 30 and December 1, focusing on the barring clause of Article V of the Anglo–American Convention of 1853. A brief session dealing with procedural matters followed on December 3.[79]

Perhaps Nielsen's most revealing testimony came on December 4. The counsel for the United States delegation questioned how the Anglo–American Treaty of Ghent, a

treaty between two great nations, could be linked to a state treaty with the Indians. He revealed a distinct racial bias:

> Mr. Nielsen: I must confess to a great deal of ignorance with regard to Indian Affairs, even though I am obliged to deal with this case.
>
> Mr. Pound: Of course the Supreme Court of the United States has settled it as a question of domestic law, but I have not been able to find anything in international law.
>
> Mr. Nielsen: Well, speaking broadly, of course savages as such or Indians have no standing in international law. Now the questions is as to their possible standing in domestic law.[80]

At the last hearing on December 21, Nielsen once again showed his lack of cultural sensitivity. He played down the Grand River Cayuga case, referring to the arguments made by Robinson and his "experts" as "whether Rain-in-the-Face is the same Indian as Snow-in-the-Face," thereby implying that the Grand River Cayugas were wasting the time of the tribunal arbiters by filing their pecuniary claim.[81] Nielsen further minimized the claim by arguing that the Treaty of Ghent and the state treaties with the Cayugas were not linked in any way and that the presumption was "far-fetched."[82] He observed that nothing in the 1814 international treaty dealt "with land contracts or with annuities."[83] He also stressed that New York had carried out its obligations under the Treaty of 1795 and had afforded the Grand River Cayugas the right to be heard, since the matter had previously been dealt with by the New York Court of Appeals as well as the New York State Legislature.[84]

At the same hearing, the American counsel also raised the doctrine of laches, arguing that both the Grand River Cayugas' long delay in petitioning the New York Legislature and Great Britain's long delay in filing grievances for these Indians under the Treaty of Ghent were both proof that the claim was bogus.[85] Nielsen also continued to bring up Article V of the 1853 Anglo–American Convention as a bar to the Cayuga treaty annuity, and posed questions as to how a Canadian tribe under British auspices could bring suit as a New York tribe and how a purely United States domestic matter had become a concern for the British government.[86]

On January 22, 1926, Alfred Nerincx, chair of the American–British Claims Arbitrational Tribunal, issued its final report, unanimously approved by all three arbiters.[87] Acknowledging their ignorance of US Indian law, the arbiters refused to make a determination based upon their interpretation of what constituted a binding Indian treaty under American law.[88] They insisted that the Cayuga Nation had no standing in international law, but claimed that "the elementary principle of justice" required them "to simply look at the substance" and not stick strictly to "the bark of the legal form."[89]

The arbiters then continued their decision by agreeing with Nielsen's argument, namely that the state treaty of 1795 was exclusively a contract relating to the Cayugas ceding land to New York State. They maintained that "the United States was not liable merely on the basis of a failure of New York to perform a covenant to pay money."[90] They claimed that the state negotiators of the Cayuga treaties from 1789 to 1795 derived their authority from the New York State Legislature and purported only to

represent the state alone. The arbiters insisted that "the United States does not appear anywhere in the negotiations, and that it was not a contract on a matter of Federal concern or in which the United States Government had an interest."[91] They also sidestepped placing blame on New York officials for their failure to pay these annuities by pointing out that New York State actually had paid out the whole amount due to the Cayugas each year by dispensing the monies on the United States side of the line—implying that it was the split in the Cayuga Nation between New York and their much more numerous kin on the Six Nations Reserve in Ontario that had actually caused the problem.[92]

Despite the arbiters' agreement with Nielsen about the nature of state treaties, they, nevertheless, believed that two great powers, Great Britain and the United States, had the responsibility finally to resolve this longstanding claim. In an age of colonial mandates and protectorates, the arbiters saw the Grand River Cayugas as dependents incapable of managing their own affairs, insisting that they "were and are dependent upon Great Britain or later upon Canada, as the New York Cayugas were dependent on and wards of New York."[93] Consequently, they decided the United States bore some responsibility to the Grand River Cayugas for ignoring Article IX of the Treaty of Ghent.

The three arbiters also insisted that they couldn't apply the doctrine of laches since the Indians' claim "ought not be defeated by the delay of the British Government in urging the matter on their behalf." They also held that the Cayugas, who were permanently established on British soil, were dependent Indians who were not free to bring a case on their own act except through the "appointed agencies of a sovereign" who had "a complete and exclusive protectorate" over them.[94] Legally the Indians could do nothing except under the guardianship of some sovereign.[95] They pointed out that even while in a dependent condition the Grand River Cayugas had pressed their claims and "in every way open to them." They noted that courts in the English-speaking countries had rejected the doctrine of laches and had refused to apply it to "persons under disability," implying that the poor, lowly Cayugas were to be placed in that category.[96] They also maintained that Article V of the Anglo–American Convention of 1853 did not necessarily bar them from making a pecuniary settlement, however reduced.[97]

Thus, they concluded that being in "a legal condition of pupilage," the Grand River Cayugas were entitled to an award under the Treaty of Ghent. However, they decided that the Grand River Cayugas were not entitled to treaty annuities or interest on them before 1849, since New York State "paid the whole amount of the annuity each year in reliance upon its authority to decide who constituted the Cayuga Nation."[98] The arbiters readily admitted that the amount they decided on was not based on "any clear mathematical basis of distribution." Hence, after acknowledging that the bulk of the Cayuga population was resident in Canada, they awarded the Grand River Cayugas $100,000, an amount that included 60 percent of the treaty annuities after 1849 and "a capital sum which at five per cent interest will yield half of the amount of the annuity for the future."[99]

Conclusion

The push to be heard before the American–British Claims Arbitration Tribunal and Deskaheh's efforts before the League of Nations were related and, in addition, were both assertions of Hodinöhsö:ni´ nationhood in the international arena. In each case, the Hodinöhsö:ni´ insisted that their treaties were between sovereigns that required reciprocal obligations from each party. For them, treaties such as the Treaty of Ghent of 1814 or New York–Cayuga treaties from 1789 to 1795 were not merely words written on documents able to be ignored or cast aside at a whim. Rather, they and the governments of the United States, Great Britain, and New York State were bound by them to live up to their promises.

Although the arbitrational tribunal effort and the one promoted by Deskaheh largely failed in in securing formal international recognition, the Six Nations have continued the long quest across the globe to seek acknowledgment of its separate nationhood. Hodinöhsö:ni´make and have made their presence known, whether by appeals to the United Nations in New York or in Geneva, Switzerland; attempts to use their own Six Nations-issued passports overseas; sending representatives to conferences related to global matters of concern such as climate change; or through its

Figure 4: *Eastern Iroquoia today. In the last three decades, Cayugas in New York have purchased or have been bequeathed approximately 1,000 acres in Seneca and Cayuga counties—lands that before dispossession, 1789–1841, had been part of their homeland. Map by Joe Stoll; used by permission.*

own lacrosse team, the Iroquois Nationals, which participates in international competitions held in Japan, Israel, and Great Britain.

Today, the Six Nations' insistence on being recognized as transnational Indigenous peoples are best expressed on Border Crossing Day, sponsored by the Indian Defense League of North America. There, Hödinöhsö;ni´ from both sides of the United States–Canada international boundary line come together to commemorate another international accord: the Anglo–American Treaty of 1794, better known as the Jay Treaty, that specifically recognizes Indigenous peoples' right of free and unlimited passage across the United States–Canadian border.

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Notes

1. United Nations Declaration on the Rights of Indigenous People, United Nations General Assembly, 61st Session, Resolution # 1/295, Agenda item 68, adopted September 13, 2007.

2. For Deskaheh's stated grievances, see his *The Red Man's Appeal for Justice* (London, UK, 1923), 6–7, pamphlet found in George P. Decker mss., St. John Fisher College, East Rochester, NY (hereafter GPD mss., SJFC). For Canadian efforts to silence Deskaheh, see Brian Titley, *A Narrow Vision: Duncan Campbell Scott and the Administration of Indian Affairs in Canada* (Vancouver: University of British Columbia Press, 1986), 110–34. For a detailed analysis of Deskaheh's efforts, see Andrea L. Catapano, "The Rising of the Ongwehonwe: Sovereignty, Identity and Representation on the Six Nations Reserve," PhD diss., State University of New York, Stony Brook, 2009), 140–296. See also Rick Monture, *We Share Our Matters: Two Centuries of Writing and Resistance at Six Nations of the Grand River* (Winnipeg: University of Manitoba Press, 2014), 107–40. Deskaheh inspired the late Mohawk Chief Ernest Benedict, who founded *Akwesasne Notes* in 1969; author's interview of Chief Ernest Benedict, Cornwall Island, Akwesasne Mohawk Reserve, September 10, 1982. In 1977, Confederacy sachems and other Hodinöhsö:ni´ retraced Deskaheh's steps to Geneva. See *Basic Call to Consciousness* (Rooseveltown, Akwesasne Indian Reservation: *Akwesasne Notes*, 1977), 19–37.

3. My late colleague Howard Vernon, a historian of Canada, previously wrote about the early efforts of the Cayugas to seek justice that focuses mostly on the years before 1910, and does not explore the tribunal's history, deliberations, and overall significance. He also lacked access to key records that are now available. See Howard Vernon, "The Cayuga Claims: A Background Study," *American Indian Culture and Research Journal* 4, no. 3 (1980): 21–35, https://doi.org/10.17953/aicr.04.3.e0137m0848741330.

4. Qtd. in Clinton Rickard, *Fighting Tuscarora: The Autobiography of Chief Clinton Rickard*, ed. Barbara Graymont (Syracuse: Syracuse University Press, 1973), 62.

5. For the resurgence of Iroquoian nationalism in this period, see ibid., 49–94; Gerald F. Reid, *Chief Thunderwater: An Unexpected Indian in Unexpected Places* (Norman: University of Oklahoma Press, 2021); *Laura Cornelius Kellogg: Our Democracy and the American Indian and Other Works*, ed. Kristina Ackley and Kristina Stancia (Syracuse University Press, 2015); and Laurence M. Hauptman, *Seven Generations of Iroquois Leadership: The Six Nations since 1800* (Syracuse University Press, 2008), 117–62.

6. For more on Decker, see Hauptman, *Seven Generations*, 117–62; "G. P. Decker Is Dead; Was Indian Champion," *The New York Times*, February 25, 1936; "G. P. Decker, 74, Lawyer Friend of Indian, Dies," *Rochester Democrat and Chronicle*, February 25, 1936. For Oneida praise of Decker, see Chief William Rockwell Hanyoust's comments on August 17, 1922, Lulu Stillman mss., Box 1, Folder 1, New York State Library, Albany, NY; Keith Reitz (Oneida), "George Decker and the Oneida Indians," *The Iroquoian* 13 (Fall 1987): 28–33; and Anthony Wonderley, *Oneida Iroquois Folklore, Myth, and History* (Syracuse University Press, 2004), 196–202. For criticism of Decker, see Rickard, *Fighting Tuscarora*, 67–68, 88; nevertheless, Decker gave Chief George Rickard, Clinton's father, free advice from time to time. See Decker to Chief George Rickard, April 1, 1916, #9_8_21_1916_4_01, 48; December 9, 1916, #9_8_1916_1_09; and January 3, 1917, # 9_8_2_ 1917_ 01_03, George P. Decker mss., St. John Fisher College, hereafter "GPD mss., SJFC."

7. US Congress, Arbitration of Pecuniary Claims, Special Agreement for the Submission to Arbitration of Pecuniary Claims Outstanding between the United States and Great Britain; Signed at Washington, August 18, 1910, Approved by the Senate, July 19, 1911, US Department of State, *Foreign Relations of the United States, 1911* (Washington, DC: US Government Printing Office, 1918), 268–71. For a brief summary of the tribunal's work by the assistant solicitor of the State Department, see Howard S. LeRoy, "American and British Claims Arbitration Tribunal," *American Bar Association Journal* 12, no. 3 (1926): 156–60, 195–96, https://www.jstor.org/stable/25709483.

8. M. Henri Fromageot remarks, May 13, 1913, in *American and British Claims Arbitration under the Special Agreement Concluded between the United States and Great Britain*, August 18, 1910, comp. Fred Nielsen (Washington, DC: US Government Printing Office, 1926), 17–19 (hereafter cited as "Nielsen Report").

9. Fred Nielsen, "Communication from the American Agent to the Secretary of the United States, June 25, 1926, Nielsen Report, 1–2.

10. "List of Claims Scheduled for Arbitration Under the Agreement of August 18, 1910, Showing the Final Disposition of Each Claim," Nielsen Report., 24–36.

11. Robert S. Grumet, *Historic Contact: Indian People and Colonists in Today's Northeastern United States in the Sixteenth through Eighteenth Centuries* (Norman: University of Oklahoma Press, 1995), 396–402; Marian White, William E. Englebrecht, and Elisabeth Tooker, "Cayuga," in *Handbook of North American Indians* XV: *The Northeast*, ed. Bruce Trigger (Washington, DC: Smithsonian Institution, 1978), 500–2.

12. Barbara Graymont, *The Iroquois in the American Revolution* (Syracuse University Press, 1972), 168, 209, 224–25, 236.

13. For the establishment of these communities, see White, et al., "Cayuga," 501–3. For Grand River, see Sally M. Weaver, "Six Nations of the Grand River, Ontario," *Handbook of North American Indians* XV: *The Northeast*, 525– 36; Charles M. Johnston, "The Six Nations in the Grand River Valley, 1784–1847, in *Aboriginal Ontario: Historical Perspectives on the First Nations*, ed. Edward S. Rogers and Donald B. Smith (Toronto: Dundurn Press, 1994), 167–81; and Susan M. Hill, *The Clay We Are Made of: Haudenosaunee Land Tenure on the Grand River* (Winnipeg: University of Manitoba Press, 2017). For the Indian Territory, see William C. Sturtevant, "Oklahoma Seneca–Cayuga, in *Handbook of North American Indians* XV: *The Northeast*, 537–43; Erminie Wheeler-Voegelin, "The 19th and 20th Century Ethnohistory of Various Groups of Cayuga Indians," mss. in National Anthropological Archives, Smithsonian Institution, Suitland, MD. For Buffalo Creek, see Alyssa Mt. Pleasant, "After the Whirlwind: Maintaining a Haudenosaunee Place at Buffalo Creek, 1780–1825," PhD diss., Cornell University, 2007. For the Treaty of Buffalo Creek of 1838, see 7 *Stat.*, 550 (January 15, 1838) and Laurence M. Hauptman, *Conspiracy of Interests: Iroquois Dispossession and the Rise of New York State* (Syracuse University Press, 1999), 101–44, 175–220.

14. Philip Schuyler, "Thoughts Respecting Peace in the Indian Country," July 29, 1783, Philip Schuyler mss., microfilm reel 7, New York Public Library, Manuscript Division; and Christopher Colles, *Proposals for the Speedy Settlement of the Waste and Unappropriated Lands on the Western Frontiers of the State of New York, and for the Improvement of the Inland Navigation between Albany and Oswego* (New York: Samuel London, 1785). See also Nathan Miller, "Private Enterprise in Inland Navigation: The Mohawk Route Prior to the Erie Canal," *New York History* 31, no. 4 (1950): 398–413, https://www.jstor.org/stable/23149666; Barbara Graymont, "New York State Indian Policy after the American Revolution," *New York History* 57, no. 4 (1976): 438–74, https://www.jstor.org/stable/23169427; and Laurence M. Hauptman, "Ditches, Defense, and Dispossession: The Iroquois and the Rise of the Empire State," *New York History* 79, no. 4 (1998): 325–58, https://www.jstor.org/stable/23182321.

15. New York State Legislature, *Report of Special Committee to Investigate the Indian Problem of the State of New York Appointed by the Assembly of 1888* (Albany, NY, 1889), I: 216–20 (hereafter cited as "Whipple Report").

16. For the state treaty of 1790, see ibid., 220–24. For the Cayuga protest over the state 1789 treaty, see *Proceedings of the Commissioners of Indian Affairs Appointed by Law for the Extinguishment of Indian Titles in the State of New York*, ed. Franklin Benjamin Hough (Albany: Joel Munsell, 1861), II: 331. For the first Trade and Intercourse Act, see. 1 *Stat*., 137–38 (July 22, 1790).

17. 1 *Stat*., 329 (March 1, 1793).

18. 7 *Stat*., 44 (November 11, 1794).

19. Whipple Report, I: 224–28.

20. Simeon DeWitt, Report of Surveyor General Relative to Indian Reservations, January 27, 1801, New York State Surveyor General's Land Papers, Series II, New York State Archives, Albany, NY.

21. Whipple Report, I: 229–30.

22. White, et al., "Cayuga," 502.

23. Carl Benn, *The Iroquois in the War of 1812* (University of Toronto Press, 1998), 178.

24. Article IX, Treaty of Ghent, 8 *Stat*., 218, December 24, 1814.

25. Petition of Chiefs and Principal Men of the Canadian Branch of the Cayuga Nation to the New York State Legislature, February 6, 1849, in Testimony Taken Before the Senate on Indian Affairs under Resolution of May 15, 1889, 1890 New York State Senate Document 58, 496–500 (hereafter New York State Senate documents will be cited as "SD").

26. Resolution sent to Richard Theodore Pennefather, Superintendent of Indian Affairs by the Grand River Cayuga Nation of Indians at the Council House, Caledonia, Grand River west, July 17, 1860, 1890, SD 58, 511–15. The Grand River Cayugas chiefs designated Pennefather their representative to bring their appeal forward to the Crown's governor general of Canada.

27. For Strong, see *James Clark Strong, Biographical Sketch of James Clark* (Los Gatos, CA: privately printed, 1910); "Gen. Jas. Strong Is Called Beyond: Veteran Writer and Former Lawyer Succumbs to Heart Trouble," *Oakland Tribune* (CA), September 4, 1915; Laurence M. Hauptman, "*Seneca Nation of Indians v. Christy*: A Background Study," *Buffalo Law Review* 46, no. 3 (1998): 947–79, https://digitalcommons.law.buffalo.edu/buffalolawreview/vol46/iss3/7/. For the Fish Carrier Peace Medal, see "A Washington Medal," *The New York Times*, May 11, 1884.

28. "A Claim by Canadian Indians: The Cayuga Indians Sue for Payment of an Annuity," *The New York Times*, December 7, 1883; "The Cayuga Indians' Claim," *The New York Times*, May 5, 1884; "The Cayugas' Claim; Judge Peckham Says the Cayuga Indians Have No Right to the Money," *The New York Times*, August 6, 1884; "The Cayuga Indians' Annuity," *The New York Times*, March, 12, 1885; Denis O'Brien, New York State Attorney General, Opinion of the Attorney General, April 30, 1884, rpt. in 1886 SD 86. For the State Court of Appeals decision, see *That Portion of the Cayuga Indians Residing in Canada v. State* [of New York]," 1 N.E. 770 (N.Y. 1885).

29. For William Henry's testimony, see *Testimony Taken Before Herbert P. Bissell, Commissioner in the Matter of Cayuga Indians, January 30, 1889*, 1889 SD 35. For the full transcript of Bissell's extensive hearings, see *In the Matter of the Cayuga Indians 1888*, 1890 SD 58. For population statistics on Cayugas on both sides of the border at this time, see *Indians: The Six Nations of New York. Extra Census Bulletin for the Eleventh Census of the United States*, comp. Thomas Donaldson (Washington, DC: US Census Printing Office, 1892), 5–6.

30. Whipple Report. For more on Whipple's efforts to push allotment, see Laurence M. Hauptman, *Coming Full Circle, The Seneca Nation of Indians, 1848–1934* (Norman: University of Oklahoma Press, 2019), 146–68.

31. For the report overturning Bissell's findings, see 1891 SD 73.

32. Warren F. Kuehl, *Seeking World Order: The United States and International Organization to 1920* (Nashville: Vanderbilt University Press, 1969), 41–42.

33. John Hay, *Addresses of John Hay* (New York: Century Co., 1906), 75–88.

34. Julian Pauncefote to the United States State Department, June 9, 1898, with an attached copy of an extract of a report of the Privy Council dated September 20, 1897, *Arbitration of Outstanding Pecuniary Claims Between Great Britain and the United States of America; The Cayuga Indians; Great Britain* (rpt.: Ithaca: Cornell University Library, Huntington Free Library Native American Collection, 2006), 789–90. See also Pauncefote to Secretary of State John Hay, December 1, 1899, ibid., 799.

35. Theodore Roosevelt to New York State Legislature, January 17, 1899, *State of New York Messages from the Governors*, ed. Charles Z. Lincoln (Albany: J. B. Lyon, 1909), 10: 31–32.

36. Vernon, "The Cayuga Claims," 28. The fourth Earl of Minto served as governor general from 1898 to 1904. He was the major promoter of box lacrosse in Canada. To this day, the Minto Cup is awarded to the champion Junior Box Lacrosse Team in Canada. The Six Nations Arrows team from Grand River won the cup in 1992, 2007, 2014, 2015, and 2017.

37. See Calvin DeArmond Davis, *The United States and the Second Hague Peace Conference: American Diplomacy and International Organization, 1899–1914* (Durham: Duke University Press, 1975).

38. Kuehl, *Seeking World Order*, 137–38.

39. "G. P. Decker is Dead; Was Indian Champion," *The New York Times*, February 25, 1936.

40. See endnote 6. The author has worked with attorneys on three separate Hodinöhsö:ni´ land claims cases since the mid-1980s that have made use of Decker's research.

41. For John Van Voorhis, see Laurence M. Hauptman, "Senecas and Subdividers: The Resistance to Allotment of Indian Lands in New York, 1887–1906," *Prologue: The Journal of the National Archives* 9 (Summer 1977): 105–16.

42. Memorial filed by George P. Decker and Charles Van Voorhis, "In the Matter of the Cayuga Nation of Indians," February 14, 1906, brought by David Warrior, Ernest Spring, and Elon Eels before the Commissioners of the Land Office, in *Proceedings of the Commissioners of the Land Office for the Year 1906* (Albany, NY: Brandow Printing, 1906), 76–85.

43. *Proceedings of the Commissioners of the Land Office, for the Year, 1910* (Albany: J. B. Lyon), 27–32, 107–53, 306, 334–35, 364.

44. *Proceedings of the Commissioners of the Land Office for the Year, 1911* (Albany: J. B. Lyon, 1911), 128–31. For Grand River Cayuga appeals, see "A Delegation of Cayuga Indians," *Ottawa Journal*, June 24, 1908.

45. *Rochester Business Directory, 1910*, Rochester Public Library, Rochester, NY.

46. George P. Decker to J. Reuben Clark, July 11, 1913, #9_8_17_1913_07_11; Martin M. Wyell to Decker, July 14, 1913, # 9_8_17_1913_07_14-J; Clark to Decker, July 16, 1913, #9_8_17_1913_07_16, GPD mss., SJFC.

47. "T. Mott Osborne, Reformer, Is Dead," *The New York Times*, October 21, 1926. Both Osborne and FDR provided Decker with recommendations for federal appointments as well as access to lobby

before federal agencies—the State, Interior, and Justice departments. The extensive Osborne and FDR correspondence with Decker continued unabated from 1910 until 1918. For his mentorship, see T. Mott Osborne, March 24, 1910, #9_8_14_1910_ 03_24; May 27, 1910, #9_3_8_15_1910_05_27, GPD mss., SJFC. For examples of FDR's early encouragement of Decker, see FDR to George P. Decker, May 29, 1911, # 9_8_15_1911_05_29; July 13, 1911, # 9_5_1911_07_13-j: November 12, 1914, #9_8_19_1914_11_12; Decker to FDR, October 14, 1914, # 9_8_19_1914_10_14, GPD mss., SJFC.

48. George P. Decker to Robert Lansing, September 17, 1913, #9_8_1913_09_17-a. The day before, Lansing expressed his gratification that Decker had been appointed and indicated that the Rochester attorney's expertise would be "of material benefit" to the tribunal. Robert Lansing to George Decker, September 16, 1913; George P. Decker to Robert Lansing, September 17, 1913, #9_8_1913_09_17-a, GPD mss., SJFC.

49. See endnote 48. See also George P. Decker to Robert Lansing, September 3, 1913, #9_8_1913_09_03; November 5, 1913, #9_8_18_1913_11_05; Lansing to Decker, September 8, 1913, #9_8_1913_09_08-c.; September 22, 1913, # #9_8_1913_09_22; October 2, 1913, # 9_8_18_1913_10_02; October 8, 1913, # 9_8_18_1913_10_08-a; October 20, 1913, # 9_8_18_1913_10_20; Decker to Manton M. Wyvell, Lansing's private secretary and State Department counsel, August 27, 1913, #9_8_18_08_1913_27, GPD mss., SJFC.

50. George P. Decker to Herbert P. Bissell, September 2, 1913, #9-8-18-1913_09_02, GPD mss., SJFC.

51. George P. Decker to J. N. B. Hewitt, December 20.1913, # 9_8_18_1913_12_20-a; Decker to Arthur C. Parker, December 1, 1913, # 9_8_18_1913_12_01; Decker to Frank Severance [Buffalo Historical Society], September 2, 1913, #9_8_18_1913_09_02-a ; December 15,1913, 9_8_9_8_18_1913_12_16; Severance to Decker, December 18 ,1913, #9_8_18_1913_12_18; Frederick Colson, librarian at New York State Library, to Decker, January 12, 1914, # 9_8_19_1914_01_12.; Decker to Mr. Foster, US Consul in Ottawa, October 9, 1913, # 9_8_18_1913_10_09, GPD mss., SJFC.

52. Decker to Arthur McKinstry, September 18, 1913, #9_8_18_1913_09_17; McKinstry to Decker, November 18, 1913, #9_8_18_1913_11_18, GPD mss., SJFC. For examples of affidavit requests, see George P. Decker to Alexander John (Cayuga), November 24, 1913, # 9_8_18-_1913_11_24-b; Decker to William H. Rockwell, November 11, 1913, #9_8_18_1913_11_ 11-c, GPD mss., SJFC. For examples of Decker-collected affidavits showing Hodinöhsö:ni´ customs and government, see Alexander John [Cayuga], September 13, 1913; William C. Hoag [Seneca], November 15, 1913; Arthur C. Parker [Seneca ancestry], November 7, 1913; and William H. Rockwell [Oneida], November 13, 1913), in A*merican and British Claims Arbitration–Cayuga Indians Appendix to the Answer of the United States*, vol. 2 (New Haven; Yale University Library, 1932), 925–33, exhibit nos. 285, 290, 291, 292, and 293.

53. George P. Decker to Robert Lansing, September 3, 1913.The same letter was sent by Decker to New York State Attorney General Thomas Carmody, September 3, 1913, #9_8_1913_09_8-c. See also Carmody to Decker, September 8, 1913, # 9_8_18_1913_09_08-b; Decker to Carmody, September 15, 1913, # 9_8_18_1913_09_15; Decker to Lansing, September 8, 1913; Decker to James Whipple, October 7, 1913, # 9_8_18_1913_07, GPD mss., SJFC.

54. Titley, *A Narrow Vision*, 110–34; Catapano, "The Rising of the Ongwehonwe," 140–296; and Monture, *We Share Our Matters*, 107–40.

55. Charles Stewart to Deskaheh and Six Nations Council, September 27, 1922, RG 10, vol. 3229, file 571, 571, Library and Archives of Canada.

56. George P. Decker, "State or Federal Jurisdiction in Affairs of the 'New York' Indians," Speech in Buffalo, November 12, 1921, # 4_5_78_1921_ 11_12, GPD mss., SJFC.

57. George P. Decker, "Must the Peaceful Iroquois Go?" *Research and Transactions of the New York State Archaeological Association* (Rochester, NY: Lewis Henry Morgan Chapter, 1923). See also

Decker, "America Europeanized," *Researches and Transactions of the Lewis Henry Chapter of the New York State Archeological Association* (Rochester, NY: Lewis Henry Morgan Chapter, 1925): 5–17.

58. An immigrant from Denmark, Nielsen had attended the University of Nebraska and Georgetown University School of Law. In between pursuing his degrees, he had served as a successful football coach at the University of Maryland, Catholic University, and Georgetown University. In 1911, his excellent Georgetown football team suffered its lone defeat in its twelve-school schedule at the hands of the Carlisle Indian School led by Jim Thorpe! See "Judge Nelson Dies," *Lincoln Star* (Nebraska), January 17, 1963. Nielsen's teams at Georgetown had a record of 14–2–2. His team lost to Carlisle by the score of 28–5 on October 14, 1911. See Georgetown Football History Project, www.HoyaFootbal.com.

59. "Harding Names Nielsen State Department Solicitor for British American Claims Commission," *The New York Times*, August 4, 1922; Fred K. Nielsen to Roscoe Pound, July 16, 1923, Roscoe Pound mss., folder: Nielsen, Fred K. Hollis 601599, 30–10, Harvard Law School Library (hereafter "RP mss., HLS").Roscoe Pound's magnum opus was his five-volume work *Jurisprudence*, published in 1959 when he was nearly 90 years of age. Pound also spoke 11 languages; see "Roscoe Pound Dies at 93, Revitalized Legal System," *Harvard Crimson*, July 3, 1964. In the past decade, Pound has received heavy criticism for his favorable comments about Hitler in the early 1930s and for accepting an honor from the Nazi-administered University of Berlin in 1934. Stephen H. Norwood, *The Third Reich in the Ivory Tower: Complicity and Conflict on American Campuses* (Cambridge University Press, 2011), ch. 2 (on Harvard). See also James Q. Whitman, *Hitler's American Model: The United States and the Making of Nazi Race Law* (Princeton University Press, 2017).

60. Nielsen to Pound, July 16, 1923.

61. Roscoe Pound to Fred K. Nielsen, July 30, 1923, RP mss., HLS.

62. Nielsen to Pound, September 30, 1923, RP mss., HLS.

63. Fred K. Nielsen to Roscoe Pound, November 23, 1923, RP mss., HLS.

64. Necincx was the author of seven books and a leading proponent of universal suffrage as well as international arbitration. For the most recent account of the trial of Louis Riel, see Roger Salhany, *A Rush to Judgment: The Unfair Trial of Louis Riel* (Toronto: Dundurn, 2020).

65. For Hurst, a key member of the British Foreign Office, see Gabriela A. Frei, *Great Britain, International Law, and Maritime Strategic Thought, 1856–1914* (Oxford University Press, 2020), 114–15.

66. "Remarks Made at the Opening Session at London on October 15, 1923, by Mr. Ronald Neill," Nielsen Report, 20–22.

67. Nielsen, qtd. in Nielsen Report, 22–23.

68. Sally Weaver, "The Iroquois: The Grand River Reserve in the Late Nineteenth and Early Twentieth Centuries, 1875–1945," *Aboriginal Ontario*, 247–50; Titley, *A Narrow Vision*, 110–34; Catapano, "The Rising of the Ongwehonwe," 140–296; and Monture, *We Share Our Matters*, 107–40.

69. "Six Nations Lose Chief Deskaheh, Noted Pleader; Champion of Red Men Before League of Nations Dies," *Rochester Democrat and Chronicle*, June 29, 1925; Rickard, *Fighting Tuscarora*, 63–68, 174n8; Annemarie Shimony, "Alexander General, 'Deskahe,' Cayuga–Oneida, 1889–1965," in *American Indian Intellectuals of the Nineteenth and Early Twentieth Centuries*, ed. Margot Liberty (Norman: University of Oklahoma Press, 2002 [1978]), 185. Alexander General, who succeeded his brother Levi as Deskaheh on the Confederacy Council, insisted that his older brother had worked himself to death on behalf of his people; see "New Deskaheh Made Head of Indian League," *Rochester Democrat and Chronicle*, December 21, 1925.

70. On November 14 and 15, 1925, the *Windsor Star* (Ontario) inaccurately reported that the Grand River Cayugas had withdrawn their treaty annuity claim before the tribunal largely as a result of their anger with the Canadian and British mistreatment of Levi General. However, on November

17, the same newspaper corrected its reporting: "The claim against the State of New York, as reported in the Washington dispatch, is without official warrant." "Repudiate General as Indian Counsel," *Windsor Star*, November 17, 1925. Despite this strange headline, Alexander General had actually gone to Washington, DC to lobby for a just settlement of the restoration of the Cayuga Treaty annuity claim. See "New Deskaheh Made Head of Indian League," *Rochester Democrat and Chronicle*, December 21, 1925. Two hundred ninety-two from the Six Nations Reserve served in the 114th Battalion, Haldimand Rifles, Canadian Expeditionary Forces, under the British overall command. See Sally Weaver, "Six Nations of the Grand River, Ontario," in *Handbook of North American Indians* XV: *The Northeast*, 532.

71. Nielsen, "Extracts from the Argument of the American Agent [Nelson]," Nielson Report, 208–9.

72. Ibid., 214–16.

73. *Convention of 1853 between Great Britain and the United States*, https://avalon.law.yale.edu/19th_century/br1853.asp.

74. "Brief Filed by the American Agent with Respect to the Interpretation of Article V of the Convention of February 8, 1853," Nielsen Report, 221–46.

75. "Synopsis of British Government's Arguments with Respect to the Interpretation of Article V of the Convention of Feb. 8, 1853," Nelson Report, 247–48.

76. Oral Argument by Fred K. Nielson, US Agent and Counsel, in Fred K. Nielson, *American and British Claims Arbitration–Cayuga Indian* (1926), rpt. in *The Making of the Modern Law Trials, 1600–1926* (New Haven: Yale Law School and the Gale Publishing Series), 1–2.

77. Ibid., 5.

78. Ibid., 20.

79. Ibid., 32–146.

80. Ibid., 203.

81. Ibid., 228.

82. Ibid., 209.

83. Ibid., 244.

84. Ibid., 242.

85. Ibid., 218–19.

86. Ibid., 217–77.

87. Alfred Nerincx, "American and British Claims Arbitration Tribunal: Cayuga Indian Claims," *American Journal of International Law* 20, no. 3 (1926): 574–94, https://doi.org/10.2307/2189049.

88. Ibid., 591.

89. Ibid., 580.

90. Ibid., 591.

91. Ibid., 590.

92. Ibid., 593.

93. Ibid., 578.

94. Ibid., 575.

95. Ibid., 580.

96. Ibid., 593.

97. Ibid.

98. Ibid., 594.

99. Ibid. Also see LeRoy, "American and British Claims Arbitration Tribunal," 195–96; "Canadian Indians Get $100,000 for Ancient Rights," *The Province* (Vancouver, BC), January 23, 1926; "Cayuga Indians Get $100,000," *The Province*, February 14, 1926; "Awards Indians $100,000," *The New York Times*, January 24, 1926; Rickard, *Fighting Tuscarora*, 94; Vernon, "The Cayuga Claims," 30.