

Kaswentha

by Paul Williams
and
Curtis Nelson

Paper prepared as part of the
Research Program of the
Royal Commission
on Aboriginal Peoples

January 1995

Contents

Preface vi

Executive Summary viii

PART I

THE TREE AND THE GREAT LAW OF PEACE 1

Introduction 1

Giving Thanks 4

The Coming of the Law 10

The View of the World 400 Years Ago	15
Kinship and Continuity: Clans and Names	24
The Message of the <i>Kaianerekowa</i>	29
The Equality of the <i>Rotiianeson</i>	31
The Authority and Responsibility of the <i>Rotiianeson</i>	35
The Procedure of Council	37
Preserving the Law	42
The Use of Speakers	46
Balance	46
Maintenance	46
PART II	
THE SAILING SHIP AND THE SILVER CHAIN	48
Introduction	49
Procedure in Treaty Councils	54
Giving Thanks	56
The Condolence	57
The Two Sides of the Fire	61
The Use of Metaphors	65
Avoiding Direct or Strong Language	66
The Role of Women	67
Kinship	68
Relations with Other Aboriginal Nations	73
The Authority of the Speaker	74
Interpreters and Translators	75
The Place of Council	77
The Kaswentha, The Two Row Wampum	78
The Covenant Chain	83
Maintenance	91
PART III	
THE TREATIES ARE STONES IN THE STREAM, THEY MARK OUR PLACE IN TIME	94
Introduction	95

What is a 'Treaty'?	101
The Dish with One Spoon	102
Significance of this Treaty	108
The Kaswentha or Two Row Wampum	109
The Nanfan Treaty of 1701	112
The 1701 Treaty Conference	114
Was the 1701 'Trust Deed' a Surrender?	130
Significance of the 1701 Nanfan Treaty	132
The Great Peace of Montreal of 1701	134
The Documents	136
The Significance of the 1701 Treaty at Montreal	143
The Visit to Queen Anne: 1710	144
Significance of the Treaty	145
Kahnawake, 1760	147
The Council	147
The Royal Proclamation of 1763	153
Documents	154
The Treaty of Niagara, July 1764	162
Background	162
The Niagara Strip and Criminal Jurisdiction	167
Significance	172
The Treaty of Fort Stanwix, 1768	173
Background	173
The Impact of the Treaty of Fort Stanwix	210
The Haldimand Grant of 1784	211
Review of the Documents	226
Significance of the Haldimand Deed	227
The Treaty of Fort Stanwix, 1784	228
Background	228
The Treaty of Canandaigua, 1794	258
Background	258
The Jay Treaty: 1795	272

Background	272
The Treaty	273
The Significance of the Treaty	276
Burlington Heights, 1815	277
Background	277
The Treaty	278
The Aftermath of the Burlington Heights Treaty	286
Significance of the Treaty	290
The Grand River 'Surrender' of 1841	292
Background	292
Nearly a Treaty: Dorval, 1990	303
Background	303
Analysis	313
PART IV	
THE CHAIN TARNISHED, THE STREAM POLLUTED, THE BRIGHT PROMISES FADE, AS THE SUN STILL SHINES	316
* Introduction	317
Giving Thanks: Erosion of Relations with the Natural World	320
The Rest of the Natural World: Hunting and Fishing	324
Condolence: The Crown Turns its Back	330
Erosion by Treaty: Criminal Jurisdiction	331
Erosion by Lack of Legislation: Border Crossing Rights	339
Erosion by Law: The Application of Provincial Laws	342
Erosion by Legislation: Taking over the Governments	344
Erosion by Rewriting History and Law: Denial of Sovereignty	346
Erosion of Citizenship Rights: The <i>Indian Act</i> Membership Provisions	349
Erosion of Religious and Cultural Rights	352
Erosion of Land	354
Kahnawake	357
The Seigneurie	357
St. Nicholas Island	358

Akwesasne	359
The Thousand Islands (The Oswegatchie Islands)	359
The Thousand Islands (The St. Regis Islands)	360
The Dundee Lands	361
The Nutfield Tract	361
<i>Point v. Dibblee Construction</i>	362
The St. Lawrence Seaway	363
Grand River Territory	363
The Haldimand Grant and the Simcoe Deed	363
The 1841 'Surrender'	364
The Cockshutt Lands: <i>Logan v. Styres</i>	364
The Grand River Navigation Company	365
The Railway Lands: <i>Longboat and Jamieson v. The Queen</i>	367
Other Grand River Territory Claims	368
Bay of Quinte Mohawk Territory	369
Kanesatake Mohawk Territory	369
<i>Karente v. Seminaire de St. Sulpice</i>	369
Wahta Mohawk Territory	370
The Constitution of Canada	371
The Governor General Has No Name: The Lack of Relations with the Government of Canada	375
The Power and Survival of the Confederacy	378
NOTES	381
APPENDIX 1	
Letter to Queen Elizabeth II from the Grand Council of Chiefs of the Haudenosaunee	394
APPENDIX 2	
Statement concerning the Lands and Government of the Haudenosaunee by the Grand Council of Chiefs of the Haudenosaunee	396
APPENDIX 3	
Presentation of the Haudenosaunee to the Special Committee on Indian Self-Government	399

Preface

There is no 'official' version of the Great Law of Peace of the Haudenosaunee. In writing this paper, we have used four different versions. The first was compiled by a committee of chiefs, including Skaniadariio (John A. Gibson), Kanongweya (Jacob Johnson) and Deyonhegwen (John William Elliott), at the Grand River Territory in 1907; the second was written by Dayodekane (Seth Newhouse) of the Grand River Territory and transcribed by Albert Cusick; both of these were published through the efforts of Gawasowane (Arthur C. Parker) in 1916 (cited as Gawasowane (Parker), Chiefs and Gawasowane (Parker), Dayodekane (Newhouse) respectively in this paper). The third was recalled by Skaniadariio (John Arthur Gibson) of the Grand River Territory and transcribed by A.A. Goldenweiser in 1912 (cited as *Concerning the League* in this paper) and published in 1992 as part of the Algonquian and Iroquoian Linguistics Series. The fourth was told by Tahadegaihiyade (Roy Buck) of the Cayugas of the Grand River Territory, in Mohawk, and translated by the staff of the North American Indian Travelling College in their book, *Traditional Teachings*. Dayodekane wrote another version in 1885.

The Great Law is not based on precise words but on principles. We concluded that it did not matter which version we used as long as the principles remained consistent. One version or the other was chosen to explain specific parts of the law only on the basis of which one seemed to carry the spirit of the law better in English.

We have chosen to use Mohawk words for many things; Mohawk, rather than any of the other five languages of the Haudenosaunee, because it is the language of council; Mohawk, rather than English, because there are many concepts that are poorly served by the English words that are commonly used to translate them. 'Chief', for example, implies a different kind of authority than *royaner*; it suggests executive powers, and it omits the required goodness. The use of the English word 'warrior', which has no direct Mohawk equivalent, has led to its share of problems over the past few years as well. The closest Mohawk terms suggest instead one who helps maintain the peace.

Some things can be described by several separate terms: the Haudenosaunee are also known as the Iroquois Confederacy and the Five Nations (later the Six Nations). We have tended to use 'Haudenosaunee' most frequently and 'the Confederacy' for variety, but many of the historical documents use the other terms as well.

In preparing this work, we have been grateful for the advice, thoughts and teachings of many people. Among those we want to acknowledge respectfully are Sosistowahs (John Mohawk), Deskahe (Harvey Longboat), Joagquisho (Oren Lyons), Ganoegeedahweh (Bernie

Parker), Tekarihoken (Samson Gabriel), Kaientaronkwen (Ernie Benedict), Kanatiio (Allen Gabriel), Kawenotakie (Salli Benedict), Otsistakenra (Charlie Patton), Ohyuhgeh (Darwin Hill), Tekanatsasere (Brian Skidders), Guhwuhwuks (Marlene Martin), Tekaronianeken (Jake Swamp), Deyonhwethon (Jake Thomas), Mary Druke Becker and Michael Foster.

This is for our children. And for all the coming faces.

Executive Summary

The *Kaianerekowa*, or Great Law of Peace, of the Haudenosaunee (also known as the Iroquois Confederacy) is a complex and self-sustaining system of law. Its founding principles promote forethought, responsibility to the natural world and to future generations, and a desire to create and spread peace.

The spreading of the Great Peace by bringing other nations under the shade of the Tree of Peace was already well under way when the Europeans arrived in North America. In 1534, Jacques Cartier was greeted at Hochelaga with the ceremony of condolence, which clears the mind as a threshold of peace. Over the two and a half centuries that followed, Haudenosaunee peacemaking (or, as the legalists now say, treaty making) procedure was used by all the nations in the northeastern part of the continent – Britain, France and the United States as well as many Aboriginal nations. There were several reasons for using Haudenosaunee laws and ways to make agreements between nations: the Europeans were relatively weak, European procedures were themselves evolving, and the ways worked.

This paper follows the chronology of Haudenosaunee treaty making from the Dish with One Spoon, a pre-Columbian treaty, through the Kaswentha or Two Row Wampum Treaty of 1664, which separated criminal jurisdiction between the Confederacy and the Crown, to a number of other important transactions, ending in the near-treaty of the fall of 1990. Where in western Canada individual transactions – such as the numbered treaties – stand as monolithic events, between the Haudenosaunee and the Crown it is the *relationship* that is important and constant over the centuries. The Two Row Wampum or Kaswentha symbolizes the river of life on which the Crown's sailing ship and the Haudenosaunee canoe both travel. The individual treaties are like stones along the river's course, marking the trail.

The fourth part of the paper chronicles what the government of Canada has done with respect to the Crown's relationship with the Haudenosaunee. It is a sorry chronicle of broken promises, injured governments and deliberate amnesia. The relationship that was created in 1664 and evolved into the Silver Covenant Chain that preserved British North America is now disavowed by Canada, and the many fine promises made by the Crown's representatives lie tarnished and ignored.

Kaswentha

by Paul Williams and Curtis Nelson

PART I THE TREE AND THE GREAT LAW OF PEACE

Introduction

The Haudenosaunee ÿ the People of the Extended House ÿ are known to modern Canadians as the Iroquois Confederacy, or the Six Nations Iroquois Confederacy.

The Haudenosaunee are a people of law. Long before the Europeans came, the laws maintained peace, power and prosperity in stable agricultural communities.

Haudenosaunee laws were very different from the laws of the newcomers. The Europeans did not base their governments on the consent of the people or recognize the freedom of the individual to any great extent. Haudenosaunee democratic institutions and constitutional law affected the creation of democracy first in France and then in the United States of America.

Other fundamental aspects of Haudenosaunee law have not been embraced by other peoples. Five centuries ago and today, Haudenosaunee law was and is based on peace. The lawmakers, in weighing any decision, must consider its effects on peace. It is a law based on rational thought, on using the mind both for the good and to its fullest potential. The lawmakers, in weighing any decision, must cast their minds seven generations ahead, to consider its effects on the coming faces. The lawmakers must consider the effects of each decision on the natural world.

The Haudenosaunee brought these principles and processes to their relations with all the other nations they met. They did so because this was their own way, and they knew no other. They did so also because their constitution required the Great Peace to spread. They did so with confidence, knowing that the way of peace was right and powerful.

The Haudenosaunee have had more than three centuries of treaty relations with the Crown. Where other nations indigenous to North America can point to one or two seminal 'treaties' as the foundation and origins of their relations with the Crown, the Haudenosaunee have a continuum of evolving relations, contained in streams of principles and commitments, not in singular events or documents.

The crucial relationships ÿ the Silver Covenant Chain and the Two Row Wampum ÿ were developed over time and were reaffirmed so often that it is pointless to recite every instance.

The Confederacy's relations and agreements with France, the Netherlands, the United States of America and Great Britain are important parts of its history; Haudenosaunee relations with other nations indigenous to North America are crucial to understanding the history of the land and the people. Haudenosaunee relations with Canada are, ironically, the most uncertain and unresolved of all.

By the time the Europeans landed on this continent, its people had developed a clear, efficient process for coming to one mind, for promoting and preserving peace, and for creating and protecting friendship and trade between nations. The Europeans adopted that process, understanding fully what each part of it meant. For more than two centuries, the procedures used in making treaties between the Europeans and the indigenous nations were the Haudenosaunee way. If there were great frauds and abuses, as the *Royal Proclamation of 1763* says there were, they came not in open council but in back rooms, not in agreements attested to by sacred wampum, but in written documents and land deeds signed by inebriates and impostors. The record of treaty relations displays a consistency, a resilience, and a will that are remarkable.

This is our way.

In this we are of one mind.

In their first two and a half centuries in North America, the European nations conformed to Haudenosaunee law. They did so in almost every statement and action they made in formal councils. There were hundreds of formal councils.

The only authorized representatives of Britain, France and the United States that met with Haudenosaunee delegations did so in ways that showed their acceptance and understanding of Haudenosaunee law and procedure.

Each part of such councils carried meaning and purpose. Virtually each part of the international councils was an extrapolation, an adaptation of the Great Law of Peace of the Haudenosaunee from its internal functions ÿ governing the nations of the Confederacy ÿ to its external ones ÿ regulating relations between nations of the world.

The borders between 'ritual', 'procedure' and 'substance' have been drawn more tightly by western sociologists, historians and political scientists over the past century. The Haudenosaunee did not consider those borders so important. Each element of the council had and has a specific purpose, and most of those purposes involved the ultimate goal of the Confederacy ÿ peace.

When a 'ritual' ensures that guests are comfortable, are assured of their hosts' concern for their well-being, and are able to think clearly, it is no empty ritual. It helps promote peace. So does a process that avoids adversary relations, anger, haste and confrontation and that encourages participants to think about the effects of their decisions on future generations. In fact, the law and the process also encourage people to think, and think well.

To understand the extent to which the Europeans adopted and used the laws and processes of the Haudenosaunee in their treaties, it is necessary first to learn about those laws.

It is necessary also to recognize that these were laws and that the Haudenosaunee are a people of law. It is condescending and wrong – legally and historically – to believe otherwise. And yet crucial decisions have been made in that wrong-mindedness:

Each tribe had its own tract of land, mountain, river or lake. They got their food by hunting and fishing and their clothing by trapping for fur. So far as we know they did not till the land. They had their chiefs and headmen to regulate their simple society and to enforce their customs. I say "to enforce their customs", because in early societies custom is the basis of law. Once a custom is established it gives rise to rights and obligations which the chiefs and headmen will enforce.¹

If the same decision were being made about the Haudenosaunee by a judge with an open mind and access to full and accurate historical records, it would have been:

Each nation had its own territory, but the law regulated the way that territory would be used by that nation and by other nations. They got their food mainly by tilling the land, raising large crops of corn, beans and squash as well as many other fruits and vegetables. All the land was used, also, for hunting and fishing, and many of the people's clothes were made from animal skins, as many of our shoes and coats are today. Hunting, fishing and trapping were carried out in a sustainable and systematic way. They had their chiefs and headmen, as well as many other title-holders, including women, to fulfil their functions and to help regulate their complex society, while all the people – men, women and children – bore a responsibility for enforcing the laws. I say "enforcing the laws" because in Haudenosaunee society there was a well defined set of constitutional and internal laws that the people as a whole would obey and enforce...

For all his sympathy, Lord Denning, one of Britain's finest judges, was drawn into the same Eurocentric fabrications that had been used to justify the imposition of European laws ("they have no real laws of their own") and the taking of Aboriginal land ("they do not use it properly, they do not clear away the forests, they do not till the soil") in many parts of the world. Beneath the surface of these falsehoods floats, unspoken, the lie of racism ("they are not equal to us as people") and its children ("they should move aside and make room for us", "they deserve what we do to them").

Too many people today believe these lies and the assumptions that go with them.

Canadian governments that ignored the richness and righteousness of Haudenosaunee law felt little hesitation in suppressing it. Canadian governments that had no knowledge of the Crown's promises and obligations – legal and moral – to the Haudenosaunee had no trouble

violating them. Canadian governments and people who had not been taught respect for the land had little trouble exploiting it beyond its limits, injuring both the earth and the prospects of future generations.

It is time to set things straight. The place to begin, naturally, is at the beginning.

Giving Thanks

Before opening any council, within the Confederacy or with other nations, the Haudenosaunee give thanks. Many people, alone and in families, also begin and end each day in this way. They say: *This is what has been given to us.*

Thanksgiving comes before all else: it is a way of the Haudenosaunee that is fundamental to seeing and understanding the world. In the *Kaianerekowa*, the Great Law of Peace, the manner of giving thanks is stated:

...the Onondaga Lords shall open it by expressing their gratitude to their cousin Lords and greeting them, and they shall make an address and offer thanks to the earth where men dwell, to the streams of water, the pools, the springs and the lakes, to the maize and the fruits, to the medicinal herbs and trees, to the forest trees for their usefulness, to the animals that serve as food and give their pelts for clothing, to the great winds and lesser winds, to the Thunderers, to the Sun, the mighty warrior, to the moon, to the messengers from the Creator who reveal his wishes and to the Great Creator who dwells in the heavens above, who gives all things useful to men, and who is the source and ruler of health and life.²

The thanksgiving address, *Ohenton karihwateh'kwen* ("the words that come before all others"), has a deliberate structure. It moves outward and upward from the earth and the plants and animals of the earth to the village and the things that grow in the clearing, into the forest and then into the heavens.

Ohenton karihwateh'kwen provides both a three-dimensional structure to the world and a fourth order: the world has a spiritual structure.

We resign nothing of intellect or learning in taking seriously the voices and spirits of places, the spiritual dimensions of a people's history. On the contrary, to dismiss the dictates of the gods and spirits of places as either transparent rationalizations for aggression or childish credulities is to recommit old mistakes ÿ both of conquest and of historiography.³

It is in that spiritual dimension of the known world, as well as in its physical structure, that the thanksgiving locates the spirits and messengers from and workers for the Creator. While places have their spirits, and the world as a whole can be viewed as forming a single sacred creation, the beings with the greatest powers are generally those that are the most distant from

the everyday surroundings of the people. It is no accident that Hadu'wi lives at the world's rim, or that the Creator dwells beyond the heavens.

Ohenton karihwateh'kwen fulfils several purposes.

It reminds each person present that human beings are a small part of a much larger natural world. The structure of *Ohenton karihwateh'kwen* is to address and return thanks to each part of the natural world separately. After each part, the speaker states that "we who are gathered here have put our minds together for this purpose", and the assembled people indicate their agreement.

If you put God outside and set him vis-à-vis his creation and if you have the idea that you are created in his image, you will logically and naturally see yourself as outside and against the things around you. And as you arrogate all mind to yourself, you will see the world around you as mindless and therefore not entitled to moral or ethical consideration. The environment will seem to be yours to exploit. Your survival unit will be you and your folks or conspecifics against the environment of other social units, other races and the brutes and vegetables.⁴

Ohenton karihwateh'kwen reminds those gathered in council that they have duties not only to the law and the people, but also to the entire natural world; that as each part of that world continues to fulfil its responsibilities, so we as human beings have our own duties to fulfil to maintain the world as it should be.

When the Creator gave his Great Law and planted the Tree of Peace, He uprooted it, and He threw under it all the weapons of war. He said: You are now a nation of peace; and I will give to you oyankgwo-oohway, the sacred tobacco; and that will be your strength. That will be what you depend on, the spiritual power of prayer, a belief: the belief of your people. And if you have one mind, and you consider this again, it is the power that you have. So it happens when you burn the tobacco and use the sacred cornmeal that all of the animals stop and they listen: they turn, and they listen to these words.

...We went to Geneva ÿ the Six Nations, and the great Lakota Nation ÿ as representatives of the indigenous peoples of the Western Hemisphere. We went to Geneva, and we spoke in the forum of the United Nations. For a short time we stood equal among the people and the nations of the world. And what was the message that we gave? There is a hue and cry for human rights ÿ human rights, they said, for all people. And the indigenous people said: What of the rights of the natural world? Where is the seat for the buffalo or the eagle? Who is representing them here in this forum? Who is speaking for the waters of the earth? Who is speaking for the trees or the forests? Who is speaking for the fish ÿ for the whales ÿ for the beavers ÿ for our children? We said: Given this opportunity to speak in this international forum, then it is our duty to say that we must stand for these people, and the natural world and its rights, and also for the generations to come.

We are the indigenous people to this land. We are like a conscience. We are small, but we are not a minority. We are the landholders; we are the landkeepers; we are not a minority. For our brothers are all the natural world, and by that we are far the majority.⁵

The separation of church and state has become a cornerstone of European and Euro-American governmental systems. Temporal powers and spiritual beliefs are not allowed to interfere with each other. For the Haudenosaunee, there is no such separation. The chiefs, the *rotiianeson*, are obliged by the law to participate in and maintain the ceremonies. The Haudenosaunee conduct their legal obligations and proceedings in a sacred manner.

Everything is together ÿ spiritual and political ÿ because when the Creator...made this world, he touched the world all together, and it automatically became spiritual and everything come from the world is spiritual and so that's what leaders are, they are both the spiritual mentors and the political mentors of the people.⁶

Ohenton karihwateh'kwen also brings the minds together in a sacred way. A gathering of the people begins with their agreement on their place in the world and their duties to the world. The momentum of agreement carries over to the council that follows. Where two peoples may have arrived at the meeting as adversaries, giving thanks together reminds the participants of their place as human beings together, and also of their transitory nature.

As human beings, we are a small and humble part of a larger natural (and spiritual) world, but we are also part of a continuum of humanity. What we know, we have learned largely from our ancestors. What we do, we do for the generations that will come after us. From the opening of any gathering of the Haudenosaunee, we are reminded of our place in time as well as our place in the world.

This is *Ohenton karihwateh'kwen*:

...We bring our minds together and give a thanksgiving.

Then we mention the ground we walk on, our sacred Mother Earth, the importance of what the Creator has given to our people, to acknowledge the very basic things here ÿ and we have been given a mandate to look after these things. So we look to the earth as a sacred mother who holds everything in the palm of her hand to give us things so that every day and every night our families are in good health. So at this time we will bring our minds together and give a thanksgiving to our mother, the earth.

Then we mention the strawberries, the first berries to give fruit when the warm winds come. We were told of the importance of that; that there will come a day when we will not see strawberries any more and all the rest of the foods will die away. We are told what to do at that time. So come spring, almost at the time that we see the strawberries bloom again and give berries, we put our minds together and give a thanksgiving to all the berries of the world that came to us

from the Creator's land. We put our minds together and give a thanksgiving for that.

Then we mention all the medicines. When we come out of our homes, when we come out of that door, the medicines are there; they start from there. There are people amongst us who are given the right to have the ability to help our people with medicines. It is in the grass, it is in the shrubs, it is in the trees; it is all around us. Only a chosen few know what that is and how it is supposed to be used. So at this time we bring our minds together and give a thanksgiving for those things that are still being carried out to this day. So be it in our minds.

We mention all the trees that are around us; and again we see the leaves coming forth. We say that the head one of those trees is the maple tree, because it gives us sugar at a certain time when the sap runs, and we set a day aside and there are ceremonies that we do in thanksgiving. Those things are still carried on. All the other trees in the world ÿ we put our minds together and we give a thanksgiving for all those things that are still alive to this day; all the trees.

Then the animals. They say that they are our brothers and our sisters ÿ the animal world, the four-leggeds ÿ and they say that they are put here for a purpose and we are supposed to look after them; we are supposed to live in harmony with our brothers and sisters of the animal world, the four-leggeds. So at this time again, we bring all our minds together and give a thanksgiving for all those animals that still exist, and we know that there are some that have gone, that have become extinct. We still mention them and we still give a thanksgiving. So we bring all our minds together and give a thanksgiving for all the animals of the world.

We mention the bird life. They say that the eagle is the most important to our people; it is a symbol, the tree of peace that was given to us...a Great Law of how we are supposed to conduct ourselves with one another. The eagle at the top of that tree is supposed to look far into the distance and he will give a cry when he sees danger approaching our people. So again at this time, we put all our minds together and give a thanksgiving for all the bird life of the world. We know too that some birds have become extinct, but we still mention them in our ceremonies. We have never forgotten them. So we give a thanksgiving for that. So be it in our minds.

Then we say that there will be two suns in the heavens, the first one is *wasekwatiha*; that is the man, the male, the sun. He is given a purpose never to remove himself or be late at any time. He still functions in the way that was given to him for us to see on the horizon and around us all the beautiful things the Creator has given us. At this time we put our minds together and give a thanksgiving for the most beautiful thing, which was put there for a reason, and we still acknowledge it and give a thanksgiving to our eldest brother, the sun.

At night we give a thanksgiving to our grandmother the moon. In every thing that we have mentioned there is a male and a female: in plant life, in the animal world, in the tree life, even in the fish life. Grandmother Moon was given a purpose, that she would control all that, the female life in the world, what we look at and how we understand what surrounds us. She is in control of the future generations of all these species, and so are women. That is how we look at the

months, as to when to conceive, to give birth, to give life, to continue. So it is time to bring all our minds together and give a thanksgiving to our grandmother the moon.

And at this time we also mention the stars in the heavens, for there is our history written, in the stars in the heavens. Our old people say that if we look at the stars they will tell us when to conduct our ceremonies, when it is time. And still to this day our people carry this on. Still to this day we have people who can tell you what that means and what it says. Our history is recorded there; it is given to us in that way.

So again we bring our minds together and we give a thanksgiving to the stars, for they still continue in the ways that were given to them, in the order that was given to them to bring our minds together and give a thanksgiving. So be it in our minds.

We also give a thanksgiving to the Thunder-makers who come from the setting sun. They bring rains to quench the earth, for all the things to make life possible.

We have been given a great responsibility. They say there were huge animals at one time on this earth, that roamed this earth, and we, our people, asked the grandfathers to put them down into the earth, and so they did. There will come a time when we will not be able to give a thanksgiving to the Thunder-makers, and they say that the earth will open up and those huge animals will surface again. And the dangers that we talk about today in the world that we live in are nothing compared to what will come. So there is a reason why we exist today. We have never forgotten that. We still carry out the ceremonies, and we still give a thanksgiving to the first thunders that we hear. So we bring all our minds together and give thanksgiving. So be it in our minds.

We asked the four beings who come from the Creator's land ÿ who say they come to us at this level ÿ they do not touch the earth ÿ where we see, where we hear, where we speak from, where our minds are. They come to us in our dreams. They tell us of the things that need to be done, what needs to be said...concerns that we have for our people. So we give a thanksgiving for those that are still carried out to this day. Our ceremonies are still being conducted, in ways as far back as we can go in our language.

So at this time we would like to thank those four beings, because we asked them when we left our homes that we get here safely, to protect us, and that we go back to our families, back to our homes safely. So we give a thanksgiving, bring our minds together as one, give a thanksgiving for those. So be it in our minds.

Then we come to the Creator himself. He has put himself in a place where we say that we do not know his face. We will never know his face, but all those things of what is possible for us, he gave us a responsibility to look after.

So to this day we carry that out to the best of our ability. So we bring all our minds together as one, giving thanks to the Creator for making all these things possible. So be it in our minds.⁷

The Coming of the Law

More than five hundred years ago ÿ and it does not matter how much more ÿ a man came across the waters now known as Lake Ontario, bringing a message of peace to five nations. Those nations are now known in English as the Mohawk, Oneida, Onondaga, Cayuga and Seneca nations, and the man is known to us today as the Peacemaker.

The account of how these nations were brought together to form a single league or confederacy can be considered history or legend ÿ no doubt it contains elements of both. In political, legal and philosophical terms, though, the story contains teachings that flow through all parts of the culture and history of the Haudenosaunee since the arrival of the Europeans. Those same lessons, as reflected in the politics, law and history of the past five centuries, have had an influence far beyond the Five Nations. But it is best to begin the story at its roots.

The Peacemaker first enlisted as his helpers two very powerful people: a man, Ayonhwathah ("Hiawatha", as he later became known), and a woman, Jikonsaseh. Each of these two was powerful in a twisted way. Ayonhwathah, driven to madness by grief over the death of his daughters, lived in isolation and had become a cannibal. Jikonsaseh lived on the warriors' path. She encouraged and thrived on gossip and war. The Peacemaker reasoned that if his message were seen to persuade these people, it would be accepted as a powerful force for peace.

In choosing these two helpers, the Peacemaker was consistent with later parts of the law. There is a duality between men and women, a balance. Men and women have different strengths. Though the role of Jikonsaseh and the women in the making of the law is less well documented in the creation of the *Kaianerekowa*, the balance she represents must be recognized.

To convince Jikonsaseh and Ayonhwathah to join him, the Peacemaker first explained that he had to clear their minds of the things that were troubling them. When he came to Ayonhwathah's lodge, he listened for a while to Ayonhwathah's words of anger and sorrow, which were also a plea for sympathy, and then he said:

My younger brother, it has now become very plain to my eyes that your sorrow must be removed. Your griefs and your rage have been great. I shall now undertake to remove your sorrow so that your mind may be rested.

Peacemaker condoled with Ayonhwathah, and then he said:

My junior brother, your mind being cleared and you being competent to judge, we now shall make our laws...⁸

What the Peacemaker did for Ayonhwathah was later called in English the Ceremony of Condolence. First he cleared Ayonhwathah's senses, removing the tears from his eyes so that he could once again see clearly; clearing his ears so he could once again hear clearly; removing the obstructions caused by grief from his throat; clearing the impurities from his insides. Then the

words made him physically comfortable and removed the memories and thoughts that caused anguish.

It is said that Ayonhwathah gathered from a nearby stream strings of algae that had small river clam shells attached to them. He used these strings as a means of recalling the sequence of the words he was to speak. When the Peacemaker condoled with Ayonhwathah, it was the first use of wampum, the origin of its use as both an aid to the mind and memory and a sacred part of a sacred way.

Each word of the condolence is separate and symbolized by a separate string of wampum. It teaches us to concentrate on one thing at a time ÿ an important part of the procedure of council.

Today, the ceremony of condolence is used most often to calm, clear and raise the minds of a family in grief and mourning over the death of a *royaner* and to help in the raising up of another man to take his place. The strings of wampum that are strung across the condolence cane at the death and installation ceremony for Confederacy sachems are direct descendants of the shells the Peacemaker used with Ayonhwathah.

As giving thanks was the first step in peoples coming together, the condolence is the second. When nations met, they would condole each other, to raise up and clear each other's minds and thoughts and bodies of distractions before they could get down to the business of peace. The strings used by the nations to perform the condolence at the beginning of treaty councils are descendants of the Peacemaker's first strings, as well as of those used within the Confederacy to preserve and promote the peace.

The ceremony of condolence is the threshold to peace. A clear, rational, 'good' mind accepts peace as a matter of reason. The Good Mind accepts and welcomes the unity of nations brought together in peace.

Each of the 'words' of the condolence describes a particular hurt that has come from the grief and loss. Then the speaker explains how that hurt has affected the people who are gathered together. Then, through his words, he removes or heals the hurt and grief. The condolence is above all a healing for troubled minds.

This is the condolence:

...it begins with a preliminary rite of greeting called "At the Woods' Edge" at a fire kindled a short distance away. The clear-minded tribes meet a little distance beyond and send notice of their approach to the bereaved tribes gathered at the fire. They then march toward the fire, one of the men at the head of the line chanting the Roll Call of the Chiefs, punctuated with the responses of Hai, hai. When they reach the small fire, they stop and a speaker for the bereaved side gathered there greets them in the ancient fashion...giving thanks that they have arrived safely and that none has perished on the way.⁹

Greatly startled have I been today by your voice coming through the woods to this clearing. With a troubled mind you have come through obstacles of every kind.

Continually you saw the spots where they met, on whom we depended, my children. How then can your mind be at ease?

Ever you saw their footprints, those of your forefathers. And even now almost might the smoke have been seen where together they smoked. How can your mind then be at ease, when weeping you come on your way?

Great thanks we give, therefore, that safely you have arrived. Now then together let both of us smoke. For all around indeed are hostile powers, which are thinking thus: I will frustrate their plans. Here are many thorns, and here are fallen trees, and here the wild beasts wait. Either by these you might have died, my children, or here by floods you might have been destroyed, my children, or here by the hatchet raised in the dark, outside the house. Every day by these we are wasting away, or by deadly and invisible disease you might have been destroyed, my children.

Great thanks, therefore now, that safely you have traversed the forest. For painful would have been the results if you had perished by the way, or startled one had said: Lo! Bodies are lying yonder; Yea, and those of Chiefs! And they would think in dismay; it was startling, my children.

Our forefathers made the rule, and they said: Here shall they kindle a council fire. Here at the forest's edge, they will condole each other with very few words.¹⁰

The "very few words" are also called the "Three Bare Words". They are to clear the eyes, ears and throat of those who have travelled, and they are "bare" because they are preliminary and are usually spoken without wampum (that is, the speaker's hands are bare). They are also the first three parts of the full condolence ceremony.

Afterward, the hosts take the visitors by the hand, in affection. They bring them to the place of council. There, the Words of Condolence, Teyonhonkwaraktah, are spoken:

Your eyes are constantly shedding tears for the ones who have departed, who have been gathered to the Creator's land. Because of these tears, you can no longer see your brothers clearly, and your ability to see the world around you has been affected. With this word we wipe the tears from your eyes, so that you may once again see clearly.

The grief and sorrow you are suffering have stopped up your ears, so that you can no longer hear clearly what is being said to you. With this we once again open your ears, so that you can hear clearly what is being said.

Your throats have been stopped up with grief, so that you are no longer able to speak. With this we once again open your throats, so that you will be able to say what you wish, without obstruction.

With the purest white deerskin I clean the insides of your bodies of any impurities that may have lodged there, so that you can go about your lives in comfort and peace.

The memory of the people who have departed sometimes takes the form of the sight of blood on the space where you sit as Chiefs. With this we remove the bloodstains from your mat and once again prepare a safe and comfortable place for you to sit.

In your sorrow and grief you sit in darkness in your mind. You cannot see your brothers who seek to raise your spirits once again. With this we remove the darkness you are seeing and feeling.

When you have suffered a great loss, you sometimes cannot see the sky above you and around you; you are blind to the beauties of creation. With this word we restore the sight of the sky to your eyes, so that you can gaze about you in calm and beauty.

In your sorrow and grief the sun is lost to you, and you can no longer feel his warmth and the light he casts about us. With this we restore the sun to the sky so that you can once again see the world around you.

You have travelled far, and your path has been difficult. There are thorns in your feet, and you are in pain from your journey. With this we remove the thorns from your feet and once again make you comfortable.

The memory of the people who have passed away is refreshed in your minds whenever you pass their graves. With this we remove the sight of the graves and level the earth over them, so that their sight no longer disturbs your peace of mind.

When grief and sorrow strike the people, their fires are sometimes scattered, as their thoughts are in disarray. With this we gather together the embers of your fire and rekindle the fire so that it can once again give you warmth and light.

Not only a person's close family but all the people suffer when a respected person passes away. With this we once again raise up the minds of the women and the young men, that they may resume their responsibility of supporting and advising the Rotiianeson in their deliberations.

There are times when grief causes a person to behave in a way that is beyond reason, where they can injure or be injured by bad medicine. This can happen on earth, it is known to happen. With this we remove any shadow of insanity and all bad medicine from your minds, so that you can once again resume your place in our councils and our thoughts with a clear mind.

When a Royaner passes away, the deer horns that are the symbol of his title are said to fall from him, and fall apart. With this we put his horns back together again, so that the title may be passed on to another person who is worthy to carry that burden for the people.

The View of the World 400 Years Ago

Indigenous people often say, "We have a different view of the world than the white people." Usually, this is explained as a view that is closer to the natural world, a view in which people are a part of nature, rather than standing against it or on a holy mission to exploit or dominate it. As

well, this humbler view is said to involve different senses of time, of material values, and of purpose.

It is almost certainly true that people indigenous to a land have a greater attachment to that land, and affection for it, than people who are recent immigrants, whose roots are recent and whose mobility is still part of their culture. Yet the historical record shows that the world views of different indigenous peoples also reflect differences in the ways they lived. Agricultural peoples would not see the world as necessarily having the same structure and timelines as hunting and fishing peoples, for example.

The way a Mohawk of the fifteenth or sixteenth century would have viewed the structure of the world would reflect that person's society and economy, as well as that person's spiritual understanding.

At the centre of that world view is the village. In the days we are speaking of, the village was palisaded, defended ÿ safe. Inside the walls, each clan had its own longhouse, its own part of the village. Old people and children were the least mobile of the people, spending much of their time inside the village. Since the society was matrilineal and matrilocal, the multi-family longhouses were headed by matrons (or clan mothers, as we say today). Within the longhouse, each small family had its own hearth or fireplace. The hearth was probably the nucleus of a person's life, the first point of departure for a view of the world.

Beyond the hearth and the longhouse walls and the palisades lay the cultivated fields, the clearing. For at least a kilometre in all directions lay the cleared and planted lands. The Three Sisters ÿ corn, beans and squash ÿ grew together in their compatible mounds. Tobacco, melons and other fruits and vegetables were also grown.

Most of the gardening was done by the women, working together. Historians suggest that the villages of the 1600s may have been of single clans; by the late 1700s, at the Six Nations Grand River Territory, we can see maps showing the fields around the villages divided into sectors, by clan.

The Constitution of the Confederacy, the *Kaianerekowa*, as it was recorded in the early twentieth century, speaks of "the soil" and "the land" in the following terms:

These clans distributed through their respective nations, shall be the sole owners and holders of the soil of the country and in them is it vested as a birthright...

Within the clan the women also have specific roles:

Women shall be considered the progenitors of the Nation. They shall own the land and the soil. Men and women shall follow the status of the mother.¹¹

On 11 March 1763, the Mohawks of Canajoharie told Sir William Johnson:

being asked whether the Women were looked upon as having any right in the disposal of the lands, he answered "that they were the properest owners, being the persons who laboured on the lands and therefore were esteemed in that light".¹²

Though the women were the landowners, it was the men who dealt with other nations politically. As the women dealt with internal matters, the men would deal with the outside. On 15 May 1791, women of the Six Nations met with Major Thomas Procter, a representative of the United States, at Buffalo Creek:

...you ought to hear and listen to what we women shall speak, as well as to the sachems, for we are the owners of this land y and it is ours; for it is we that plant it, for our and their use. Hear us, therefore, for we speak of things that concern us and our children, and you must not think hard of us, while our men shall say more to you; for we have told them.¹³

There is indeed a special connection between the women and our Mother the Earth. It is the women's function to bring forth and nurture life, just as the Earth does. Their relationship with the soil is only a small part of their link with bringing forth life.

There were times when the chiefs used English legal language in their translations of the Great Law. The translation is often not exact. The feudal English concept of interests in land 'vesting' is alien to Haudenosaunee law. The expression 'the soil' may refer only to the part of the land that is used to grow things. (Some older people say that the early land treaties with Europeans went 'only to a plow's depth'.) It may also mean, as in Latin law, 'from the centre of the earth to the farthest star...'. There is little documentation of such historico-legal details. We do not know what people meant four centuries ago, and the views of people who are alive today have been affected by the ideas and actions of their neighbours.

The division in roles between men and women is reviewed, briefly, in William Fenton's "Northern Iroquoian Cultural Patterns", in the *Handbook of North American Indians*: Of the eastern Woodland Indians the Iroquois are best known as horticulturalists, for the slash and burn agriculture that was practiced by the women near the villages. The men, in season, cleared the forest, hunted deer, bear and small mammals, and at other seasons carried on extensive fisheries. Meanwhile, women collected roots, berries, greens, nuts and other edibles. The balance among the activities is difficult to judge from the sources: the only full accounting of hunting practices is of eighteenth-century Mohawks in Ohio (James Smith in Drake, 1851).

After the harvest, hunting parties of men and a few women abandoned the villages, leaving the old people, some pregnant women, and children, and walked several days into the forest where they set up camp to hunt deer and bear, dry the meat, and pack it home at midwinter...

Growing crops was the principal occupation of women in the village (Lafitau 1724: 2:70); the village and its surrounding fields comprised their domain.

Although Iroquois towns were built and governed by men,...men owed their offices to female succession, and the village and its environs up to the woods' edge were the domain of the women. Save the council, men's roles were carried out in the forest ÿ hunting, the war path, and embassies of peace and trade.¹⁴

Just as the village walls represent a boundary, the woods' edge is the second clear line. It represents a boundary between the women's domain and the territory of the men. It is also a boundary in terms of security and control. Where inside the palisades the people had total control and safety, and in the clearing they had virtual control, in the woods they were far more subject to the forces of the natural world (as well as more vulnerable to attack by human enemies). The power of the men as protectors became more important as people moved farther from the safety of the walls and the clearing. In all records and ceremonies, the boundary is called the woods' edge ÿ not the clearing's edge.

The woods' edge is where visitors to the village stop and wait. It is where they are greeted, welcomed, taken by the hand and led to the village. A specific ceremony of greeting takes place there, to raise the minds of the visitors ÿ partly to prevent bad thoughts from being brought into the village, partly to express a strong welcome. Strangers who would not wait at the woods' edge might be attacking the village and its people. Strangers coming to the clearing through the woods would come singing their songs of peace, or announcing their presence with calls appropriate for the occasion.

Who `owned' the land beyond the woods' edge, and how was it divided? The Great Law provides some indications:

The soil of the earth from one end of the land to the other is the property of the people who inhabit it. By birthright the Ongwehonweh are the owners of the soil which they own and occupy and none other may hold it. The same law has been held from the oldest times.

The Great Creator has made us of one blood and of the same soil he made us and as only different tongues constitute different nations he established different hunting grounds and territories and made boundary lines between them.

The boundaries between the hunting grounds of different nations and villages were geographic: watersheds and rivers were likely the most frequent, since they were both logical

and easily recognized. While those boundaries were known, and were provided for in the law, the peace created by the Great Law did away with conflicts over hunting for food:

We shall only have one dish (or bowl) in which will be placed one beaver's tail, and we shall all have coequal right to it, and there shall be no knife in it, for if there be a knife in it, there would be danger that it might cut some one and blood would thereby be shed. This one dish or bowl signified that they will make their hunting grounds one common tract and all have a coequal right to hunt in it. The knife being prohibited from being placed into the dish or bowl signifies that all danger would be removed from shedding blood by the people of these different nations of the Confederacy caused by differences of the right of these hunting grounds.¹⁵

The dish with one spoon referred to in this last provision of the Great Law appears often in councils between the Haudenosaunee and other indigenous nations, as well as in relations with Europeans. It refers to the hunting grounds. As the dish of beaver tail stew is shared between the chiefs, the land is like a bowl to feed all the people. The wampum belt preserving this principle is white, with a round purple area as the bowl.

The concept of the dish with one spoon spread gradually, as the Great White Roots of Peace spread to other nations. After the coming of the Great Law, a Mohawk could hunt not only in the hunting grounds of his village and nation, but also in the territory of the other nations of the Confederacy. Even though he would acknowledge, for example, that going west of a certain watershed meant passing from 'Mohawk territory' into 'Oneida territory', he would still have the right to hunt for food in peace. As treaties enshrining that principle were made with other nations, hunters would be able to use ever larger territories.

Meanwhile, the Great Law provided for a single territory of the Confederacy: Five strings of shell tied together as one shall represent the Five Nations. Each string shall represent one territory and the whole a completely united territory known as the Five Nations Confederate Territory.¹⁶

The dish with one spoon applied to the hunting grounds but probably not to the cultivated lands – though anyone entering a village would be treated with hospitality, with food as its first component. It is less clear whether commercial hunting and trapping received the protection of the law. Though there was much trading between the nations, including trade in skins, there was no such large-scale commercial activity in furs before the arrival of the Europeans.

After the creation of the fur trade, the historical records abound with complaints by indigenous nations that others are encroaching on their hunting grounds and harvesting the beavers and other fur-bearing animals. The Algonquins in the Ottawa Valley, for example,

complained about Mohawk trappers interfering with the sustained-yield trapping practices of traditional Algonquin territory, since the Mohawk trapping threatened to drive the beavers to extinction. The British reply, at times, was that the Indian nations should share their hunting grounds ÿ and that the *Royal Proclamation of 1763* confirmed this sharing by reserving the land to all the nations without specifying any internal breakdown.

A Mohawk before the arrival of the Europeans would thus have the following circles of territory ÿ my hearth, my longhouse, my village, my clearing, my hunting grounds (beyond the woods' edge), the hunting grounds I may share with the people who own them.

Beyond that last boundary, there lay still more territory where the men rather than the women would take the lead. However, in 'the hunting grounds of nations where I do not have the right to hunt', people would undergo another change. Just as a man's role would change to hunter as he stepped beyond the edge of his own clearing, his likely role beyond the edge of safe hunting territory also shifted. He was probably still a hunter, to feed himself and others with him. But now he was also either a messenger, a diplomat ÿ or a warrior, a member of a war party.

Beyond one's nation's hunting grounds and the hunting grounds shared with other friendly nations, the people had even less control, less security, and were farther from home. In unfamiliar forests, one was even more at the mercy of the natural world than in the places one knew and lived by.

It is no accident that Hadu'wi, the grandfather spirit whose help is invoked through Haudenosaunee medicine masks and medicine societies, lives and moves about at the rim or edge of the world. That is where the powers of people are weakest, and the forces of nature are most powerful. And the power of Hadu'wi, in many ways, is the power of all the things that human beings cannot control ÿ the power of the natural world.

The way the Haudenosaunee understood the world four centuries ago created boundaries, both of the mind and of the earth. Those boundaries affected people's behaviour, their confidence, their ceremonies.

This view of the world has changed, over time, though strong elements of it still remain. Mohawk villages are no longer palisaded, but the legal and perceived boundaries that are the boundaries of the reserve are real and protective. Mohawk men still travel beyond those boundaries as hunters, workers and adventurers, often without women and children and old people, who stay behind those protective boundaries. Twentieth-century ironworkers may have much in common with the hunters of 500 years ago, passing beyond the woods' edge into the forest.

The world views of the Europeans in North America have changed over the past five centuries as well. An Englishman in 1700 might see the world as having a well defined boundary between his fort, a protective palisade, his people's cleared lands, and the wilderness, with more abstractly defined boundaries for the edges of the political colonies and jurisdictions that had been created.

One could not speak of the wilderness without thinking of its location, beyond the unpredictable edge of the rational world.¹⁷

Though the European might feel he was standing against the wilderness, the world view of a European and a Mohawk 300 years ago might have had more in common than what that European might share with his modern descendants.

The average Euro-American today has no deep roots in the soil. He measures his ancestry in this continent in a few generations from the original immigrant, not in thousands of years. He owns his house and a little land around. He is at ease in his town, city or municipality, but probably knows few of its people. His next important boundary is the international one. The wilderness, the woods' edge, is probably not in his mind at all. He rarely sees what is left of the wilderness. In the past two generations, he has become increasingly urban. As well, the roles of men and women have become blurred as his society has passed from hunting, fishing and gathering to agriculture to an industrial economy and society to the beginnings of a post-industrial unknown.

Things have changed. They have changed irreversibly. They have changed in such a way that the Europeans, the Euroamericans and the Americans today, are as different from their 15th century ancestors as their ancestors were from the Indians they saw standing on the sands of the islands of the Caribbean in 1492...

It is really hard to imagine how those two could have been so far different from each other as they were – how people of the same species could arrive at the same place at the same time with such extraordinarily different versions of reality, different experiences of the world, different ways of viewing things, different ways of knowing what was real – as those Indians who were inhabiting the North American forests and those waves of differing kinds of Europeans who found their way across the Atlantic Ocean.¹⁸

Why are these world views relevant for modern thought? Because they provide us with an insight into what people intended in the early treaties – in terms of what they believed they held, what they could share, and the reasons for the relationship. And because 'upstreaming' – understanding where a people's mind came from – helps us understand how that people lives and believes today.

It is also relevant because the world view of the people provided the basis for their thinking on law ÿ and the tradition of Haudenosaunee law is a separate legal tradition from the European, separate but appropriate for the people it served and the land it lived in.

Within this physical description of how the world is ordered (in terms of boundaries), there are other dimensions that must be mentioned. The physical world is three-dimensional. That is, it extends from the centre of the earth to beyond the heavens. The world view of a Mohawk 500 years ago would include this, though neither the rock far below the earth's surface nor the beings in the Sky World would be thought of as under the control or influence, much less the ownership, of human beings.

The traditions and documents we have today cannot give us a full picture of what was in people's minds 500 years ago. If the earliest clear picture of Mohawk hunting practices was for the Ohio country in the eighteenth century, it would tell us something of what must have been true in the Mohawk River Valley two centuries earlier ÿ but much would also have changed. Whatever the European observers saw must have been through the lenses of their own views of the world, and they may have misunderstood. The rights and powers of women, for example, were often overlooked by European recorders. What may have been said in jest (for example, that beavers turned into raccoons in the winter) was sometimes recorded seriously. On the Haudenosaunee side, there is a consistency to tradition, but also gradual change over time: the earliest written versions of the Great Law are only 150 years old.

It is with caution, then, that one can state the boundaries of a Haudenosaunee view of the world at the time of first contact. There are certainly boundaries. Some of them are sharp and well documented. The woods' edge, the hunting grounds, and the difference between 'lands of people of the League' and 'lands of people with whom we are not at peace' are important. The difference between men's and women's roles in different kinds of lands is important. How the people relate to the land, in terms of time and ownership, is vital.

Kinship and Continuity: Clans and Names

Your name gives you and the world information about who you are.

In modern European North America, people generally draw their surname from their fathers. The surname provides an idea of the family's origin ÿ in the father's line. Until recently, most women changed their surname to their husband's surname on marriage.

A person's first name provides individuality, just as the second identifies the person as a member of a family. Sometimes the combination of names indicates a degree of continuity, with names taken from parents or ancestors, but generally it names the individual and then the family the individual belongs to.

This system is not very old. Not that long ago, before the population explosion and increased mobility of the past century and a half, surnames were not universal in Europe. The Dutch, for example, did not have an organized system of last names until Napoleon's time. English surnames are derived from an ancestor's occupation (Smith, Miller, Potter, Cooper) or from one's father's first name (Jones, Williams, Peterson, Jackson). Other names described the place the family lived or someone's physical characteristics (Bridges, Little, Noseworthy).

The names of the Haudenosaunee are based on different principles. They still identify the individual *y* but not through the father. At any time, there is supposed to be only one person in the world who holds a particular Haudenosaunee name. The name is descriptive: it fits the person, and it belongs to the person's clan.

The Haudenosaunee are born into their mother's clan. The person's mother and father and the elder women of the mother's clan choose a name for the child. The name belongs to the clan. It is a name that has been carried by people of that clan in the past, and it will return to the clan to be used again in the future when the present namebearer dies (or receives another name).

A person's name is introduced to the people of the community at one of the major ceremonies of the year *y* Midwinter or Green Corn. A close male relative or a chief will carry the child (or walk with the child, if the child is older) up and down the longhouse, announcing the new person's name and singing his own personal *atonwa*. In an adoption, the process of giving and ratifying the name is the same.

The clan and the extended family have been the basic building blocks of Haudenosaunee society. In modern North America, and over the past two centuries, there has been a move (consistent with industrialization) away from the extended family and toward the nuclear family *y* father, mother and children. The nuclear family is small and mobile, a simple component of a society that requires its members to move from job to job and from place to place.

Kinship ties, expressed in terms of clan, defined a person moving to a new community not as an isolated individual but as part of already established networks. These relationships tended to bind together individuals of different villages and nations as well. The number and names of clans varied from nation to nation, but three *y* Bear, Wolf, and Turtle *y* were common to each member of the Confederacy. A Cayuga of the Wolf clan, therefore, was accepted as kin by Mohawks of the same matrilineal clan.¹⁹

The clan system gives each member of the community clear knowledge of his or her place, in a number of ways. In a community with a functioning clan system, it tells individuals who their spiritual and political leaders are. It tells the person where to sit in the ceremonies. It

often tells people about the others to whom they bear a special set of obligations ÿ to help and guide them, but also that they are responsible and accountable to a particular individual as well as to all members of the clan.

Haudenosaunee society is inclusive. Just as the *Kaianerekowa* was designed to spread and expand, so it was designed for any person to be brought into the Confederacy, to be included, to be adopted. The written history of relations between the Haudenosaunee and other nations is full of stories of adoptions, of individuals and of entire nations. Individuals were adopted as war captives and given the names of people who had been lost in the same wars ÿ to act as replacements. People were taken in as runaways. But whoever was brought into the society was given a name and a clan ÿ a place full of knowledge and security. It was always clear that the name and the clan went together.

Adopted people were given 'a name hung about the neck'. In citizenship terms, this is similar to landed immigrant or probationary status, since the name could be removed by the people who granted it.

The harshest penalty in the criminal law system of the Haudenosaunee was not death ÿ the Great Law was designed to put an end to bloodshed ÿ but the removal of a person's name. Europeans would call this banishment or ostracism, but the message to the individual was that he no longer existed, that his name was taken away, that he no longer had relatives. A person whose name was taken away would eventually leave the community and wander the forests aimlessly, for his perception of himself throughout his life until that point would have been as one who belonged.

Not all European peoples were so very different. Both Irish and Scottish law ÿ traditional Celtic law, that is ÿ was based on a strong clan system. Saxon law recognized the mother's side rather than the father's (small boys losing fights are still told to 'say uncle' to the winner²⁰). The extended family was and remains a feature of European village life. But the Europeans who have come to North America over the past three centuries often came in a different spirit ÿ as individuals rather than as communities, intent on making it as individuals, without the fetters of social class or ethnic background. Many of the very things that gave the Haudenosaunee secure places in their world were the things that their new neighbours were seeking to escape.

While Haudenosaunee government and society give great independence to the individual, they do so secure in the knowledge that the individual will act in a way that is of benefit to all the people. This is because of the individual's strong sense of belonging, and it begins with the clan.

In the government structure, the clans are also crucial. The clan is the fundamental unit of government. The women of the clan, through the clan mother, observe the leadership abilities of the men. It is the women who choose the *rotiianeson* ÿ and can remove them for misconduct. The clans are subdivided into parts or families, and each part of each clan of each nation has a

clan mother and a *royaner*. Thus, the chief's title belongs not only to the nation but also to the clan. Just as an individual person's name goes back to the clan when he dies, for another to take up that name in the future, so the title belongs to the clan and returns to the clan when the title holder dies or gives it up. The continuity is the same, though there is strong pressure to fill the vacancy soon.

In Haudenosaunee society, the kinship created by the clan system engenders both responsibility and institutions. Conflict between members of a clan is resolved by the other people of the clan. Conflict between clans is resolved by the leaders of the two clans. The clan takes responsibility for the actions of the individual member ÿ but members are accountable to the clan for their behaviour.

The institutions that developed at the clan level ÿ and the ways of making decisions, of resolving conflicts ÿ were brought from the clan to the nation level and, through the Great Law of Peace, to the Confederacy level.

The Peacemaker adapted institutions that were already working at the local level to a higher plane. Those institutions were natural to the people: they had been their way for centuries. The Peacemaker did not invent an entire system: he extrapolated elements of what was already in place and working well to an international level and identified the strands of the existing ways that would best promote peace and unity.

It was natural for the Haudenosaunee to use many of those same ways in dealing with other nations. The continuity, the checks and balances, and the responsibility of the whole for the actions of the individual that came from the clan system found their way into the *Kaianerekowa* and from there into treaties with other nations, both indigenous and immigrant.

The Message of the *Kaianerekowa*

The message of the *Kaianerekowa* has three parts: the Good Word, Peace and Power ÿ *Kaiwiio*, *Skenon*, *Gashadenshaa*.

`Good Message', this is what it means: people respect each other as though they are one person; also everybody is related among the various nations, so that now they will stop, the sins and activities of evil people; now everyone will repent, the old people and young people; now everyone will repent one another among all of the nations; and just this is what will operate again, the good, and that is what the `Good Message' means.

Secondly, this is what 'Power' means: all of the nations will unite all of their affairs, and the group of several nations will become just a single one, and their power is that they shall join hands. This, moreover, will be the basis upon which they will survive as a group, forming a single family, similar to one person having one head and one life, surrounded by the Good Message. This is how peace will now come about among all of the nations, and power will arise for families to continue from here on in.

Thirdly, this is what 'Peace' means: now it will stop, the massacre of humans and the scalping and bloodletting among themselves, specifically, among the people of the various nations. Now as to that, it will end, the human slaughter, because the Great Spirit never planned for humans to hurt one another or to slaughter one another. So now it will end, the warpath, and everywhere it will become peaceful; the different nations' villages are as neighbours and as to the localized families and their children, what will happen is that they all will be very close relatives; and it will come to pass that they will become just like one family which will encompass every nation and every language. And this: when everyone can travel from village to village, then it will end, the danger and terror, and then everything will be peaceful, and they will rejoice, by day and by night as the family continues on, there being no end to peace; that is what it means, the Great Law of Peace, that everyone will be united; now I am finished.²¹

The Peacemaker travelled first to the Mohawks, the eastern-most nation of what was to become the Haudenosaunee. The Mohawks required proof that he was indeed carrying a message from the Creator, but they soon accepted the concepts and goals of the *Kaianerekowa*.

The process of bringing the nations together took several years. The process itself, the work that the Peacemaker and his helpers did, is an example of how consensus is built. The story of the nations coming together carries several important lessons.

Within four years, the Peacemaker's message had been accepted by the Mohawks, Oneidas, Cayugas and Senecas. Only the Onondagas had not been persuaded. While the Onondaga people appeared to be willing, they held back, in fear of the most powerfully twisted mind of all ÿ the sorcerer and leader Thadodaho. His power was twisted by evil: the evil manifested itself in his distorted limbs and the snakes in his hair. The people approached him together, using that power that comes from unity of mind. Singing the Song of Peace, they calmed Thadadahoh enough that Ayonhwathah was able to comb the snakes from his hair, straighten his limbs, and bring his power to be used for good.

The persuasion of Thadadahoh carries lessons as well for future lawmakers. There are two considerations involved in dealing with evil people. The first is to confront their evil, identify it, and remove it. The Song of Peace and the condolence are two mechanisms for doing this. The second is that such people, once their mind is made good, will support and lend their power to a project if they are made part of it. They must be included, given responsibilities. Without that, they will remain outsiders, and their bitterness will return.

Today, the person who holds the title of Thadadahoh is central to the working of the Confederacy Council.

The *Kaianerekowa* was not intended to be restricted to the original Five Nations of the Confederacy. For there to be true peace, it would have to exist both within the Confederacy and with all nations outside and beyond it. Once the union of the Five Nations was firm, the principles of Peace and Power were to spread. After planting the Tree, the Peacemaker said, Roots have spread out from the Tree of Great Peace, one to the north, one to the east, one to the south and one to the west. The name of these roots is the Great White Roots and their nature is Peace and Strength.

If any man or nation outside the Five Nations shall obey the laws of the Great Peace and make known their disposition to the Lords of the Confederacy, they may trace the Roots to the Tree and if their minds are clean and they are obedient and promise to obey the wishes of the Confederate Council, they shall be welcomed to take shelter beneath the Tree of the Long Leaves.

We place at the top of the Tree of the Long Leaves an Eagle who is able to see afar. If he sees in the distance any evil approaching or any danger threatening he will at once warn the people of the Confederacy.²²

The Equality of the *Rotiianeson*

The Peacemaker, with the people who were working for peace, created a council for the Confederacy. In the council, each clan of each nation is represented. In that way, every person within the circle of the Law knows who is his or her representative.

Within the council, no member is considered to have any greater power than any other. The *rotiianeson* are equals. Since there is no voting, and consensus is required, the influence of the individual is a matter of persuasion, wisdom and ability.

I now charge each of you lords that you must never seriously disagree among yourselves. You are all of equal standing and of equal power, and if you seriously disagree the consequences will be most serious and this disagreement will cause you to disregard each other...then your grandchildren will suffer and be reduced to poverty and disgrace.²³

The law provides that different members of the council shall bear different responsibilities – a reflection, probably, of the talents of the fifty men who formed the first council under the law. Thus, Thadadaho must be vigilant to sweep away crawling things that might approach the council fire; Dehatkodons is to sit at Thadadaho's left hand; Skanawati must consider things carefully from both sides; Dehatnakarineh is a watcher of the land; Tekarihoken identifies and ratifies consensus among the Mohawks. Within the council of each nation, individual members have responsibilities that assist the council in arriving at decisions.

The *Kaianerekowa* also provides for Pine Tree Chiefs, men who are raised up by the people based on their merit alone and who are not necessarily members of one of the noble families. These people sit with and advise the councils of their respective nations.

The Equality of the Nations

Within the council of the Confederacy, each nation has its own roles, powers and responsibilities. The Senecas and Mohawks are the Doorkeepers, through whom the issues to be considered must pass. The Onondagas are the Firekeepers, who seek and reaffirm the one-mindedness of the council. The Cayugas and Oneidas, the Younger Brothers, assist in building consensus and weigh the issues and ideas proposed by the Mohawks and Senecas. Each nation has a different role. There are also different numbers of *rotiianeson* in each nation. The Mohawks have nine, as do the Oneidas. The Onondagas, who have more clans than other nations of the Haudenosaunee, have fourteen. The Cayugas have eight and the Senecas have ten. The number of *rotiianeson* has nothing to do with the population of the nation, nor does it translate into influence or voting in the council: since decisions require that the council come to one mind, the number of members per nation is irrelevant. An Onondaga spokesman explained to the British at the council at Fort George on 3 August 1826:

Brother

It is natural for us to wish to preserve our ancient customs and to walk in the paths of our forefathers.... We consider each nation alike respectable and although we are the fire holders and appointed to speak for the whole, yet we do not consider ourselves any better than the rest in point of power and respectability.²⁴

The fact that each nation retains its internal integrity, rights and government means that the laws of the Confederacy must make room for these rights. For example, in the area of citizenship, a person adopted by one nation is recognized as a citizen by the Haudenosaunee as a whole. (The division of powers between Canadian provinces and the federal government is the essence of the Canadian constitution, beginning with the act of 1867. While the powers are

divided differently, because Canada and the Haudenosaunee concern themselves about different things in different ways, the challenges of a dynamic confederation are similar).

The wampum belt that shows five men standing with their elbows crooked, their hands joined, also contains the symbol of the Circle. The crooked elbows mean that if any person seeks to leave the protection of the Law, he may do so, but if he (or she) holds a title, that name catches on the elbows, like a deer's horns catch in the brush and fall off, so that the name remains within the Circle, to be given to someone else. The individual is free to leave (and to return) but the continuity of the title remains within the Circle, for it belongs to the people, not to the individual.

The same messages of peace and power that accompanied the making of the law, and the same processes, moved from the personal to the political and ceremonial level, pervade the Confederacy's ways and processes in its dealings with all other nations.

The Peacemaker also created a way of making decisions in council. The process involved all the Five Nations coming to one mind, using the two sides of the council fire as the means of moving an idea back and forth until everyone was comfortable with it. The process involved gentle persuasion rather than confrontation, consensus rather than votes, deliberate thought rather than rash action.

The Nature of Peace

The historical record contains both war and peace: accounts of long and bloody battles and torture contrast vividly with councils in which weapons of war are put away and words of peace are expressed with dignity and hope.

The debate over whether war was an acceptable means of spreading peace is not one that will be soon resolved. What is clear, though, is that the influence of the Peacemaker's ideas, and of the Confederacy that bore them, spread steadily across North America. When the Europeans arrived, they found a strong people with a strong law and a well established process of building consensus.

The Authority and Responsibility of the *Rotiianeson*

The nature of leadership in Haudenosaunee communities and in the Confederacy itself was not the same as the nature and authority of leadership among their settler neighbours.

The *Kaianerekowa* provides:

The Lords of the Confederacy shall be mentors of the people for all time. The thickness of their skin shall be seven spans ÿ which is to say that they shall be proof against anger, offensive action and criticism. Their hearts shall be full of peace and good will and their minds filled with a yearning for the welfare of the people of the Confederacy. With endless patience they shall carry out their duty and their firmness shall be tempered with a tenderness for their people. Neither anger nor fury shall find lodgement in their minds and all their words and actions shall be marked by calm deliberation.²⁵

To live by these ideals meant humility as well as leadership. Cadwallader Colden, a Commissioner of New York in its dealings with the Confederacy in the early 1700s, noted in respect of war chiefs ("captains") and *rotiianeson* (sachems):

Their Great Men, both Sachems and Captains, are generally poorer than the common People, for they affect to give away and distribute all the Presents or Plunder they get in their Treaties or War, so as to leave nothing to themselves. If they should once be suspected of selfishness, they would grow mean in the opinion of their Countrymen, and would consequently loose their Authority.²⁶

Since the *Kaianerekowa* required the *rotiianeson* to keep their minds on peace, the law prevented them from taking part in any war. The Great Law did not contain any provision for expansion of the Confederacy through force, coercion or warfare. Once a decision was made that warlike activities were necessary, the conduct of the war passed out of the hands of the *rotiianeson* and into the hands of other men.

The *rotiianeson* are not hereditary positions. No person inherits a title. People chosen as *royaner* are born into certain families that hold the title, so that what one can inherit from one's mother is the *eligibility* to be chosen.

People who are not members of those noble families can still be chosen to sit in the councils of their nations or the Confederacy as Pine Tree Chiefs ÿ people of merit raised up by the people themselves but who hold no title to pass on.

Just as they would later ascribe subjection in the place of affection, English translators have had difficulty with the concept of chief and continue to have that difficulty today. ...the word chief in our language means a position or office. We call it *royaner* and if there are many of them we call them *rotiianeson*. If we take that word apart, what does it mean?

It is coming from the root word *ioianere* which means, in English, *nice* or *good*. And then when you put *io* at the beginning of it means it is masculine or a man who is *of the nice* or *of the good*. And so that is literally, when translated into

English, what Iroquois people think of their leaders ÿ those men who are of the good...

...those leaders are the most humble ones and they are the poorest people of all of the nation because they are always giving, always giving, always giving, both materially, psychologically, spiritually and politically of themselves to all the people of the nation; they are always giving.²⁷

The *rotiianeson* have several clear responsibilities that are not present for lawmakers in Canada, Britain or the United States.

- In weighing every decision they make, they must consider the effect of the decision on peace.
- In weighing every decision they make, they must consider the effect of the decision on the coming seven generations.
- In weighing every decision they make, they must consider the effect of the decision on the natural world.

The process of the councils of the Haudenosaunee is designed to ensure that each of these considerations is kept in mind.

The Procedure of Council

The Council is divided into three parts. The chiefs of each of the original Five Nations sit in their own circles, since their decision on any matter must be unanimous as a nation. The Mohawks and Senecas are called the Elder Brothers ÿ they are both the largest nations in terms of population and the nations at either end of the Confederacy's geographic longhouse. Any matter that comes into the Confederacy from outside comes through the Mohawks if it is from the east and through the Senecas if it comes from the west. A matter to be considered in council must be put forward first by one of those two nations.

Before the matter can be 'put across the fire', it must have the consensus of both the Mohawks and Senecas. The matter is then put to the Oneidas and Cayugas for their consideration. These nations are the Younger Brothers, and for the matter to proceed, it must receive their approval as well. The matter is considered first by the council of each nation separately, then by that 'side' together.

Since the 1720s, the Tuscaroras have sat with and under the wing of the Younger Brothers.

Since coming to one mind is a careful and respectful procedure, the process of building consensus is gradual. Often only part of a proposal is put forward, for the 'other side' to confirm and add to. The Confederacy's way of dealing with an issue is built piece by piece, without confrontation.

This is in contrast with British parliamentary procedure, in which there are 'sides' in the lawmaking body. The government brings in a bill in virtually completed form. The function of the other side – which is called the opposition – is to test and challenge the proposed legislation. The hammering of the opposition on the legislation hardens and tempers the law, in theory removing imperfections and making it better. The course of the law through Parliament involves a series of challenges and votes. At each step, the vote involves the majority having its way, beating the minority. There are winners and losers, but the process is intended to lead to a law that will benefit all the people. The opposition is supposed to accept its losses in the votes as part of the rules of the legislature – it is supposed to be able to resume its goodness of mind and equanimity in time for the next issue, keeping its mind focused on the day when it will no longer lose the votes and will become the government itself.

Lafitau described the manner of deliberation in council:

...each of the opposing sides first takes up the proposition in a few words and sets forth all the reasons which have been alleged pro and con by those who first expressed their opinion. He [the speaker] then states his own opinion and concludes with these words: "That is my thought on the subject of this, our Council." After their deliberation on whatever subject it may be, there is almost no reason, for or against, which they have not seen or weighed.²⁸

Instead of the parliamentary adversary process, Haudenosaunee lawmaking is a co-operative one. Proposals are not opposed: they are modified, built. All possible steps are taken to ensure that the council comes to one mind, that there is no person and no nation that feels that it has lost. To that end, the language of council is full of moderation, of indirectness, of politeness.

Euro-American lawmakers have adopted part of that indirectness, in theory. They do not attack one another directly, but address their comments to the speaker of the legislature, a third party, to avoid having their words cause injury. Parliamentary language is also expected to be respectful and to observe certain rules of decorum, and members can be removed from the chamber for language that does not meet these standards.

Initially, though, the Europeans had difficulty understanding the degree of indirectness required in building consensus: what they saw, instead, was so much civility that no serious decision could be made, since there was never direct confrontation:

That People...have however a Piece of Civility peculiar to themselves: for a Man would be accounted very impertinent, if he contradicted anything that was said in their Council, and if he does not approve even the greatest Absurdities therein propos'd; and therefore they always answer, Niauoa; that is to say, Thou art in the right, Brother; that is well.

Notwithstanding this seeming Approbation, they believe what they please and no more; and therefore 'tis impossible to know when they are really persuaded

of those things you have mention'd unto them, which I take to be one of the greatest Obstructions to their Conversion; for their Civility hindring them from making any Objection, or contradicting what is said unto them, they seem to approve of it, though perhaps they laugh at it in private...²⁹

The rules of the council ensure that speakers can speak until they have said all they have to say (this is usually indicated by the words *Da neh to y`* 'that is all'). Council rules, not stated explicitly in the *Kaianerekowa*, but understood by all, ensure that there are no interruptions.

It is considered improper to single out any person, to name a person, to point at a person: all these things tend to work against the deliberations of the council as a single mind. In fact, any form of language that is hostile or accusatory can cause hard feelings and affect the state of mind necessary for councils to do their work. Instead, forms of speech and tenses that do not exist in English are used to make the proposals tentative, respectful. Hard words were rare. Thus, in the 1790s, when a spokesman for the western nations accused the Haudenosaunee of questionable dealings with the United States and actually "threw down at the Seneca's feet, the Strings of Wampum on which he spoke", the Haudenosaunee replied:

Brothers

We desire you all to sit still, we shall move to a little distance to consult on what answer to give you. You have talked to us a little too roughly, you have thrown us on our backs.

The Farmer's Brother then put the String which had been thrown down, over his head & hanging down his back they then moved away & remained an hour.³⁰

Rather than succumb to the hard or hot feelings that would have resulted from their being thrown on their backs, the Haudenosaunee withdrew, cooled off, and returned to restore unanimity and peace with their explanations. When the Seneca *royaner* known to the English as the Farmer's Brother put the wampum on his head, he was saying that the Haudenosaunee were considering the matter that had been thrown across the council fire, but had not accepted it.

Once the Younger Brothers have come to one mind on the issue, they state their feelings to the council, sending the matter back to the Elder Brothers. If there has been no change made by the Oneidas and Cayugas to the original proposal, then the Senecas and Mohawks will refer the issue for final confirmation to the Onondagas, who are the Firekeepers of the council.

Implicit in all the procedure of council is the assumption that there is always enough time in this world to do things right. Historical records show councils taking days or weeks, sometimes because not all the required participants had arrived (transportation two centuries ago

being less rapid and more dangerous than today). Consensus was built carefully and slowly, point by separate point. Where British and Canadian parliamentary procedure moves through a series of votes, the treaty procedure built consensus – coming to a single mind – by working on principles shared by the participants, moving those principles onto the fabric of the particular issues being discussed. The relationship between the parties, their respect for one another, their previous agreements and commitments, and their commitment to peace and the future generations were part of what kept them moving toward that consensus.

From what we know...the Indians had a tradition of law and the Iroquois are our surviving example of it. The Iroquois possessed a tradition of law, and that tradition of law is what has created them as a people. That part is definitely true, but the Iroquois tradition is not a tradition of law, exactly. The Iroquois tradition is a tradition of responsible thinking. It is not something written in paragraphs and lines because it doesn't matter whether the letter of the thing is right. The questions that have to be before the people are what is the thinking? Is the thinking right?

...As they were standing on the shore watching these people come ashore, the Indians carried with them a tradition of meeting and democracy, of free speech, of free thinking, of tolerance for each other's differences of religion, of all those things which got attached to the Bill of Rights, of all those things that we say are truly American, were born on this soil generations before Columbus ever set sail.

If the Indians hadn't been on that shore, if there had been no one living in the woods, do you really believe that all those ideas would have found a birth among a people who had spent a millennium butchering other people because of intolerance over questions of religion, killing people who suggested that the earth was not the centre of the universe, burning people who said that the sun was only one little thing in a whole bunch of stars, killing people who said they did not want to send their taxes to Rome? Do you think that tradition would have found its way, by itself? I think not.³¹

Our law is a law of the mind. From giving thanks, to the clearing of the mind through condolence, to coming to one mind in council, to the realization that the Good Mind pursues and accepts peace, the stream that flows through the entire law is that of the mind.

The law is created and maintained by the Good Mind – a mind that is both used well and used for good, since the one will inevitably lead to the other.

Because it is a law of the mind, it is a law of ideas and principles, rather than of words and details.

It is natural that the law should be preserved in the mind, as well. That is, the human mind is the storage device that was chosen by the Haudenosaunee, just as statute books were chosen by the Europeans. A law that is kept in the minds of the people will cause them to keep the law 'in mind' in their lives ÿ while a law that is kept in institutions will gradually find its enforcement by those institutions rather than by the people themselves.

Neither way of law is better than the other. Over three centuries, each has influenced the other deeply. Each has influenced the people deeply.

Preserving the Law

At the Friendship Treaty of 1736, the speaker for the Confederacy stated:

We nevertheless have methods of transmitting from Father to Son, an account of all these things, whereby you will find the remembrance of them is faithfully preserved and our succeeding generations are made acquainted with what has passed that it may not be forgot as long as the Earth remains.³²

A British observer of the eighteenth century explained how these methods of transmitting worked:

...where any one is making a speech he gives belts made of wamphum, to assist the memory in the different divisions of it. A very great regard is paid for these belts: when the subject is of great importance the belt is very wide & so on. If a Mohawk makes a promise to another, he gives him one of those belts. His word is irrevocable & they do not consider anything a greater reproach than showing them the belts which they have distributed; here is your belt, this sentence is sufficiently binding ÿ the treaties which they formerly made were oral & remembered by repeating them from father to son, but the Memory is very much assisted by the Wampham belts. When any foreign ambassador comes to them & makes any proposal they contrive to remember every word he says; different people are appointed to learn by heart a separate sentence & no more; so when they come to put it together they know every word of it.³³

The Great Law of Peace is based on the mind. It is no accident that the medium chosen for recording and recalling the Great Law ÿ and all later important events and decisions ÿ was the human mind. The mind is the most sophisticated recording and preserving device that human beings have found. Its storage capacities have not been fully tested. It is portable, does not need much temperature or humidity control, and is capable of complex storage and retrieval tasks. Knowledge stored in the mind can be transmitted or transferred to other minds, and that knowledge invests those other minds with abilities to use and understand the purposes of the knowledge.

The law is based not on words but on principles. Confederacy law suggests that the people should always keep those principles in mind. To relegate them to words and paper would remove, in part, the people's duty to keep the law in mind and would also encourage debate over technicalities.

The use of the human mind as the chosen storage device led to a legal and political system far different from the one developed and used by the Europeans over the past four or five centuries.

As literacy spread, paper became the chosen medium of storage. Yet the paper record was only as good as its recorder, and paper was susceptible to being destroyed. Indeed, two of the Four Great Folio Volumes of British treaties with the Confederacy kept by Sir William Johnson in the 1760s have been lost (the other two found their way, after the American Revolutionary War, into the National Archives of Canada), and portions of the rest of Johnson's papers have many missing fragments. Other modern storage media are also capable of loss or damage (we have only to recall the Watergate tapes' missing eighteen minutes, or the erasures of computer disks and the shredding of paper as the Iran-Contra affair began to unravel).

Some provisions of the Great Law of Peace, and some fundamental concepts of treaties between the Confederacy and other nations, including Britain, France and the United States, have been preserved on wampum belts.

The wampum belts help to preserve the provisions of the law and the treaties. It would be wrong, though, to think that the wampums can be read like the pages of a book. Anthropologists have called the wampums mnemonic devices ÿ tools to aid the mind or memory. And that is exactly what they are. The record of the event or provision is recorded in a person's mind. The wampum helps that person to recall the specifics, through the symbols that are worked into it.

While wampum is less of a record than some would believe, it has another aspect that has no direct European equivalent. It is sacred. A promise that is accompanied by wampum is deeply binding.

Another consequence of using wampum is that it is the *principles* rather than the legalistic details of an agreement that are recalled. It is the principles that are later recalled and re-ratified, not the particulars and details, which might lead to arguments and to a need for lawyers.

In council and in ceremony, wampum also helps to set a clear agenda. The use of wampum belts and strings in council meant that the issues would be considered only one at a time, and would be responded to in the order in which they were raised. The earliest recorded

`treaty' between the Haudenosaunee and the French ŷ at Three Rivers in 1645 ŷ involved the use of wampum as a means of setting the agenda and controlling the pace of the council.

The Haudenosaunee speaker waited in a canoe at the edge of the river ŷ and that equivalent of the woods' edge is where the condolence took place, according to the Jesuit recorder. The speaker set up a horizontal rod between two upright ones, and after each separate item in his talk, he would place a string of `porcelain', as the French called wampum, across this rod.

Since wampum was rare in the early days, written records indicate that other ways of ordering and recalling the councils were also used. Sticks, cut into beads and strung like real wampum, or notched, were used. Furs were presented as gages of the nations' word. The Europeans at first believed these were `presents', and linked them with compensation or esteem; later the Haudenosaunee may also have begun to believe these ideas ŷ but the records of the earliest councils clarify that the purpose of `presents' was to assist in the recall and structure of the exchange of ideas:

The next day the Iroquese answer'd our Discourse and Presents Article by Article, having laid on the Ground several little pieces of Wood, to put them in mind of what had been said the day before in Council; their Speaker, or President, held in his hand one of these Pieces of Wood, and when he had answer'd one Article of our Proposal, he laid it down, with some Presents of Black & White Porcelain, which they use to string upon the smallest Sinews of Beasts; and then took up another Piece of Wood, and so of all the rest, till he had fully answer'd our Speech, of which those Pieces of Wood, and our Presents, put them in Mind. When his Discourse was ended, the oldest Man of their Assembly cry'd aloud for three times, Niaoua, that is to say, It is well, I thank thee; which was repeated with a full voice, and in a tuneful manner, by all the other Senators.³⁴

The Use of Speakers

When they were binding the nations together in the Great Peace, Ayonhwathah often spoke for the Peacemaker. For the Haudenosaunee, the use of speakers is a tradition that differs from the practices of their European neighbours.

The Haudenosaunee prize each person according to his or her special abilities, There are many ways in which a person can be useful to the people, and the ideal of a Haudenosaunee education is that each person should achieve his or her potential and make the fullest use of his or her abilities. Some people had an ability to speak in council, to express ideas beautifully or carefully. The fact that they were asked to speak in council did not mean that they were political leaders; that ability might have reposed in someone else. When the Haudenosaunee met with

European peoples, they found that the Europeans expected leaders to also be speakers ÿ their leaders would not allow others to speak for them. This sometimes led to confusion on both sides. The Europeans occasionally addressed themselves to the speakers, instead of to the entire assembly. More often, however, the Europeans understood the practice of using speakers, though they did not imitate it.

Balance

Constitutional scholars have noted the structure of checks and balances in the *Kaianerekowa*. Of the two, it is the balances that are more pervasive, and as much as possible Haudenosaunee structures reflect what anthropologists have called 'duality'. In council, whether within the Confederacy or with other nations, there are two 'sides'. There are two 'sides' in the ceremonies. There is a balance of authority between women and men. For the condolence, there are always the aggrieved people and the 'clear-minded ones'. The energy and will of the young men is balanced by the authority and wisdom of the elders. The sense of balance pervades not only the law but the entire society.

Maintenance

When a legal system is kept in the minds of its people, it requires regular reaffirmation. This fulfils several separate functions. The simplest is that the exercise of reaffirmation involves full recitals of the law, and this enforces and encourages recall and recollection. It reinforces the people's commitment to the law, as well, by keeping them informed of the law and its spirit and structure.

The *Kaianerekowa* provides:

Every five years the Five Nations Confederate Lords and the people shall assemble together and shall ask one another if their minds are still in the same spirit of unity for the Great Binding Law and if any of the Five Nations shall not pledge continuance and steadfastness to the pledge of unity then the Great Binding Law shall dissolve.³⁵

Periodic renewal and reminder of past agreements serves to strengthen the union. In councils, it adds to an atmosphere in which further agreement can take place. It is also a practice that teaches that the peace and the union must be worked at, cannot be taken for granted or neglected.

It is possible that the idea of reaffirming commitments stems from the nature of the longhouses that are the symbol of the League. A house made of wood and bark requires maintenance and, as it gets older, requires props to be added to the sides for support. People who

would maintain their houses in this way could see analogies in how to maintain their laws and institutions.

The process of deliberate maintenance was another element of the Confederacy's legal system that was accepted and adopted by the Europeans in treaties.

The *Kaianerekowa* is a complete system of law.

It is a constitution based on the people's original ways, based on peace and justice and power.

It is farsighted and deliberate.

Its principles include checks and balances, accountability, respect, full representation.

But above all, they include peace.

The *Kaianerekowa* is as respectable a system of law as any other that exists among the nations of this world.

PART II THE SAILING SHIP AND THE SILVER CHAIN

Now that we understand the framework
Within which the Haudenosaunee lived
And within which their laws operated,

We can examine their relations with other nations,
And specifically with the European nations,
The settler nations.

And we will find that Haudenosaunee processes,
Both as ritual and as ways to reach decisions,
Were accepted and used by the settler peoples.

For two centuries, Haudenosaunee ways
Were the ways of coming to one mind
In the treaty councils of the British and French.
And those peoples understood those ways
And used them
Because they worked
And because the power of the Haudenosaunee
Meant that they could not be ignored.

Using those processes
Led to the acceptance of relationships
Consistent with Haudenosaunee ways, as well.

With the British, those relationships
Have two consistent symbols.

The two row wampum.

And the silver covenant chain.

Introduction

Just as the councils and procedures of the Confederacy adapted and raised clan and village ways to the level of dealings between the nations of the Haudenosaunee, those same practices and procedures dominated the way the Haudenosaunee dealt with other nations.

The Peacemaker had stated that the Great White Roots of the Tree of Peace should spread to the four directions, bringing the message of peace to the nations of the world. When the Haudenosaunee met other nations, their councils reflected the internal councils of the Haudenosaunee. The ways of the *Kaianerekowa* were intended to lead nations to peace. When the Dutch, British and French followed the processes prescribed by the Great Law, they were, in effect, placing themselves under the Tree of Peace.

For two centuries, Haudenosaunee ways were the means used to come to one mind in treaty councils between the British and the French and the indigenous nations of this land.

The use of the council processes led to the acceptance and understanding of relationships that were consistent with the processes and the law that lie behind them.

With the British Crown, those relationships have two consistent symbols: the Two Row Wampum, or Kaswentha (which means 'river of life', as well as referring to the relationship between the Haudenosaunee and the Crown), and the Silver Covenant Chain.

These relationships were consistent with the *Kaianerekowa*: they respected the internal lawmaking powers and sovereignty of the nations while linking those nations together in a union of peace and power.

The message of the Peacemaker was that peace should exist between all nations, and that the means of achieving peace was through the power and vision of *ska:nikanikȳnha*, unity of mind. The message was not restricted to the original Five Nations. The *Kaianerekowa* provides that:

Whenever a foreign nation is conquered or has by their own will accepted the Great Peace, their own system of internal government may continue, but they must cease all warfare against other nations.³⁶

From the beginning of relations between the Haudenosaunee and European nations, and until about the 1830s, each element of council and treaty procedure was knowingly adopted and adapted by both sides from the internal procedures of the Haudenosaunee.

There were several reasons for doing so.

In the beginning, the Haudenosaunee were powerful and the Europeans were relatively weak.

The procedures were a requirement for the Haudenosaunee, while the Europeans had no formal counterpart to offer.

The procedures worked: they worked effectively to bring about peace and consensus, to create the Good Mind and the One Mind necessary for the joint welfare of all the peoples involved. They were dignified and peaceful.

There were times when European leaders or speakers were uncomfortable or unfamiliar with Haudenosaunee ways. These were exceptions. Generally, the treaty councils were conducted ÿ as the written record confirms ÿ by people on both sides who knew and understood the significance of their actions, ceremonies and words.

As an example of a European leader unfamiliar with Haudenosaunee practices, there is the confrontation between Lieutenant-Governor Simcoe and Thayendenegea (Joseph Brant) at the Grand River Territory in late 1792. Simcoe had recently arrived from Britain. One of his first tasks was to take jurisdiction over a case involving the death of one Mohawk at the hands of another. He wrote:

Captain Brant made a long speech, and delivered a Belt, which, upon being interpreted to me by Colonel Butler, to my great surprise, I understood was to cover the grave of the Indian who had been murdered, according to the ancient Indian custom...

I refused this Belt and left the Council House. The Indians, I apprehend, were in a great astonishment, and the affair began to wear a serious aspect. Upon the nature of it being fully explained by Colonel Butler...it was thought most prudent that I should accept the Belt, which was accordingly done next day.³⁷

Simcoe later rationalized his retreat: "the murder was really committed in a drunken frolic", there was no convincing evidence, and the Mohawk victim was "worthless". In fact, Simcoe, through his own ignorance of procedure and treaties, had been placed in a position where he had to reconsider the effects of his actions on peace in general. Simcoe had taken and then refused a wampum.

Contrast Simcoe's clumsiness with Sir William Johnson's confident actions in 1756, when he went to Onondaga to condole on the death of one of the chiefs:

About a mile from Onondaga, three Cayugas met us, and a halt was made of two hours, to settle the formalities of the condolence, agreeable to the ancient Custom of the Six Nations. Then I marched at the Head of the Chiefs singing the condoling song which contains the names, laws, and customs of their renowned ancestors, and praying that their deceased brother might be blessed with happiness in his other state.³⁸

Not only the condolence, but every aspect of Haudenosaunee procedure and law was accepted by peoples with whom the Confederacy met in council:

Much the same principles and ceremonies of peace that sustained amicable relations among the Five Nations applied when leaders of Iroquois nations dealt with peoples outside the League. Indeed, treaty making was essentially an extension of the Great Peace to a broader stage. The Condolence rituals, words of peace, and exchanges of gifts mandated by the Good News of Peace and Power provided the basic paradigm for diplomatic relations with outsiders... Throughout the process of external diplomacy the nature and status of peaceful relationships and good thoughts themselves, rather than the mundane business details of what seventeenth-century Europeans called international relations, counted most.³⁹

The Europeans went beyond adopting and adapting Haudenosaunee diplomatic processes. There is evidence that the spirit of the law itself was also accepted by the Europeans in the Americas and that it gradually gained acceptance among the European nations and in modern North America.

The principle that law should determine our agreement between ourselves to act in a way that brings safety and freedom to us all was argued between Indians and explorers in the 16th, 17th and 18th centuries. It was argued between the Indians and the people that the Jesuits sent into the Indian country. It was carried over to France by writers and by voyageurs. It was argued in France and it found its way back to America when the Americans heard it from the French.

The idea of that law goes back to a tradition, still alive among the people of the Six Nations, that tells of a philosopher who came across Lake Ontario and journeyed among the Mohawks and went from man to man among the leadership of the Mohawks and argued with them that reason can bring us peace. He argued that we can create a world in which people look to thinking instead of violence and created the council of the Five Nations as a place that sits under a tree, protected by the law, and around the idea of which the chiefs hold their hands together to do clear thinking about the welfare of the coming generations, of the people of this earth.

...We as a people living in the 20th century must have a clear understanding that our roots come from those two places. We must understand that from the one place came the technologies and the abilities to move into the kinds of philosophical knowledge that finds its way into the hard sciences and

also to work on building institutions around the issues that we call the social sciences and the arts and humanities. But the other confluence of this talks about the need to think about our responsibilities as human beings when we create institutions to remember those institutions must respect and must reflect on the rights and the sacredness of the individual.⁴⁰

The individual councils that have been described as treaties had well defined processes. They can be described and documented, as can the fact that the British understood, accepted and used those processes. These councils, though, were not isolated incidents, but part of a dynamic stream, a continuing and increasingly well defined relationship. Beyond that relationship, the impact of each side on the world of the other is equally important.

The spirit of the *Kaianerekowa* ÿ seeking peace and power through the Good Mind ÿ pervades these councils and through three centuries of turmoil has survived. The law has survived and remains a respectable law. The relationship between the Haudenosaunee is based on that spirit, and the Haudenosaunee would like to think that it, too, has survived and is worthy of respect.

It is important to acknowledge the extent to which the Europeans adopted, understood and respected Haudenosaunee processes in treaty making. The following extract from the United States case of *Jones v. Meehan* (175 U.S. 1 [1889]) was quoted with approval by the Supreme Court of Canada in *R. v. Sioui* in 1990. In terms of documents written in English legal language, the statement may be accurate. In terms of what took place in council, it is dead wrong:

...it must always...be borne in mind that the negotiations for the treaty are conducted, on the part of the United States, an enlightened and powerful nation, by representatives skilled in diplomacy, masters of a written language, understanding the modes and forms of creating the various technical estates known to their law, and assisted by an interpreter employed by themselves; that the treaty is drawn up by them and in their own language; that the Indians, on the other hand, are a weak and dependent people, who have no written language and are wholly unfamiliar with all the forms of legal expression, and whose only knowledge of the terms in which the treaty is framed is that imparted to them by the interpreter employed by the United States...

During the first century of treaty making with the Haudenosaunee, most of this statement would have had no application. The Confederacy was not a weak and dependent nation; its representatives were at least as skilled in diplomacy as the Europeans; the council would have been held in Mohawk, with interpreters on both sides; the technical terms would have been those of Haudenosaunee law; and the lack of a written language would not have been an obstacle to preservation of the commitments made in the treaty.

If the laws of Canada require treaties to have just, broad and liberal constructions and interpretations, let it not be because of some imagined incapacity of the Haudenosaunee ÿ but rather because of the intention of the Crown to act with honour and justice for their own sake.

Where the written documents vary from the understanding arrived at in the treaty, it must be recalled that those documents themselves are *not* the treaties. They are merely the *record* of the treaties, preserved by one side. The full record of the treaties consists of writing, memory and action. Where there are written records, though, containing technical or legal language, and one party is both unschooled in that law or technology and illiterate, a great deal of caution is required to ascertain that party's understanding of the transaction. The 'trust deed' of the 1701 Nanfan Treaty is an excellent example of this kind of problem, for history shows that there were clearly separate understandings, after the fact, of what had been intended.

Procedure in Treaty Councils

Generally, council would be called by the sending out of runners, carrying wampum and sticks notched to indicate the number of days until the council, as well as a message about the matters to be discussed.

The Haudenosaunee had people renowned as messengers ÿ word could be carried the entire length of the geographic Longhouse, from the Seneca country of Niagara to the eastern door on the Mohawk River, nearly five hundred kilometers, in less than three days.

In response to the invitation, delegates from the invited nations would come to the place of council ÿ known as a council fire, or fire place ÿ carrying their invitation wampum with them.

The Haudenosaunee council fire burns at Onondaga, the place of the Firekeepers as well as the geographic centre of the Confederacy's territory. For meetings with the British, the council place was Albany, which lay on the border between Mohawk territory and British lands. The council fire of the "Indian Confederacy" of the late eighteenth and early nineteenth century lay on the Miami River, south of Lake Erie. In all cases, the council place was convenient to reach for all participants, and a place appointed by tradition. However, councils could be held in different places as circumstances demanded: there have been Haudenosaunee councils at Buffalo Creek, near the Niagara River, when necessary.

Some very early documents indicate that the visitors would come along the path, singing their songs of peace and carrying their pipe with them. Later councils, too, could begin with the arrival of the guests, singing songs of peace and condolence.

This makes sense. You would want to warn people that you were coming, and a song is a powerful way to do so. It broadcasts your peaceful intentions (because stealing silently up to the

village could easily be misinterpreted). Where the messengers were single runners, they would approach the village with specific cries: a runner with news of death would come crying, "Kwe! Kwe! Kwe!" to warn the people of his arrival.

Coming with a song is also sacred: just as the Peacemaker taught Ayonhwathah and the other people the Song of Peace as they walked to Onondaga to meet Thadadahoh, so, too, nations could repeat that power and prudence in their later councils.

The council of 15 September 1685 provides an example of how song was mixed with speech to assist in putting the ideas across. Since one of the concerns of the council was always to open the senses, to make the channels of communication as effective as possible, the use of a song "to drive it into you" was one way to do so. The British record is not detailed, but it reports that the Mohawk speaker, Canondondawe, stated:

Oh Brethren, Corlaer and Governor of the Virginia, where will I look for the peace covenant, where else will I find it but on our path, and but where will this path lead but to this house, which is a house of peace and welfare, and started a song and sang completely the covenant song... Let us observe and keep to what has been commanded so sharply to us. Let me drive it into you with a song. Open now your ears, and he sang a song of admonishment, and gave one belt of wampum to the Governor and one belt to the Governor of Virginia, concluding all the proposals with a song and said that they were done for this time.⁴¹

Coming with a song was part of the diplomacy of Northeastern North America: on 10 May 1765, when the British met with the Shawnees and Delawares, the record shows that

The Shawanese came over the River with the English Prisoners, beating a Drum & singing their Peace Song, agreeable to the Antient Custom of their Nation, which they continued 'till they entered the Council Room.⁴²

In actual practice, the visitors would stop and wait at a place some distance from the real edge of the woods – often several kilometres away. The Three Bare Words of greeting would take place there, a condolence without wampum as a preliminary welcome. The people of the village would take the visitors gently by the hand, removing any grief or bad thoughts from their minds, comforting them, removing the thorns of the road from their feet and the dust and fatigue of the trail from their bodies. One purpose of the meeting at the woods' edge is a welcome. Another equally valid purpose is to ensure that bad, confused or grieving thoughts are not taken into the community in a way that will disturb the people and their peace of mind.

The earliest written record of Europeans being received in this way is Jacques Cartier's visit to Hochelaga in October 1535:

The City of Hochelaga is six miles from the riverside, and the road thither is as well-beaten and frequented as can be, leading through as fine a country as can be

seen, full of fine oaks as any in France, the whole ground being strewn over with fine acorns. When we had gone four or five miles we were met by one of the great lords of the city, accompanied by a great many natives, who made us understand by signs that we must stop at a place where they had made a large fire, which we did accordingly. When we had rested there some time, the chief made a long discourse in token of welcome and friendship, showing a joyful countenance and every mark of goodwill.⁴³

The visitors are given food and a place to rest for the night. And that is the end of the first day of the meeting.

At least, that is the end of the *formal* part of the first day. In reality, it is likely that the visitors and their hosts would have informal meetings and discussions "behind the bushes" to understand the issues, ascertain the facts, and prepare for the next day.

The first principle governing the Council is that people's minds must be clear and good. To ensure this, one would not rush tired people into council. Since there was always time in this world (in those days, at least) to do things right, the visitors would be required to have a good night's sleep.

The other necessity and tradition is that visitors must be fed.

The earliest well documented treaty council between the Haudenosaunee and a European nation was the council with the French at Three Rivers in 1645. The Jesuit Relations provide a relatively detailed record – one that shows both that the French did not yet fully understand or accept the process and that the Haudenosaunee were clear and confident in a well established practice. The French description includes elements that we can recognize today as the thanksgiving, the condolence, the parts of the council that lead to decisions. To the French at the time, it was new, strange and picturesque. But within twenty years, the French were conducting councils according to those rules.

Giving Thanks

There are two parts to giving thanks in international treaty councils. The first is at the woods' edge, where thanks are given to the Creator for the people's safe journey. The second, sometimes taking place at sunrise, opens (and closes) the council itself. Since these parts do not vary much from council to council, the English recorders often abbreviated them in their reports:

Ganughsaegah an Onondaga Sachem Spoke.
Brother

We the Five Nations now assembled here All bid you heartily welcome to our Fire or Meeting Place, and are thankful the Lord who is above has spared your Life to come among us at this bloody time.⁴⁴

The Condolence

Sir William Johnson, the first imperial superintendent general of Indian affairs for the northern superintendency of North America, was a master of Haudenosaunee procedure. The 1768 Treaty of Fort Stanwix was to replace the 'temporary' boundary between Indian territory and British colonies created by the *Royal Proclamation of 1763* with a permanent line. Representatives of New York, Pennsylvania, Virginia and New Jersey were present for the British 'side'. It was crucial that the treaty be conducted properly:

Brethren,

I take you by the hand, and bid you all welcome to this place, where I have kindled a Council Fire on affairs of importance.... I hope therefore that you are now come fully prepared, and with hearts well inclined to the great business for which we are convened, and in order to prepare you the better for these purposes, I do now agreeable to the Antient custom established by our forefathers, proceed to the ceremony of Condolence usual on these occasions...

With this string of wampum I do on behalf of His Majesty, and all His subjects, wipe away the tears from your eyes, which you are constantly shedding for your late dead chiefs, and I clear your sight so that you may look cheerfully at your Brethren who are come from several of the Provinces to attend this general Congress, ordered by His Majesty to be held by me in order to settle some necessary points between him & you.

With this string I clear the passage to your hearts, that you may speak cheerfully, and candidly, on the several subjects, which during this Congress will be treated of, as well as to remove all sorrow, and uneasiness, from your minds.

With this string I wipe away the blood of your friends from off your Berths, that you may on your return rest with peace and comfort on them.

Gave Three Strings.

Brethren

I am greatly concerned for the many losses you have sustained in your several nations, since our last meeting, sincerely condole with you for them all.

A Belt.

Brethren

With this Belt I light up anew your several Council Fires, that the Chiefs still remaining may upon all occasions sit comfortably by them, and consult upon the several matters which may come before them.

A Belt.

Brethren

As I have by the former Belts kindled up your several Council Fires, I do now by this Belt desire that you the Counselors will duely assemble when the affairs of

your nations require it, and then zealously apply yourselves to every means which may tend to your peace and interest.

A Belt.

Brethren

With this belt I dispell the darkness which for some time past hath overspread your several countrys by reason of your many and great losses and now heartily wish you may enjoy a serene clear sky so that you may be able to see your Brethren from the sun rising to the sun setting.

A Belt.

Brethren

As I would deal with all people in their own way, and that your ancestors have from the earliest times directed and recommended the observation of a set of rules which they laid down for you to follow, I do now agreeable to that custom take of the clearest water, and therewith cleanse you inside from all filth, and everything which has given you concern.

A Belt.

Brethren

I must desire that your Sachems and Councillors will as Occasions may require, consult with the Chieftains of your young men, as they are in general of sense and experience, and you Chieftains and Warriors to pay a due regard to your Sachems and Councillors, whose sage advice will always tend to your interest.

A Belt.

Brethren

In performing these ceremonies I cannot omitt this necessary part, which is, that as there are but two Council Fires for your Confederacy, the one at my House, the other at Onondaga, I must desire that you will always be ready to attend business at either of them when called upon by which means business will, I hope, always be attended and carried on for our mutual interest, and this I earnestly recommend to you.

A Belt.

Brethren

I must also desire you to be unanimous amongst yourselves, to reside in your respective countrys, and not to think of scattering or settling amongst other nations, as has been too much the practice for some years past, to the great weakening of your Confederacy.

A Belt.

Brethren

I give you a pouch with a string of wampum in it, which you are to make use of when you hear of the loss of any of your Confederacy, and rise up on such occasions without delay in order to condole for the same, I remove the concern thereby occasioned.

Three strings of wampum.

Brethren

I now supply you with a torch or candle which you are to travel with by night on any extraordinary emergency, such as the approach of an enemy, in order to communicate the news with the utmost dispatch.

Three strings.

The Nations gave the Yo Hah at the proper place and the ceremony of condolence ended. Adjourned till the next day.⁴⁵

Sir William Johnson had a tendency to add political advice (not to scatter your settlements, not to listen to the French) to the ceremonial parts of the council. It was a personal idiosyncrasy: other colonial or imperial representatives would adhere to the stricter forms of ceremony. But Johnson also tended to deliver the ceremonial parts of the council fully and eloquently. There is no contemporary statement by the Haudenosaunee about their feelings about Johnson's additional comments.

Another example of the British performing the condolence as an opening of a treaty council they had called is the words of the Deputy Superintendent General of Indian Affairs, William Claus, at Burlington Heights on April 24, 1815:

Chiefs and Warriors

The customs of our forefathers have prescribed ceremonies which I would be sorry to omit on the present occasion. The Ceremony of Condolence for the loss of our near and dearest relations and friends must now be performed, which I now do most sincerely.

The Great Giver of Life has been pleased to remove from this world many of our friends and relations. You sit in darkness. Your Eyes are so full of tears that you cannot see clearly. Your Ears and Throats are stopped up. Your Hearts have been in trouble and grief. Your Limbs are still covered with mud and your Feet full of Thorns and your seats are still covered with blood.

I now therefore dispell the cloud which hangs over you and wipe the tears from your eyes that the brightness of the sky may again appear to you. I open your hearts that you may hear distinctly and I free your throat from all obstruction that you may speak freely and with ease. Your heart I replace and remove all troubles and griefs from it, and I hope you will listen to nothing but what is good; I wash the mud from your legs, and extract the thorns from your feet, and from your seats I cleanse the blood which has covered them, that you may again sit on them with comfort.

Strings white and black wampum.

Chiefs and Warriors

I now gather together the bones of those dear friends and relations whom it has pleased the Great Spirit to remove from this world and place them all in one grave, and to prevent all briars and rubbish from collecting thereon I cover them with this belt.

A Large Wampum Belt.⁴⁶

There are many councils where it is recorded that the Crown's representative condoled with the Haudenosaunee, or that the Council began with 'the usual ceremonies'. Based on the

councils where the records were more complete, we can assume, first, that they would be the same ceremonies, and second, that the ceremonies had become so familiar, so much a part of British way that it was no longer necessary to report in detail. Sometimes the condolence is reported in an abbreviated manner, and there is no way of telling whether it actually was that short ÿ though it was likely just the recorder's brief:

Brethren;

I am grieved for the loss of your people who are deceased since our last meeting therefore I wipe off the tears from your eyes, open your understandings, wash off your blood, and condole the death of all the people you have lost, that we may behold one another with Joy and Cheerful Countenances.

Gave a Belt⁴⁷

The Two Sides of the Fire

Just as the procedure within the Confederacy's councils involved a matter being introduced by the Elder Brothers (the Senecas and Mohawks) and being passed across the fire to be considered by the Younger Brothers (the Cayugas and Oneidas), the process of international councils involving the Confederacy also used two sides to work on an issue. In such councils, where the parties came as equals, there was no equivalent to the Firekeepers, the Onondagas. Also, the nations coming together came as equals with equal rights to introduce issues. That part of the protocol of council depended more on who had called the meeting than on any elder/younger relationship.

The event sequence of an Indian-white council can be thought of as a formal dialogue between the speakers appointed on each side. The speaker for one side stood up and presented a set of proposals, each marked by a string or belt of wampum, which an "interpreter" (*hatewènaká:tas*, 'he puts up the words') then translated into the language of the opposite side.

When he was finished and had sat down the speaker for the opposite side took the floor, but at this point only to announce briefly through an interpreter that his side would withdraw to consider an answer, a process which usually took the remainder of the day. The form of the answer was closely tied to the form of the original proposals. Each point was first "repeated" ÿ this consisted of a summary rather than verbatim recall ÿ and then answered. During the repetition phase the speaker pointed to or occasionally held the wampum originally given; during the answering phase he pointed to or took up a wampum of comparable type from his own side (a string for a string, a belt for a belt). By thus linking proposals to answers wampum functioned to regulate the ongoing speech event, and, in the end, to leave each side with a mnemonic record of the proceedings.

When all of side A's proposals had been answered, side B might introduce proposals of its own which were then, of course, answered in like fashion after a private conference by side A. Yet the point remains that even though side B could

in due course raise business of its own, it must dispose of A's business to the latter's satisfaction first; and indeed many historic councils consisted only of a single "cycle" of A's proposals followed by B's answers.⁴⁸

In councils between the Haudenosaunee and European nations, there was no direct equivalent to the role that the Firekeepers, the Onondagas, held in the Grand Council of the Confederacy. Where in Haudenosaunee councils, it can be said that there are actually three sides to the council fire, in councils with the Europeans there were only two (actually, the Haudenosaunee think in terms of duality, two-sidedness, in their own councils, dividing ceremony and process between Elder Brothers and Younger Brothers).

Nevertheless, in councils with European powers as well as with other indigenous peoples, individual nations or colonies played distinct roles. The Colony of New York, for nearly a century, was the primary British link in the Covenant Chain. Other British colonies and plantations entered or joined the Chain only through New York. The Mohawks, as keepers of the Eastern Door of the Longhouse, were the primary intermediaries with the Europeans, and the Haudenosaunee in general were seen as the way for other nations to enter the Covenant Chain with the British.

The remnants of the Hurons, who had settled at Detroit, became the firekeepers of the Council of the Three Fires in that area and acted as speakers for the Ojibwas, Ottawas and Potowatomis in their dealings with the Haudenosaunee. The French set themselves up as both mediators and benefactors in dealing with numerous nations and, in this role, spoke for those nations in the Treaty at Montreal in 1701.

Knowing which nations were expected to act as speakers or hosts decreased the uncertainty that might otherwise attend negotiations. Having a clear procedure also removed issues that might otherwise take up time and cause frustration. (One need only recall the problems involving the shape of the table at the Vietnam peace talks in the 1970s, or the question of who is a legitimate party in the Middle East peace talks of the 1990s.) Each step of the process of holding councils and making treaties was designed to open and clear channels of communication, to facilitate agreement, to avoid misunderstandings.

In today's world of instant information transfer, it is easy to forget how slowly communications and information travelled 200 years ago and more. Time is of the essence in modern business, but it was secondary in importance in many councils of the past two centuries to the need to do things carefully, to do things *right*. The procedure of council was necessarily slow and deliberate, but it was effective in ensuring that the Good Minds were kept clear and alert. The structure of council was such that only one issue would be considered at a time; that replies would not be able to be made without due thought and deliberation; that no issue would be raised without being addressed. It was also undertaken in a setting of mutual respect and

solicitude, without interruptions, without personal feelings coming into play (since the speakers were only speakers, not decision makers). If the first day of the meeting was for greeting, and the first night at least was for rest, the second day was taken up in part by ceremonies of thanksgiving and condolence, creating the setting for the mutual respect and concern for peace. The parties would not address substance in open council until the afternoon of the second day, and the issues would not be replied to until at least another day had passed.

The Great Law of Peace also provides that meetings should not go past sunset. That, too, ensured that decision makers would remain alert and clear-minded.

This structure for councils gave everyone opportunities for smaller meetings, for consultation with their people, for informal discussions of details, and for thought and rest. The term used for smaller, informal meetings was 'talking in the bushes'. In one case at least, it meant literally that. Conrad Weiser, visiting the Onondagas in 1743, wrote:

I, with Shikellimo, visited Canassatego, desired him to meet Us in the Bushes to have a private Discourse, which he approved of. We met a little way distant from the Town; I brought with me my Instructions and the Wampums I had, and told him that as he was our Particular Ffriend and well acquainted with Indians & White people's Affairs & Customs, I would tell him all my business, and beg his Advice how to speak to everything when the Council should be met.⁴⁹

While the participants in the councils used all the structures and processes that would bring peace and unity of mind, the British record is full of themes that are in conflict with those ideals. Many councils consist of the British urging the Haudenosaunee not to listen to or treat with the French; British requests that the Haudenosaunee join in the wars against the French; mutual calls for military assistance; urging by the British to the Haudenosaunee to call home the families that had gone to live near the French settlements, at Kahnawake, Kanesatake, Akwesasne and Oswegatchie, or in the Ohio country. The business of these councils was often war, not peace. In many councils, the Haudenosaunee would indeed be civil rather than forthright, hoping to keep the peace and appear to maintain unity of mind with their brothers.

The use of wampum attested to the truth of statements that were made in council, ratified agreements, and preserved promises. It did so because wampum was understood by both sides to be sacred. Other aspects of the council procedure had their spiritual importance. The calumet or peace pipe, possibly a late arrival in Haudenosaunee territory from the west and southwest, was sometimes used before the business of council to clear the minds of the participants and to give thanks and, afterward, to ratify agreements.

The council fire itself was sacred, both as a symbol of the light and as the place to burn tobacco (since the Creator's attention would be drawn to the smoke rising and to the good thoughts, gathered together, of the people whose minds were meeting).

The Use of Metaphors

The language of council involved a number of metaphors that were understood by all participants. Symbols of council (the fire), unity (the arrows bound together, the rope braided), peace (the tree), and communication (the road) are repeated so often that there can be no mistake about their meaning or about how they were taken.

The openness of the path of communication, the path of peace between peoples, was to be maintained. It was also the path to people's hearts.

...I have now cleared the Road. I have cut down all the Trees and moved away all the Stones out of your Way that you may come to my Town; likewise the Road is clear from my Town to the Indian Town Chotta for your Messengers to come to us, and tell us the News; and they may go safe from town to town.

A Belt.⁵⁰

In the *Kaianerekowa*, the Peacemaker showed the Five Nations how five arrows, bound together, were stronger than they would be apart. The arrows together became a symbol of unity of mind as well as political union. The Confederacy would later advise the British colonies to form a confederation of their own, in which each colony would retain its internal government while forming a union as against the world outside. The arrows on the United States presidential seal are the arrows of the Haudenosaunee.

Nothing more cheerfull then to see soe many arrowes togiter in one sheafe as our meeting in this house today demonstrate...to joine our hearts and hands as many arrowes together which if not separated are of greater force and not to be broken...⁵¹

The hatchet or axe symbolized war. The Peacemaker had taken the weapons of war within the Confederacy and cast them into a deep pit, placing the Tree of Peace above the chasm. A war belt usually showed an axe and was sometimes painted red. Accepting to fight alongside an ally meant 'taking up the hatchet'; making peace meant 'returning the hatchet' if one expected one's ally to make the peace, or 'burying the hatchet once again' if one made the peace oneself.

The *Kaianerekowa* provides that the place of council, like the minds of participants in the council, should be kept clean and clear. That is why Thadadahoh was given a wing to sweep it clear of bad thoughts and crawling things. Spiritually, mentally, literally, council houses were to be kept clean.

Brethren

I am glad to see you in this house which is and hath always been appointed the place to speak with you and ought to be kept clean for the purpose.⁵²

Other council metaphors drew their origins from the Great Law. The *rotiianeson* were not to pay attention to the chirping of birds in the branches overhead; in later years, rumours from the French or other places became 'the songs of bad birds', to be ignored. 'Taking by the hand' became a sign of alliance, and indeed many of the Covenant Chain wampum belts depict just this ÿ but the origin of the term is in the circle of *rotiianeson* around the Tree of Peace. The council fire at Albany, at Fort Johnson, at Montreal or Fort George was an extrapolation of the original council fire of the Confederacy at Onondaga.

Avoiding Direct or Strong Language

In international councils, as in internal councils of the Confederacy, the Haudenosaunee avoid blunt language and confrontation. Sometimes, the inconsistency of positions thrust at them would occasion replies that are full of irony. Thus, after Sir William Johnson, in council at Onondaga in 1748, had told the Haudenosaunee to avoid direct dealings with the French, the Five Nations answered that their dealings with the French were efforts to recover their people who had been taken by the French:

Had you got them from thence as you have your own People We should not think of going to Canada as Friends but in another Manner, However upon your Promise of redeeming them soon We all agree to your desire and promise you we will not go to Canada nor look that way before you make a Tryal for the redemption of our People And as you say you have so many French prisoners We think you may easily do it if you have a love for us.⁵³

The Role of Women

While the general rule was that the men would handle external relations and the women would deal with matters internal to the Haudenosaunee, there were some exceptional times when women would deal directly with British authorities. In May 1750, before planting season and when the men were hunting, the women of both Mohawk 'castles' met with William Johnson "& beg'd I would repair the Stockados round their Castles, where several are decayed & pulled down, & to have Irons & Locks put to all the gates thereof, which I imediately got done".⁵⁴ This meeting may have been justified because the upkeep of the villages was an internal housekeeping matter ÿ or it may simply have been a situation where the people who were available got a job done when it needed to be done.

On the British side, colonial governors and army and Indian department officers were all male. There were exceptional times when women played important parts. In 1778, Daniel Claus

sent belts to the Haudenosaunee with Mrs. M'Ginnis, who "from her childhood was much beloved by the 6 Nations, so far that they prevailed upon her parents to let her live among them, and adopted her as one of themselves". When the United States invited the Haudenosaunee to join the rebel armies,

...all which the Indians communicated & consulted with her, and she gave her Opinion & Advice thereupon, then after that with an Authority and privilege allowed to Women of Consequence only among Indians, seized upon and cancelled the Belts...⁵⁵

The tone of Claus's letter to Haldimand is almost apologetic, as if he recognized that it was not the British way to employ women in diplomacy or war: the fact that Mrs. M'Ginnis was considered by the Haudenosaunee to be one of them, coupled with their respect for women (and the desperation of the British at a time when their war was going badly) made Claus's venture possible.

In May 1758, Sir William Johnson was addressed by a speaker for the women of Onondaga, who succeeded in dissuading him from going to a meeting at Oneida:

We flatter ourselves you will look upon this our speech, and take the same notice of it as all our men do, who, when they are addressed by the women, and desired to desist from any rash enterprise, they immediately give way, when, before, every body else tried to dissuade them from it, and could not prevail.⁵⁶

In dealing with Johnson, the clan mothers had expected him to pay the same attention to them as the *rotiianeson* would. The laws and practice of the Confederacy generally leave the clan mothers watching quietly: they have an obligation to step in to prevent rash enterprises and the power to remove any *royaner* who ignores their direction. In this instance, Johnson found that he had no need to proceed and thus acceded to their wishes. Since he lived with a Mohawk clan mother himself, he would have been familiar with what might result if he disobeyed the clan mothers ÿ however mildly their objections had been put.

Kinship

Just as the Great Law of Peace took relationships that had existed between clans and within communities and raised them to a Confederacy level, so the Haudenosaunee took some of the things that worked for them in families to another level, using the kinship terms that defined relations between people to describe the relations between nations.

The kinship basis of many personal...relations was echoed in international arenas as groups used kinship terms for one another. Iroquois often addressed Delawares, for example, as "nephews" and were called "uncles" by the latter. Wyandots and

Potowatomis were addressed as "brothers" and reciprocated with the same terms for the Iroquois.⁵⁷

On 18 September 1688, Sir Edmond Andros, governor of New England, met with the representatives of the Haudenosaunee. Both sides reaffirmed their "strong Covenant". On the following day, though, Andros addressed the Haudenosaunee as "children". This did not go unnoticed. It was the one recorded time the British attempted this relationship. In their reply, the representatives said:

The Maquase sachems who spoke formerly with you are dead, and we have not so much knowledge as they had. Nevertheless, although they are buried, yet let the old Covenant that was made with our ancestors be kept firm. Then we were called Brethren, and that was also well kept; therefore let that of Brethren continue without any alteration.

The Indians having done speaking His Excellency was pleased to express himself in the words following:

You take notice of the words Brethren and Children, but leave it to mee: they are both words of relation and friendship, but Children the nearer.⁵⁸

To the Haudenosaunee, the words were not the same. They understood that to the British, the parent-child relationship was not just affectionate ÿ to the British, an element of superiority attached to the parent. In Haudenosaunee society, though, a father had little day-to-day authority over his children. Brotherhood, on the other hand, was recognized by both peoples as implying equality ÿ an equality the Haudenosaunee intended to maintain.

When, at the Treaty of Lancaster in 1744, Governor Clinton of New York spoke to the Haudenosaunee, he addressed the delegation as "Brethren", saying he had "express orders from the Great King your Father" to renew the Covenant Chain that had "tied you and the subjects of His Majesty in mutual ties of friendship and benevolence". This kind of talk places the Haudenosaunee and the British in North America on an equal footing ÿ but also distinguishes between the King's subjects and the Confederacy.

In the minds of both the governor and the Haudenosaunee, the relationship with the King of England involved love and benevolence but did not create subjects. Nor, in Haudenosaunee society, did a father have the same kind of power, legally or morally, that he had in the European society of that time.

The status of the Haudenosaunee in relation to the Crown has been the subject of historical and political debate for nearly two centuries. For the British, it seemed a good idea to have 'subjects' who themselves had an 'empire' that would then be brought under British 'dominion'. However, Sir William Johnson explained on several different occasions:

...they have been represented as calling themselves subjects, altho' the very word would have startled them, had it ever been pronounced by an interpreter; they desire to be considered as allies and friends.⁵⁹

I must beg leave to observe that the Six Nations...having never been conquered, either by the English or French, nor subject to laws, consider themselves a free people.⁶⁰

..whatever words are usually made use of respecting their expressing subjection, etc, are only to be understood as in compliance with form and custom, the latter having no just idea of such expressions, and calling themselves no more than our friends and allies. The Treaties, submissions, Cessions etc. literally implying no more, and whoever should undertake to go further on the subject with them, must have a good army at his back, to protect him from their resentment.⁶¹

Altho' the words of the late Treaty [at Detroit, 7-10 September 1764] may at first appear extraordinary, yet, I am not at a loss to account for them, as I know it has been verry customary for many People to insinuate that the Indians call themselves Subjects, altho I am thoroughly convinced they were never so called, nor would they approve of it. Tis true that when a Nation find themselves pushed, their Alliances broken, and themselves tired of a War, they are verry apt to say many civil things, and make any Submissions which are not agreable to their intentions, but are said meerly to please those with whom they transact Affairs as they know we cannot enforce the observance of them. But you may be assured that none of the Six Nations, Western Nations &ca. ever declared themselves to be Subjects, or will ever consider themselves in that light whilst they have any Men, or an Open Country to retire to, the very Idea of subjection would fill them with horror.

Indeed I have been just looking into the Indian Records, where I find in the Minutes of 1751 that those who made ye Entry Say, that Nine different Nations acknowledged themselves to be His Majestys Subjects, altho I sat at that Conference, made entrys of all the Transactions, in which there was not a Word mentioned, which could imply a Subjection, however these matters (notwithstanding all I have from time to time said on that subject) seem not to be well known at home, and therefore, it may prove of dangerous consequence to persuade them that the Indians have agreed to things which (had they even assented to) is so repugnant to their Principles that the attempting to enforce it, must lay the foundation of greater Calamities than has yet been experienced in this Country.

It is necessary to observe that no Nation of Indians have any word which can express, or convey the Idea of Subjection, they often say, "we acknowledge the great King to be our Father, we hold him fast by the hand, and we shall do what he desires" many such like words of course, for which our People too readily adopt & insert a Word verry different in signification, and never intended by the Indians without explaining to them what is meant by a Subjection.

Imagine to yourself Sir, how impossible it is to reduce a People to Subjection, who consider themselves Independant thereof by both Nature & Scituation, who can be governed by no Laws, and have no other Tyes among themselves but inclination, and suppose that it's explained to them that they shall be governed by the laws liable to the punishments for high Treason, Murder, Robbery and the pains and penaltys on Actions for property or Debt, then see how it will be relish-ed, and whether they will agree to it, for without the Explanation, the Indians must be Strangers to the Word, & ignorant of the breach of it.⁶²

Ten years after the death of Sir William Johnson, the Six Nations Grand River Territory was established, after the end of the American Revolutionary War. In the 1950s, an Ontario court saw the coming of the Haudenosaunee to settle there as an act of subjection:

In each of these deeds it is made clear that those of the Six Nations settling on the lands therein described do so under the protection of the Crown. In my opinion, those of the Six Nations so settling on such lands, together with their posterity, by accepting the protection of the Crown then owed allegiance to the Crown and thus became subjects of the Crown. Thus, the said Six Nations Indians from having been the faithful allies of the Crown became, instead, loyal subjects of the Crown.⁶³

The Crown's representatives at the time, though, never suggested that to the Confederacy. They said precisely the opposite. Lieutenant-Governor Simcoe of Upper Canada, speaking on behalf of the Crown, said:

Brothers,

..the documents, records and treaties between the British Governors in former times, and your wise forefathers...all established the freedom of your nations...These authentic papers prove that no King of Great Britain ever claimed absolute power or sovereignty over any of your lands or territories that were not fairly purchased or bestowed by your ancestors at public treaties; they likewise prove that your natural independency has been preserved.⁶⁴

In 1876, the chiefs of the Onondagas, Senecas and Cayugas at the Grand River Territory notified the superintendent general of Indian affairs of a "great hindrance and grievance":

...one says we are subjects to the British Government and ought to be controled under those laws which was past in the Dominion Paliment by your Government, you personally, and the others (that is us) says we are not subject but we are Allies to the British Government...

In 1890, the chiefs sent a message to the governor general of Canada:
Brother

..we will tell you we are disappointed because there never was yet any treaty made between you and Us, the Five Nations Indians, that you would force any kind your laws that we did not like, and now in some cases we see you are doing so.

Brother,

We have kept patience for a long time, because, knowing the Treaty of which our forefathers and your forefathers made in the year 1758 being durable to us. But in the way you have treated us thinking for to ask you if the sun and moon has gone out of your sight. But we see the sun and moon as when our forefathers and your forefathers made the agreement. The treaty whenever you or us the Indians see anything wrong or dissatisfaction, we are to renew brighten and strengthen the ancient Covenant.

And we want to be always free and satisfied to be governed by our own laws and customs, for we have laws of our own. And those that are in favour of your laws and customs we have nothing to do with suppose they are to be governed by it. But we cannot help them in no way, for they broken our word, rules and customs.⁶⁵

Deskahe (Levi General), of the Bear Clan of the Cayugas, explained in England in 1923:

...we would not have consented to take Canada's franchises if she had asked us politely to do so...we are very willing to remain allies of the British against days of danger, as we have been for 250 years...but we wish no one-sided alliance, nor will we ever be subjects of another people, even of the British if we can help it.⁶⁶

In March 1924, the position of the Six Nations was set out formally in *The Red Man's Appeal for Justice*:

The only process known to international law whereby an independent people may yield their sovereignty is either by defeat in war or voluntary abandonment of it formally evidenced. The Grand River people have never yielded their sovereignty by any formal abandonment of it, and they have never been conquered in war by any power on earth of which there is either record or tradition.⁶⁷

There is another aspect of kinship and connection: just as, within the Confederacy, people had to have names and clans, in their relations with representatives of other nations, the Haudenosaunee insisted on those people having names. Where the person occupied an official capacity, the names given were considered the equivalent of chiefs' titles ÿ that person's successor in office would carry the same name.

The governor of Quebec was called *Onondio*, 'the Big Mountain', because the first governor to come into close relations with the Haudenosaunee was Sieur de Montmagny ÿ the title or name was a translation of his French name. The same kinds of titles were given to English colonial governors. The governor of Pennsylvania was *Onas*, 'the Big Feather', after William Penn, using the Mohawk word for a pen. Governor William Fletcher of Maryland must

have explained that a fletcher was an arrow maker, because his title became *Cayenquiragoe*, 'the Great Swift Arrow'. The governor of New York was *Corlaer*, after Arendt van Curler, the Dutch *commis* who became New Amsterdam's first official liaison with the Mohawks.

The names were given for several reasons. They placed the holder in a context that the Confederacy could understand – that of a title bearer, equivalent to the *rotiianeson* in the sense of his continuity. Names were often a sign of affection and esteem. They were also easier for the Haudenosaunee to pronounce.

Relations with Other Aboriginal Nations

The spread of the *Kaianerekowa* meant the spread of peace, as a chain of alliances moved across North America, nourished by the intermarriage and adoption of people from nation to nation. When, in 1758, the French commander at Detroit "drank the King of France's Health in the Blood of the 6 Nations" and proposed that the Indian nations in council there should join the French to "fall upon the Six Nations, and cut them off from the Face of the Earth", the Indian nations met in a separate council, and a chief of the Tionontates spoke:

"How can I, who am the Flesh and Blood of the Six Nations and in whose Towns Numbers of our Friends & Children are living and settled, declare War against them. Where are there any of the Nations now present, that are not allied to the Six Nations also. To take up the Hatchet against them, wou'd in my opinion be wrong. Therefore I now declare before you all, that I will not comply with what is proposed by this Belt." And then he kicked it from him, towards where the Twightwees [Miamis] sat, & desired they wou'd speak their Sentiments.

After a short pause the Twightwees replied, that the Six Nations were their old Friends & Allies, and therefore they wou'd never come into what the French proposed by that Belt, so kicked it from them to the nations from Illinois and about Mississippi, who after some Consultation together, said; that when the Six Nations formerly conquered them, and several other nations around them, and had it in their Power to destroy them, entirely, and did not do it, they cou'd not think it right to turn their Enemies now, so threw the Belt from them to some of the other Nations, who all joined in Opinion with the Rest who spoke before them, so that they unanimously rejected the Proposal of the French.⁶⁸

The Great White Roots of Peace had in this case spread far and effectively enough to prevent several nations from joining a war.

The kinship between Aboriginal nations reflected their relative strengths and the respect due them. The complexity of the relations can be seen in a single paragraph of a message from the Cherokees to the Delawares in 1758:

Nephews: Our Eldest Brothers the Six Nations have likewise given us a Tomahawk, and desired us to join with our eldest Brothers the English. But we desire you would be under no apprehensions, for we do not intend to hurt you our Nephews at all.⁶⁹

The Authority of the Speaker

A number of recorded councils were held for the single purpose of introducing a new colonial governor. In other councils, it was a matter of practice for the speaker to clarify his authority. In June 1691, Governor Sloughter of New York reaffirmed Albany as the place of the council fire at the same time as he gave them notice of his appointment:

Brethren

I am glad to see you in this house which is and hath been always appointed the place to speak with you in matters of import and ought to be kept clean for that purpose. I sent for you to acquaint you that I am appointed by our Great King and Queen of England to be their Governor in this Province of New York and all their Territorys depending...⁷⁰

Though British executives often spoke for themselves rather than through speakers skilled in the clarity and beauty of their words, they were also careful to state their authority. Since the colony of New York was the holder of the British end of the Covenant Chain until 1755, when it became an imperial government function, it was often the governor of New York who spoke for all the colonies in the Covenant Chain, at least to introduce the issues, just as it was the speaker for the Haudenosaunee who acted as the main speaker for the indigenous side of the councils.

Haudenosaunee speakers often clarified their authority as well:

You must not think that I am alone or that I speak for myself as I speak in the name of the whole, not only the Men, but the Women, who are here present. It seems as though you imagined, that I spoke only for myself, and I assure you, I speak for the whole...⁷¹

Interpreters and Translators

The transcripts of many of the early treaty councils also list the names of the interpreters. The office of interpreter continues to this day in several Haudenosaunee communities. This is not the same as a translator. In treaty councils, the speaker would complete an entire statement or speech before the interpreter began to speak. Where a translator would translate the *words* that had been spoken, an interpreter would concentrate on the *ideas*. It is the difference between 'this is what he said' and 'this is what he spoke about'. The interpreter would often take the time to explain

ideas or metaphors that might be foreign to the people he was addressing. The result was that there was not an exact translation in these councils, but there likely was a clear explanation of what had been said. Naturally, the concept of using an interpreter rather than a translator lent itself better to councils where concepts rather than details were the primary subject matter ÿ councils consistent with the spirit of the *Kaianerekowa*.

Parts of councils were in songs rather than plain statements. The idea that an idea can be better driven into the mind by a song is part of the *Kaianerekowa*. (The condolence is often described as a song or a chant rather than a speech.) The interpreters could struggle to translate the ideas ÿ but the effect of the songs as further opening the channels of communications could be lost on people who did not understand the purpose of using song rather than plain speech:

The Mohawks Speaker said, *Where shall I seek the Chain of Peace? Where shall I find it, but upon Our Path? And whither doth Our Path lead us, but unto this House? This is a House of Peace.* And sang all the Covenant Chain over. He afterwards sang by way of Admonition to the Onnondagoes, Cayugas and Oneydoes, and concluded all with a Song to the Virginia Indians. But I suppose our Interpreters were not Poets enough to Translate the Songs, otherwise I might have gratified the Reader with a taste of Indian Poetry.⁷²

In one of his letters to Thomas Gage, Sir William Johnson explained that the *idea* of subjection had never been explained to the Aboriginal nations. The letter also points to the inaccuracy of the British records, which would sometimes contain language that reflected the wishful thinking of the record keeper:

...I find in the Minutes of 1751 that those who made ye entry say, that Nine different Nations acknowledged themselves to be his Majesty's Subjects, altho I sat at that Conference, made entries of all the Transactions, in which there was not a Word mentioned, which could imply a Subjection...our People too readily adopt & insert a Word verry different in Signification, and never intended by the Indians...⁷³

Occasionally, despite the idea that people should stay in their own boats, a person would become important enough, and sensitive enough, that he would be 'divided'. Two such people were William Johnson (Warragihagey) and Conrad Weiser:

...the Six Nations answered, That the one half of Coll. Johnson belonged to His Excellency [the Governor of New York], and the other to them...⁷⁴

...he is of our nation, and a member of our Council, as well as of yours. When we adopted him, we divided him into two equal parts: One we kept for our selves, and one we left for you. He has had a great deal of Trouble with us, wore out his

shoes in our Messages, and dirty'd his Cloaths by being amongst us, so that he is become as nasty as an Indian.⁷⁵

The Place of Council

Just as Onondaga was the generally appointed location for Haudenosaunee councils, but other locations could be the site of councils where necessary or desirable, Albany became the place for councils between the Confederacy and the British. Its location on the rivers, as well as on the eastern boundary of Mohawk territory, at the Eastern Door of the Longhouse, made it the proper place. Other locations were chosen for convenience as well: Niagara in 1764 and Fort Stanwix in 1768 and 1784 were on 'carrying places' between major water routes.

Sir William Johnson declared his house at Fort Johnson on the Mohawk River to be a fire place for councils with the Haudenosaunee.

In September 1755, Tekarihoken (Hendrick) of the Mohawks explained to Sir William Johnson that a location of expediency would be chosen for a meeting between the British, the Haudenosaunee, and the representatives of Kahnawake:

Brother

It is our way upon these Occasions that the head Man we send, takes the People he goes to meet by the hand & desires they will come along with him to their fire place, but as it is not now a peaceable time, we imagine they will appoint some other place where you & some of your chief Men may meet with them & us in Council.⁷⁶

In the *Kaianerekowa*, Thadadahoh is given a wing to sweep the council house clear of dirt. In the condolence, attention is given to cleansing the parties of any filth inside them. In international councils, the place where council is held must also be clean, both literally and metaphorically. A dirty council place would create discomfort and distraction, as well as suggesting to the guests that less than full attention and hospitality were being extended to them. Metaphorically, one would clean the house if there had been problems or distrust between the parties before the council. Thus, at the beginning of the Mohawk reply to the delegates from the governor of Virginia in 1678, the speaker said:

But before we give an Answer, we make the appointed House clean by giving this Fathom of Wampum [by cleaning the House, they mean putting away Hypocrisy and Deceit].⁷⁷

Inside the council house, the parties would meet in their two sides, with a rod (the same one that was given to Thadadahoh by the Peacemaker) before them to hold the wampums that were being delivered for consideration. In 1743, on his visit to Onondaga, Conrad Weiser described this in the council house:

All the Wampum were hung over a Stick laid across the House about six ffoot from the Ground.⁷⁸

From the 1600s to the early 1700s, the councils may have generally taken place in the open air, under bowers to provide shade y possibly in the shape of a circle. By the 1720s, councils were taking place indoors, too, though the combination of large crowds and small buildings meant that many would still be in the open. Even indoors, the metaphors used reflected the openness of the sun shining down on those who had brought their minds together.

The Kaswentha, The Two Row Wampum

In 1870, the Parliament of Canada passed its first major Indian legislation, and the chiefs of the Ojibwa and Haudenosaunee communities of southern Ontario and Quebec met at the Grand River Territory to consider the provisions of the law. The Six Nations opened the meeting with a short condolence and proceeded to a reading of the wampum belts of the Confederacy. The Covenant Chain and the Two Row Wampum are recorded as entwined:

The wampum having two men standing one at each end, represents the first meeting or treaty with the British Government. They stand on their own rules, which they laid down, the British Government gave a check wampum to confirm what the Six Nations had done in their rules and declarations. The marks worked on the wampum shows the British and Six Nations had united by Treaty. They were each to have their own way; not hurting their customs or rules or regulations. If the Indian had his bark canoe, let him have it, let the British have his large vessels. The British gives the wampum to confirm the rules and regulations of the Confederacy.⁷⁹

In the 1880s and '90s, when the government of Canada was moving more openly to impose the elected system of government through the *Indian Advancement Act*, the petitions from Haudenosaunee communities made both direct and indirect reference to the separation of government and laws symbolized by the Two Row Wampum.

In 1890, the chiefs of the Six Nations at the Grand River Territory wrote to the governor general "according to our ancient Treaties as Brothers":

...we tell you that we are disappointed because there never was yet any Treaty made between you and Us, the Five Nations Indians, that you would force any kind your laws that we did not like. And now in some cases we see you are doing so.

Brother

We have kept patience for a long time, knowing the Treaty of which our forefathers and your forefathers made in the year 1758 being durable to us. But in the way you have treated us thinking for to ask you if the sun and moon has gone out of your sight. But we see the sun and moon as when our forefathers and your

forefathers made the agreement. The treaty whenever you or us the Indians see anything wrong or dissatisfaction, we are to renew brighten and strengthen the ancient Covenant.

And we want to be always free and satisfied to be governed by our own laws and customs, for we have laws of our own. And those that are in favour of your laws and customs we have nothing to do with suppose they are to be governed by it...

Wampum belt treaty having two rows parallel and represents the two Governments, namely the Five Nations and the British Government will exist and shall not interfere with each other. Of which the British made an illustration that the British will abide in their vessel, that is their government. While the Five Nations will also abide in their birch bark canoe, meaning their government.

In 1960, a delegation from the Grand River Territory attempted to explain the Two Row Wampum to the House of Commons Committee on Indian Affairs:

Mr. Small: Under what treaty do you deal with the United States as a sovereign body?

Mr. Erwin Logan: It is the Two Row Wampum Belt.

Mr. Small: They do not recognize you as a sovereign body, do they?

Mr. Erwin Logan: Yes, they do. I refer to the first treaty that was made with our forefathers. have you ever seen the Two-Row Wampum belt?

Mr. Small: No.

Mr. Erwin Logan: On that belt there are two rows of oars, and they run parallel; they never cross. That means that you are to stay in your boat ÿ and that I shall stay in mine. That was the first treaty your government ever made with us.

Senator Horner: What was the date?

Mr. Erwin Logan: The date was 1664. Are you so ashamed of your forefathers that you will not recognize their treaty?

Senator Horner: That was handled with the United States of America...⁸⁰

In the early 1600s, up the rivers of trade ÿ now called the Hudson and the Mohawk ÿ came the Dutch from New Amsterdam. The Dutch created trade and political relationships with the peoples of those rivers and the eastern seacoast and later extended relations to the Mohawks. The Dutch picked their way through unknown politics on their way upstream, but the commercial relations placed important tools in Mohawk hands, and these tools soon spread to the rest of the Confederacy.

At the same time, French outposts were being established on the St. Lawrence River, the northern extremity of the Confederacy's territory. At Quebec and Tadoussac, the French were creating alliances with the Montagnais, Abenaki and Algonquin nations and, through them, with the Wyandots or Hurons. By 1609, Champlain had made a fateful choice by joining an expedition against the Mohawks and using his arquebus to kill (according to his report) three

chiefs. Some writers suggest that this war party was the factor that set off a century and a half of war between the Haudenosaunee and the French.

The Treaty made at Fort Albany, now Albany, New York, on 24 September 1664 is the earliest on record between the Haudenosaunee and the British. The Dutch had given up their claims to New Netherlands, which the King of England placed under his brother, the Duke of York. The Duke named the new colony New York, and the treaty was intended to replace the Dutch relationship with the Haudenosaunee (which had existed for at least a generation and possibly as far back as 1613) with a British relationship.

The location of the treaty was important: Albany lay at the boundary between Mohawk territory and the lands claimed by the colony. It was the logical fire place for that council and future councils ÿ more than a century of them.

The treaty provided that the English "for the future" would provide "the Indian Princes above named and their subjects" with the same wares and commodities as they had had from the Dutch. The free trade provided for in this agreement is a precursor of the trade provisions in pacts like the 1794 Jay Treaty.

The idea that the British would grant refuge to the Haudenosaunee should they be defeated by the "River Indians" is a forerunner of the promises made during the American Revolutionary War ÿ promises that led to the creation of the Six Nations Grand River Territory and the Mohawk territory on the Bay of Quinte after Britain's defeat in that war.

The treaty provided for separate personal criminal jurisdiction: each party was responsible for the conduct of its own subjects. Conflicts and "satisfaction" were to be resolved at a government-to-government level, with complaints being made to the sachems on one side and to the governor of New York or the officer in charge at Albany on the other.

Implicit in the language of the written agreement is mutual recognition of sovereignty as equals. Each party is recognized as having subjects. The same powers and terms enure to each party ÿ neither is subordinate to the other.

For the first time, the phrase "Indians under the protection of the English" appears. This is a term used in the *Royal Proclamation of 1763*: historians and lawyers seem to have missed the fact that it denotes a different class of people from a second mentioned in the Proclamation: "Nations or Tribes of Indians with Whom We are Connected".

The essential elements of the Two Row Wampum ÿ the separation of laws and government ÿ are reflected in the written version of the September 1664 treaty. The idea that conflicts must be dealt with at a governmental level, without claims of jurisdiction by either party over subjects of the other, is a precursor of the Covenant Chain.

It would have been consistent with the practices of the day for the British to have given a wampum belt as a pledge of their good faith. The tradition of the Haudenosaunee is that the Two

Two Row Wampum does date back to 1664, and the treaty in September of that year would have been the most likely time for the belt to have been given – but there is no contemporary British document confirming the belt itself. In fact, few historical documents describe any belts at all with any specificity.

Was the Two Row Wampum a British invention or a Haudenosaunee one? It is hard to tell, and it may be irrelevant. It is quite possible that the Haudenosaunee expressed themselves at first in terms of the circle of the law around their people and their rights and their land – and then later, having learned that the Europeans thought in linear rather than circular terms, explained the proposed relationship by the two straight lines of the ship and the canoe. It is equally possible that the British or the Dutch used this simple symbol as the emblem of their relationship.

Since treaty commitments (like the *Kainerekowa*) had to be renewed and maintained regularly, it is virtually certain that several Two Row belts were given to the Haudenosaunee by the British. Three have been preserved (two are kept at the Grand River Territory; the third remains in the Museum of the American Indian). All three belts, as well as any versions that may have been lost, stand for the same basic principles:

That treaty established our equal rights in this land and our separate and equal coexistence on this land between our two peoples, the canoe of the Indian and the boat of the white man going down the river of life in peace and friendship forever. The last three principles were memorialized in the great silver covenant chain with the three binding us together forever, peace and friendship forever. As long as the grass grows green, as long as the water runs downhill, and as long as the sun rises in the east and sets in the west shall we hold this treaty.

...This is our canoe, the Indian people, their government, and their religions. This is our brother the white man's boat, his religions, his government and his people. Together, side by side, we go down the river of life in peace and friendship and mutual coexistence. As you note, we never come together. We are equal.⁸¹

The Covenant Chain

The sailing ship that was the symbol of the British in the Two Row Wampum is also an essential element of the Silver Covenant Chain. It is that ship that was being tied to the Confederacy, first by a rope held in people's hands, then to a tree, then to a rock, and finally by a chain linked to the heartland of the Confederacy at Onondaga.

The history of the Covenant Chain, from the beginning, was explained at the Treaty of Lancaster in 1744 by Canasatego on behalf of the Confederacy:

Brother

You came out of the Ground in a Country that lies beyond the Seas, there you may have a just Claim, but here you must allow us to be your elder Brethren, and the Lands to belong to us long before you knew any thing of them.

It is true, that above one hundred years ago the Dutch came here in a ship, and brought with them several Goods, such as Awls, Knives, Hatchets, Guns and many other Particulars, which they gave us; and when they had taught us how to use their Things, and we saw what sort of People they were, we were so well pleased with them, that we tied their Ship to the Bushes on the Shore; and afterwards, liking them still better the longer they staid with us, and thinking the Bushes too slender, we removed the Rope and tied it to the Trees; and as the Trees were liable to be blown down by high Winds, or to decay of themselves, we, from the Affection we bore them, again removed the Rope, and tied it to a strong and big Rock [here the Interpreter said, they mean the Oneida country] and not content with this, for its further Security we removed the rope to a big Mountain [here the Interpreter says they mean the Onondago country] and there tied it verry fast, and rowll'd Wampum around it; and to make it still more secure, we stood upon the Wampum, and sat down upon it, to defend it, and to prevent any hurt coming to it, and did our best endeavours that it might remain uninjured for ever. During all this time, the new-comers, the Dutch, acknowledged our Right to the Lands, and sollicited us, from Time to Time, to grant them parts of our Country, and to enter into a League and Covenant with us, and to become one People with us.

After this the English came into the Country, and, as we were told, became one people with the Dutch. About two years after the arrival of the English, an English Governor came to Albany, and finding what great Friendship subsisted between us and the Dutch, he approved it mightily, and desired to make as strong a League, and to be upon as good terms with us as the Dutch were, with whom he was united, and to become one People with us. And by his further care in looking into what had passed between us, he found that the Rope which tied the Ship to the great Mountain was only fastened with Wampum, which was liable to break and rot, and to perish in a Course of Years; he therefore told us, he would give a Silver Chain, which would be much stronger, and would last for ever. This we accepted, and fastened the Ship with it, and it has lasted ever since.⁸²

On behalf of the British Crown, Sir William Johnson described and renewed the Covenant Chain in council with the Haudenosaunee on several separate occasions. On 25 April 1748, he spoke to the Confederacy at Onondaga:

Brethren of the Five Nations,

I will begin upon a thing of long standing, our first Brotherhood. My Reason for it is, I think there are several among you who seem to forget it; It may seem strange

to you how I a Foreigner should know this, But I tell you I found out some of the old Writings of our Forefathers which was thought to have been lost, and in this old valuable record I find, that our first Friendship Commenced at the Arrival of the first great Canoe or Vessel at Albany, at which time you were much surprized but finding what it contained pleased you much, being Things for your Purpose,...you all resolved to take the greatest care of that Vessel that nothing should hurt her; Whereupon it was agreed to tie her fast with a great Rope to one of the largest Nut trees on the Bank of the River. But on further consideration in a fuller Meeting it was thought safest, Fearing the Wind should blow down that Tree, to make a long Rope and tie her fast at Onondaga which was accordingly done and the Rope put under your Feet That if anything hurt or touched said Vessel by the shaking of the Rope you might know it, and then agreed to rise all as one and see what the Matter was and whoever hurt the Vessel was to suffer.

After this was agreed on and done you made an offer to the Governor to enter into a Bond of Friendship with him and his People which he was so pleased at that he told you he would find a strong Silver Chain which would never break, slip or Rust, to bind you and him in Brotherhood together, and that your Warriors and ours should be as one Heart, one Blood, &ca. and that what happened to the one happened to the other. After this firm agreement was made our Forefathers finding it was good and foreseeing the many Advantages both sides would reap of it, Ordered that if ever that Silver Chain should turn the least Rusty, offer to slip or break, that it should be immediately brightened up again, and not let it slip or break on any account for then you and we were both dead.⁸³

Johnson explained the origins of the Covenant Chain again on 23 June 1755. The Haudenosaunee representatives had asked for copies of their written agreements with the Crown. Johnson replied:

Behold Brethren these great books, 4 folio volumes of the records of Indian Affairs which lie upon the table before the Colonel. They are records of the many Solemn Treaties and the various Transactions which have passed between your Forefathers and your Brethren the English, also between many of you here present & us your Brethren now living.

You well know and these Books testifie that it is now almost 100 years since your Forefathers and ours became known to each other. That upon our first acquaintance we shook hands & finding we should be useful to one another entered into a Covenant of Brotherly Love & mutual Friendship. And tho' we were at first only tied together by a Rope, yet lest this Rope should grow rotten & break we tied ourselves together by an Iron Chain. Lest time or accidents might rust & destroy this Chain of Iron, we afterwards made one of Silver, the strength & brightness of which would subject it to no decay. The ends of this Silver Chain we fix't to the Immoveable Mountains, and this in so firm a manner that no mortal enemy might be able to remove it. All this my Brethren you know to be Truth. You know also that this Covenant Chain of Love & Friendship was the Dread & Envy of all your Enemies & ours, that by keeping it bright & unbroken we have never spilt in anger one drop of each other's blood to this day. You well know also

that from the beginning to this time we have almost every year, strengthened & brightened this Covenant Chain in the most public & solemn manner.

You know that we became as one body, one blood & one people. The same King our common Father, that your enemies were ours that whom you took into your alliance & allowed to put their hands into this Covenant Chain as Brethren, we have always considered and treated as such.⁸⁴

The Silver Covenant Chain, the emblem of the relationship between the Haudenosaunee and the Crown, contains many of the elements of the *Kainerekowa*.

Even in its beginnings, it was linked to peace: at a conference between New York, Maryland, Virginia and representatives of four of the five nations of the Confederacy in 1677, Garakondie stated on behalf of the Haudenosaunee (after acknowledging "that we have killed of ye Christians & Indians formerly"), that we...

do thank the gentleman there that they do exhort us to peace, for we are so minded...we desire now that all that is past may be buried in oblivion, and do make now an absolut covenant of peace, which we shall bind with a chain. For ye sealing of ye same do give a belt of 13 deepe.⁸⁵

It is designed for expansion. Just as the Great White Roots of the Tree of Peace are to spread to the four directions, links can be added to the Covenant Chain as more nations join their arms into the compact. On 4 June 1691, in council with New York at Albany, the Haudenosaunee urged the governor of New York, as the principal British participant in maintaining the Covenant Chain, to strengthen the participation of the other British colonies. They did so in words that link the Covenant Chain, the chiefs' linking of arms in a circle around the Tree of Peace, and the Tree itself:

Brother Corlaer

We have not much to give or say but return our hearty thanks for the good you do us, as we have always been in the Covenant Chaine, but of late New England, Virginia, Maryland and adjacent Colonys did not put in their arms into the chain; pray animate them to make us strong, and assist us according to the covenant made between us, and altho' an angry Dog should come and endeavour to Bitt the chaine in pieces with his teeth, yet we will keep it firme both in peace and warr and do renew the Old Covenant, that so the Tree of Wellfare may flourish and that his roots may spread thro' all the Country.⁸⁶

The connection between the Tree of Peace and the Covenant Chain is clear and firm. At a council with Sir William Johnson on 23 June 1755, it was hoped that the Tree would be nourished by refreshing Streams, that it may grow up as high as the Heaven and be proof against every envious Wind; that its branches may be large &

numerous enough to afford sufficient shelter for us & all our Brethren to come & consult under it; and that our Children's Children may bless the hand that planted it.⁸⁷

In July 1684, not many years after the creation of the Silver Covenant Chain, a Seneca speaker told the colonial governors:

Let the Chaine be Kept Cleane and bright as Silver that the great tree that is can not break it a peeces if it should fall upon itt.⁸⁸

There is no difference between this and the provision of the *Kainerekowa*:

You, the Five Nations Confederate Lords, be firm so that if a tree falls upon your joined arms it shall not separate you or weaken your hold. So shall the strength of the union be preserved.⁸⁹

It was not only with the British that the Haudenosaunee had planted trees of peace. When Otrewati of the Onondagas spoke to Governor de la Barre (Onontio or "Yonondio") of Quebec in 1684, he used the image of the tree for a place of peace and trade:

Hear, Yonondio, What I have to say in the Voice of all the Five Nations. Hear what they Answer, Open your Ears to what they Speak. The Sennekas, Cayugas, Onondagas, Oneydoes and Mohawks say, That when they buried the Hatchet at Cadarackui (in the presence of your Predecessor) in the middle of the Fort, they planted the Tree of Peace, in the same place, to be there carefully preserved, that, in place of a Retreat for Soldiers, that Fort might be a Rendezvous of Merchants; that in place of Arms and Munitions of War, Bevers and Merchandize should only enter there.

Hear Yonondio, Take care for the future, that so great a Number of Soldiers as appear here do not choak the Tree of Peace planted in so small a Fort. It will be a great Loss, if after it had so easily taken root, you should stop its growth, and prevent its covering your Country and ours with its Branches.⁹⁰

The Tree might fall as a result of "high winds" ÿ often a symbol of war. It is usually not a "Dogge" that would threaten the Covenant Chain. The most important threat to the Chain ÿ as to the *Kainerekowa* ÿ is bloodshed, since that threatens the roots of any peace and eats through the silver chain like acid:

Let it be our common care to preserve it inviolable and free from rust remembering that one drop of innocent blood unjustly spilt will corrode it and if not timely and carefully wiped off will eat through and dissolve this union.⁹¹

All the metaphors of the *Kainerekowa* are transplanted to the Covenant Chain relationship ÿ and so are its values. The concern for peace, for future generations, for the power of unity of mind, for the Good Mind, are all elements of every council between the Confederacy and the British Crown ÿ on both sides of the council.

Just as nations following the Great White Roots of Peace to their source are invited to come under its protection and shade without losing their internal forms of government, so the Covenant Chain does not affect the internal affairs of any nation within it.

The language of unity that appears throughout the Great Law appears in all the council references to the Covenant Chain. In the Great Law, five arrows bound tightly together symbolize the unity of the original Five Nations. The longhouse itself, with many families living under a single roof, is a symbol of the Haudenosaunee. In council discussion of the Covenant Chain, there are references to ropes that are more powerful than their component strands.

An exchange in council on 16 August 1740 between the British and the Haudenosaunee illustrates the language of unity used on both sides, as well as the open British belief that an alliance with Britain does not create subjects, but rather "protects them in their freedom":

Brethren,

[the French conduct is]...a conduct very different from ours who treat all those Nations of Indians who are under the protection of the great King your Father with benevolence, kindness and humanity, studying to protect them in their freedom and wishing you all to increase in number as the stars of Heaven, nor do we seek to extirpate nations with whom we have made no alliance. No, on the contrary, we invite them to unite with us...You are when you are united like a strong rope made up of many small threads, which when twisted together resists the greatest Force, but by separating the Threads it is easily bought or broken...

They answered:

Brother:

You also told us, that you compared us to a rope which being twisted together is difficult to be broken but when untwisted & divided into threads, then it is easily broken.

We think not that we divide this rope of which you speak, but on the contrary, strengthen the same, by making Friendship and Alliance with many nations which has always been commended us by all the Governors of New York. All the Indians that were formerly our enemies are now entered into the Covenant with us, almost as far as the River Mississippi...⁹²

This last exchange illustrates another aspect of council language: to respond to an issue that might have been confrontational by putting it in positive language. The tone is, consistently, 'We agree, and furthermore...', rather than a refutation or rejection of what has been said ÿ even when the 'furthermore' is inconsistent with the original proposition. It is a way of speaking that requires skill and mental agility ÿ but its purpose is the avoidance of direct affronts.

From 1664 to 1755, responsibility for maintaining and expanding the Covenant Chain lay with the Haudenosaunee (on the one side) and the Colony of New York (on the other). In 1755,

with the appointment of Sir William Johnson as imperial superintendent general of Indian affairs, responsibility passed into the hands of a direct imperial appointee.

Though other Aboriginal nations could make chains with the British, the primacy of the Confederacy in such relations was recognized. Thus, in September 1761, the Hurons stated:
Brethren of the Mohocks

We have it not in our power to make a silver chain, it is you who can make such, therefore we beg you may make it so strong that nothing can break it...⁹³

Just as the *Kainerekowa* requires periodic reaffirmation by the people, so the Covenant Chain must be maintained.

If you don't renew the Covenant Chain after the Warr as usual with the Five Nations, &ca. or order it to be done in a Handsome manner,...they will certainly think themselves slighted by us.⁹⁴

The maintenance is part of the obligation of senior executives of both governments. For example, Governor Clinton of New York repolished the Chain on 18 June 1744:

Brethren

This interview gives me the greatest pleasure as I am persuaded we meet with equal sincerity in order to renew, strengthen and brighten the Covenant Chain that has so long tied you and the subjects of His Majesty the great King of Great Britain your Father and my Master in mutual ties of friendship and benevolence which I hope will forever be inviolably preserved and continue as long as the sun and moon endureth.

I have express orders from the Great King your Father to do my utmost endeavours that it should be kept bright and strong even unto the world's end, and I do now assure you on my part and on behalf of all His Majesty's subjects upon this continent in North America that we will on our parts forever keep it secure and free from rust and I expect the same from you.

Gave a Belt.⁹⁵

In this speech are elements of several streams: the relationship of "Brethren" between the British in North America and the Haudenosaunee; the distinction between the King's subjects and the Haudenosaunee; the duality or two-sidedness of the council ("on our parts..."); the paternal benevolence of the King; the hoped-for eternal nature of the Chain. Each of these streams is to be found in almost all other councils between the Crown and the Haudenosaunee.

From 1870 to the 1890s, the government of Canada passed laws affecting the internal government and land administration of Haudenosaunee communities. The Mohawks of the Bay of Quinte wrote to the governor general in 1888:

Brother

We will remind you of the Covenant Chain of Peace and Friendship between the English people and the Six Nations. When our forefathers first made the Covenant Chain with the English, both parties engaged to keep the ends of it fast in their hands; that they would take care to keep it from breaking, or from getting any rust or filth upon it. That they would be as one flesh and blood so that if any enemies should intend to hurt or strike one party, the other should immediately give notice, rise up and help him, that a good road should always be kept open between them. We the old people are sorely grieved of receiving such a document from the Privy Council stating that our wishes cannot be complied with...it fills us with great concern. Neither can we visualize any account for it, having always lived in the strictest friendship with the British Government and our forefathers faithfully served and assisted them in all their wars back against the French, and in the Revolutionary War. We therefore cannot but think it extremely hard to be deprived from our liberties, rights and privileges, and also to be deprived from our rational freedom and to suffer such treatment, in return to pass laws to encroach our systematic constitution and also to our treaty rights which our forefathers in their great wisdom thought proper to enter into an alliance with the English. And also the treaties were sealed in blood of our forefathers to benefit and to promote their children's children's welfare. It is necessary in order for the preservation of our liberties and rights, privileges and customs.

Brother!

At the time of the formation of the treaties to be perpetuated, the Six Nations Indians were found and looked upon as a people, and had a systematic constitution. Therefore, they were enabled to form these very important and sound treaties with the English...It was understood by both parties that each should maintain their own constitutions, but in the present instance, it appears that the Silver Chain is now tarnished upon these points...⁹⁶

The following year, another petition from the Mohawks of the Bay of Quinte objected to Canadian government intervention in internal Mohawk matters. Once again, the petition went to the governor general, the holder of the British end of the Covenant Chain:

Brother!

We remember still that when our forefathers first met with you, when you came with your ship, and our forefathers kindly received you and entertained you and entered into an alliance with you. Though our forefathers were then great and numerous, and your people were inconsiderable and weak, and they knew that, they entered into a Covenant Chain with you and fastened your ship therewith, being apprehensive the bark would break away and your ship would be lost...

Brother!

We are now inconsiderable and weak, and you are now a great and numerous people, and you know that we entered into a Covenant Chain of brotherly love,

and therefore we would also like to be entertained and recognize our request concerning our just rights from the Government.⁹⁷

Maintenance

The *Kainerekowa* provides that the people must meet at regular intervals to reaffirm their commitment to the law and to the peace that it seeks to establish. The same principle holds true for international relations. A chain that is held loosely in the hand or allowed to slip binds no one. A chain that is allowed to rust or become tarnished may break.

To the Iroquois, alliances were dynamic, ongoing relationships, and if they were not kept alive ÿ were not continually improved ÿ friends might turn to enemies over minor differences...Connections, therefore, were constantly being reevaluated, refined, renewed, and kept alive in ritual form.

Reciprocity...expressed mutual commitment.... Despite rhetoric, hostilities might arise, and alliances were not infrequently broken, but documentary evidence of Iroquois diplomacy is full of efforts to establish, renew, or re-establish peaceful relationships.⁹⁸

On 20 June 1911, the secretary of the Confederacy Council at the Grand River Territory, Josiah Hill, wrote to the secretary of state for the colonies, asking for an interview that summer "with you and your colleagues that they may further cement and perpetuate the Treaty rights granted years ago". His letter stated:

It is now over one hundred years since a deputation from the Six Nations Indians had the pleasure and privilege of visiting England and conferring with the Imperial authorities, re Treaty Rights of the Covenant of the "Silver Chain, which does not tarnish", which is emblematic of the relations between the Six Nations and the British Crown.⁹⁹

The secretary of state did not reply. He wrote instead to the governor general of Canada: If your Ministers concur I shall be glad if you will inform Chief Hill that I do not consider that the requested interview would serve any useful purpose.¹⁰⁰

By the twentieth century, the record shows that Canadian government authorities had no personal memory or knowledge of the treaties and promises that had been made and deliberately had no will to find out about them.

It is a matter of some debate whether the British and French of the seventeenth and eighteenth centuries understood the reasons behind the forms and procedures of Haudenosaunee councils, or whether they merely understood that 'this is the way it is done here' and complied with the ways of the land. The same debate might surround adherents of any religion: is it essential that they grasp the theology that underpins the religion, or that they have simple faith,

or just that they understand what is expected of them at each part of the ceremony? Certainly, there exist all three kinds of people in any religion. Equally certainly, the depth of understanding of the European officials who dealt with the Haudenosaunee varied from person to person ÿ but knowledge of the way to behave and familiarity with the forms and words were consistent among them.

Consistency ÿ the careful guarding and maintenance of a way of law and knowledge ÿ is a trait of the Confederacy and its people. The same consistency has guided relations between the Haudenosaunee and the Crown. It is the great strength and perhaps a great weakness of the Haudenosaunee: a strength, because it allows the people and their traditional government to take a stand based on clear principles and well documented agreements; a weakness, because having a clear and prescribed path to follow prevents 'modern' flexibility.

The Covenant Chain relationship provides for direct relations between the Confederacy and the Crown in a specific manner. That is, the path of peace lies directly between the Crown's representative, the governor of the colony, and the *rotiianeson*. For much of the colonial period ÿ from 1664 to 1755 ÿ it was the governor of New York who was the focal point of the British side of the Chain. From 1755 to 1775 it was the imperial superintendent general of Indian affairs, Sir William Johnson. In the 1780s and '90s, turbulent years, it was often the governors of the Canadas ÿ Sir Frederick Haldimand, Lord Simcoe, Lord Dorchester ÿ who personally reaffirmed the relationships. The war of 1812-1814 brought equally high-level involvement by Crown officials.

The nineteenth century saw a gradual diminution of the importance of the Haudenosaunee to the Crown. As the non-Aboriginal population of the Canadas increased, and as the threat of invasion from the United States declined, the Confederacy was increasingly marginalized. The Confederacy continued to seek relations with the more distant imperial government, recognizing that the interests of the local colonial and provincial governments lay more in acquiring land than in securing the alliance.

Meanwhile, the imperial government continued to devolve its powers to Canada, first to provincial governments and then to the federal government. By the 1830s, the focus of the British Indian department had shifted. Instead of ensuring that potential allies were ready for war, the goal of the department had become the 'civilization' and assimilation of the Indians.

The policy of assimilation, first articulated clearly in the late 1830s, remained in place officially until about 1970. During that time, the maintenance of the ancient treaty relationships and the repolishing of the Covenant Chain were contrary to Canada's objectives. By the 1840s, few Indian department officers, and no higher officials, could have conducted councils according to Haudenosaunee procedure. By the 1870s, with the administration of Indian affairs in the hands of a company of strangers, there was neither the ability nor the desire.

PART III
THE TREATIES ARE STONES IN THE STREAM
THEY MARK OUR PLACE IN TIME

The following is a collection of records of the treaties between the Haudenosaunee and other nations.

It does not pretend to be a full historical record: the written record alone is more than 10,000 documents, more than 100,000 pages.

In contrast to the treaties between Canada and indigenous nations whose lands are within its boundaries, relations between the Haudenosaunee and the Crown are not based on any single treaty council or transaction. They are a continuum based on principles or concepts that themselves are drawn from the Great Law of Peace.

The principles of respect, friendship, unity of mind, and peace are embodied in the Two Row Wampum and the Silver Covenant Chain. The idea that nations can be of one mind without becoming subsumed one by one or the other is constant in those relations and is drawn from the Great Law of Peace.

This historical record shows

- that the Haudenosaunee conducted international relations not only with the British, but also with other nations of the world,
- that the British and others willingly adopted the treaty and council procedures of the Haudenosaunee and understood not only what they were doing, but also the purposes of those procedures and processes,
- that the Haudenosaunee have adhered consistently to the concepts of the Two Row Wampum and the Covenant Chain,
- that the concepts represent a continuum in relations, dynamic and flexible in dealing with often turbulent changes in politics, war and peace and evolving technologies, while constant and consistent in fundamental principles.

Introduction

There is a myth that all Indian treaties were more or less the same, faithfully following the same script.

The script involves top-hatted white male commissioners seated behind a wooden table with a large parchment treaty document sitting atop it, ready for signing, while a couple of dozen feathered Indian chiefs sit solemnly on blankets opposite the commissioners. The commissioners

introduce themselves, announcing that they have been sent by "the Great Mother across the Big Water" to arrange matters for "Her Red Children". Scarlet-coated Mounties stand benignly off to one side, while Indian warriors in full and colourful regalia stand proudly off to the other. The eagle feather headdresses of the chiefs rustle picturesquely in the breeze of the prairies. An old chief makes a noble statement about the glorious past and sad fate of the Indian nations. The chiefs smoke the pipe with the commissioners, then sign the treaty. Some recounters of the myth suggest that rum was distributed freely after the treaty; others suggest it had its influence beforehand. Many accounts say the Indians were cheated; others insist that the relationship was sacred and good. Canadian courts have said that often the Indians did not know what they were doing.

In a single day, in a single document, the commissioners would have achieved a political relationship, a spiritual relationship, and a major real estate transaction.

Perhaps that *is* what happened with some of the numbered treaties (so called because they were designated Treaty Number 1, Treaty Number 2, and so on up to 11) made between 1876 and 1921 in western Canada.

It is not what happened in the many treaty councils between representatives of the British Crown and representatives of the Haudenosaunee. There was no single transaction that stands as the equivalent to one of the numbered treaties. The treaties of the late 1800s have become like monoliths, rocks in the path of the people's history. Haudenosaunee treaties are more like a stream, with the individual transactions like stepping stones, marking the stream's progress. The history of Crown-Haudenosaunee relations is one of a complex but ascertainable relationship in which formal treaty councils serve as indicators of health, progress and change.

From 1664 to 1760, a major factor in the policies of both the Crown and the Haudenosaunee was the existence of a strong New France, based at Quebec and Montreal, with alliances with several Algonkian nations strong in their own right, competing for domination of the fur trade economy.

While there are *rotianeson* who have been identified as anglophile and francophile individuals, the policy and strategy of the Confederacy in general over that century was one of survival, consistent with the *Kainerekowa*. The Mohawks, who were closest to the British colonies, appeared most pro-British. The Senecas, who had absorbed many of the Wyandot, Tionontate and Attiwandaronk survivors and had adopted several Frenchmen, appeared most pro-French. The Onondagas and Cayugas tended to steer a more neutral course.

...for more than a century, though never mustering more than five thousand fighting men, they were able to hold the balance of power on this continent between France and England; and...in a long series of negotiations they proved

themselves qualified to cope in council with the best diplomatists whom either of those powers could depute to deal with them.¹⁰¹

The significance of the villages of Kahnawake, Kanesatake, Akwesasne and Oswegatchie, viewed by the French as 'praying Indian' Christian settlements, cannot be underestimated. The British spared no efforts in trying to persuade the Haudenosaunee south of Lake Ontario to "call their people home". The historical record is generally that of the British and the French and reveals little of the complex relationships that must have existed, or the purposes of those settlements. Several facts emerge as constants, though:

All through the French régime, these "praying Indian" villages were seen by the Haudenosaunee as "our people".

The existence of these settlements provided opportunities for trade in French goods to other Haudenosaunee communities. English and Dutch goods flowed into New France through the Haudenosaunee in return.

While there are strong historic records of the "Christian Indians" conducting raids on behalf of their French allies into New York and New England, there are equally strong records showing that they refused to attack their own people, and indeed that Haudenosaunee on both sides would share intelligence on French and British intentions.

In Haudenosaunee eyes, were the four Christian villages viewed as outposts of the Confederacy, or as people who had taken the Crooked Path, who had strayed and should be called home? There is no simple answer. History shows that they were both, and more. There were people who *did* favour the French; there were some who *did* appreciate French presents, education and religion. Yet they were of a people who did not forget their relatives, who constantly maintained relations with the people in their original homeland.

One strategy of the French in North America was to ring their settlements with villages of their allied Indians. Any enemy would have to get past the Indians to attack the French. In 1755, working through the Mohawks and Onondagas, Sir William Johnson secured the neutrality of the "Seven Nations of Canada", a loose confederation of which Kahnawake, Kanesatake, Akwesasne and Oswegatchie formed part. The people of those communities were to "stand aside" when the British attacked the French down the St. Lawrence. They did so.

At the first formal council after the capitulation of the French at Montreal, one of the first recorded acts between the Haudenosaunee and the Seven Nations of Canada was an invitation formally to rejoin the Confederacy. The British record of that September 1760 council shows a polite but firm refusal. For the following forty years, the people of those eastern communities would sit *with* the Haudenosaunee in councils with other nations (as in the Ohio Valley councils of the 1790s) but would sometimes speak for themselves and present views that differed from

those of the Confederacy proper. Given time for healing and reconciliation, the restoration of the Confederacy might have been quicker. There was little opportunity, though.

With the French out of the way, fraudulent land transactions involving people of the British colonies accelerated. The Mohawks, in the most exposed position as the eastern nation of the Haudenosaunee, suffered most and the British policy makers felt the greatest sympathy for them, Britain's staunchest allies. The *Royal Proclamation of 1763* was designed to put an end to these frauds for the future, but without providing a remedy for past misconduct.

Though Canadian historians, lawyers and judges have made the *Royal Proclamation of 1763* into an Indian Bill of Rights, standing alone as an act of Crown generosity and foresight, it was seen at the time as part of a continuum of transactions. The line it created between the colonies and 'Indian country' was intended to be temporary. Sir William Johnson negotiated a new temporary line in 1765, and the crucial Treaty of Fort Stanwix in 1768 created what was meant to be the permanent line. The 1768 line preserved most of Haudenosaunee territory (minus much of Mohawk country) and set aside the Ohio country.

The clarity and peace intended by this line did not last.

The American Revolutionary War was seen by many of the Haudenosaunee as a fratricidal war between their English brothers, one that they should not join. The United States sought constantly to secure the neutrality of the Confederacy, just as the British sought to remind the warriors of their covenant with the King, who now called upon them in his time of need. The 'perfect neutrality' of the Confederacy was not maintained. Many of the Mohawks, who were closest to the British geographically and politically, fought for the King. The Oneidas, influenced by people sympathetic to the rebels, supplied food to George Washington's army at Valley Forge and at times fought for the United States. The Onondagas, Senecas and Cayugas tried to stay neutral most of the time, but individual people of those nations took part in the war, and there was little coercion that could stop them.

After the American Revolutionary War, the council fire was briefly scattered. The British had promised the Mohawks and others that, should the King lose the war, they would be protected and provided with land equivalent to what they had lost. At first, it looked as if this commitment would be kept: Governor Frederick Haldimand set apart the entire valley of the Grand River in southern Ontario as a new Haudenosaunee homeland. Within eight years, though, the local authorities contrived to reduce that territory by more than a third, claiming technical problems with the grant.

Meanwhile, on the 'American' side, the United States had embarked on a policy of treating the Haudenosaunee as conquered peoples. The demeaning Treaty of Fort Stanwix in 1784 was followed by a more respectful relationship created by the Treaty of Canandaigua in 1794. Land speculators poured into the country now claimed by New York, and federal officials

were ineffective in preventing trespass, fraud and friction. New York made a series of land treaties dubious in their legality and morality.

In the 1790s, the Ohio country was still 'Indian country', a land accessible from both sides of the lakes, a 'house with four doors' that a confederation of many Aboriginal nations had chosen as a new home. The war between those nations and the United States was like Vietnam nearly two centuries later. It was an unpopular war for the United States, with long supply lines, unfriendly geography, dangerous adversaries backed by a superpower. Once it became clear to the indigenous nations that Britain was arming and using them without intending to become directly involved in the war, those nations, one by one, made peace with the United States. The dream of an Indian buffer state between the United States and the Canadas was wounded by the Jay Treaty of 1794, in which the British failed to press hard enough for their allies.

The same confederation, with the same hopes and desperation, was revived for the war of 1812-1814. Once again, the British made many fair promises, and once again there were Haudenosaunee who were neutral and some who took part on either side. The Treaty of Ghent of 1815, confirmed in council at Burlington Heights, appeared to restore those rights that had existed before the war. In fact, once again, the protection of Haudenosaunee rights by the British was at best illusory.

By the 1830s, non-Aboriginal immigration and settlement meant that most Haudenosaunee territories were having problems with squatters, land speculators, and fraudulent and questionable transactions. At the same time, Haudenosaunee military power had shrunk as the non-Aboriginal population grew and the chances of a war between Canada and the United States diminished.

Both Canada and the United States extended their jurisdiction, in violation of their earlier treaty promises. Criminal jurisdiction came first, moving swiftly from a claim of jurisdiction over murder to more general jurisdiction outside Indian territory and finally to all matters inside and outside the territory.

In Canada, transfers of power from imperial to provincial authorities meant laws that made it easier to separate the Haudenosaunee from their lands. By the 1840s, more than 90 per cent of the original Grand River Territory was gone. The Nutfield Tract at Akwesasne was surrendered. Friction over land issues between the Mohawks and the priests at Kanesatake and Kahnawake continued. By the 1850s, the Thousand Islands that had been promised to Oswegatchie and Akwesasne were being sold for a pittance, with the money going to a band of Mississaugas who had never lived on or claimed those islands. Disappointed or pressured by New York state, Haudenosaunee families continued to move westward ÿ some to Kansas and Oklahoma, others across the border: the Cayugas in the 1830s, many Oneidas in the 1840s. New

York also took Iroquois lands, in treaties that apparently violated the United States constitution and the federal Non-Intercourse Act.

In the 1840s, also, the failure of the Grand River Navigation Company affected the Six Nations deeply. Their trustees were unable to keep the government from investing more and more deeply in the company, even after it was clear that other investments were more productive and less risky, even when it became clear that the company was going to fail. The money was all lost. The chaotic Indian department administration of Samuel Peters Jarvis resulted in even more money and land being lost. Though Jarvis could not account for the money and had mixed his personal bank accounts with Indian moneys, he was not prosecuted: his strong Family Compact connections allowed him to resign in disgrace. In later years, when the Six Nations of the Grand River sought redress for the loss of their money, Canada argued that the responsibility was imperial, not local. There has never been compensation made.

In 1867, Canada became a federation. The federal government exercised its power over "Indians, and Lands reserved for the Indians" by passing the first *Indian Act* in 1869. In 1870, the chiefs of all the indigenous communities in southern Ontario and Quebec met at the Six Nations Grand River Territory and rejected the new act, section by section as well as in principle. The chiefs rejected Canada's claim to the right to prosecute Indians who did not have permits from the superintendent general of Indian affairs to live on their land. They rejected Canada's decision to remove women from membership in their communities for marrying non-Indians. They rejected Canada's right to make laws for them.

Instead of retreating, Canada pursued a policy of assimilation that also involved the deliberate destruction of traditional Haudenosaunee institutions. The *Indian Advancement Act* was used, starting in the 1880s, to displace traditional governments and replace them with brown imitations of the federal elective system ÿ whether the communities wanted that form of government or not. Most did not. Residential schools and missionary schools and institutions were used to diminish Haudenosaunee languages and religious observances. The *Indian Act* made ceremonies associated with Midwinter and Green Corn thanksgiving illegal. By the early 1900s, anyone raising money to make claims against Canada without the permission of the superintendent general faced imprisonment. Any Indian who became a doctor, lawyer or university graduate automatically lost his right to live in his community or be considered one of its people.

Throughout this period, the Haudenosaunee remained consistent on several crucial issues. They never abandoned their understanding of the Two Row Wampum or the Silver Covenant Chain. They never abandoned their right to make their own laws for their own people, as a nation in the world. They never ceased to maintain the connections between their communities ÿ on

both sides of the border and both sides of the lakes ÿ or their religion, their forms of government, or their laws. And they never ceased to inform the Crown of its obligations.

The following is a selection of some of the more important treaties between the Haudenosaunee and other nations.

They have been chosen to illustrate several basic points. First, that the Haudenosaunee conducted their relations with other nations according to a clear and well established procedure, which those other nations followed. Second, that the relationship between the Haudenosaunee and the Crown was that of a mutual protectorate and friendship symbolized by the Silver Covenant Chain. Third, that the relationship evolved over time, as relationships do, but that the Haudenosaunee maintained their consistency over that time, adhering to the principles that had governed their dealings with the Crown from the beginning.

These are but a few of the treaties: the Center for the History of the American Indian at the Newberry Library in Chicago has put together a microfilm collection of Iroquois treaties and councils that takes up 50 reels of microfilm and records more than 10,000 separate documents.

What is a 'Treaty'?

The English word 'treaty' has its ancestor in a French word meaning 'to bargain'. There is no Mohawk equivalent ÿ words implying agreement are used as translations.

In Canadian law, it is important to understand what is a treaty and what is not, since promises made in treaties are more binding than other promises made by the Crown. A hierarchy of promises is not inconsistent with Haudenosaunee law, in which promises made with wampum are certainly more sacred and binding than statements made with empty hands.

Canadian law uses the word 'treaty' in three separate contexts. The word is used to describe formal agreements with foreign nations. It is used in section 88 of the *Indian Act* to describe agreements that have the effect of overriding provincial laws of general application. It is used in section 35 of the *Constitution Act, 1982* to describe agreements that are entrenched in Canadian constitutional law. The latest and most authoritative statement of what is a treaty is found in the Supreme Court of Canada's 1990 judgement in *Sioui v. The Queen*. These legal words are the lens through which Canadian courts would view the transactions that follow:

An Indian treaty is an agreement sui generis which is neither created nor terminated according to the rules of international law.

The rules of international law do not preclude the document being characterized as a treaty within the meaning of s. 88 of the Indian Act. At the time with which we are concerned [1760] relations with Indian tribes fell somewhere between the kind of relations conducted between sovereign states and the relations that such states had with their own citizens.

There is no reason why an agreement concerning something other than a territory, such as an agreement about political or social rights, cannot be a treaty

within the meaning of s. 88 of the Indian Act. There is also no basis for excluding agreements in which the Crown may have chosen to create, for the benefit of a tribe, rights over territory other than its traditional territory. Accordingly, I consider that a territorial claim is not essential to the existence of a treaty.

What characterizes a treaty is the intention to create obligations, the presence of mutually binding obligations, and a certain measure of solemnity.

The word "treaty" is not a term of art. It merely identifies agreements in which the "word of the white man" is given and by which the latter made certain of the Indians' co-operation.

The formalities are of secondary importance in deciding on the nature of a document containing an agreement with the Indians.

The laws of Canada seek 'treaties'. They seek specific events and councils at which specific promises were made. The laws of the Haudenosaunee seek the relationship and find repeated councils at which the relationship was refined and reaffirmed.

At the river crossing, Canada sees the stones; the Haudenosaunee see the stream.

The Dish with One Spoon

In the Great Law of Peace, it is stated that

It will turn out well for us to do this: we will say, 'We promise to have only one dish among us; in it will be beaver tail and no knife will be there'...We will have one dish, which means that we will all have equal shares of the game roaming about in the hunting grounds and fields, and then everything will become peaceful among all of the people; and there will be no knife near our dish; which means that if a knife were there, someone might presently get cut, causing bloodshed, and this is troublesome, should it happen thus, and for this reason there should be no knife near our dish.¹⁰²

The Lords of the Confederacy shall eat together from one bowl the feast of cooked beaver's tail. While they are eating they are to use no sharp utensils for if they should they might accidentally cut one another and bloodshed would follow. All measures must be taken to prevent the spilling of blood in any way.¹⁰³

At first glance, this does not look like a land use law at all. To understand its impact, one must first understand the Haudenosaunee views of land and ownership. To the people, the first kind of land was 'my people's village'. This included not only the palisaded, protected area around the longhouses, but also the cleared fields around it.

Within the cleared lands, each clan would have its own fields, which the men would clear and the women would cultivate. At the edge of the clearing was a real boundary y the woods' edge.

At the woods' edge, visitors would wait to be greeted, consoled, taken by the hand and brought into the village. Beyond the woods' edge were the hunting grounds.

Each nation had its own hunting grounds. There are references in early European records of dealings with the Haudenosaunee to the boundaries of the hunting grounds sometimes being marked with trees. Beyond each nation's hunting grounds were the hunting grounds and lands of other nations.

Ownership of land, in the European sense, and 'title' would have been alien to this traditional view of the world. Underlying the alienness would have been the different senses of time between indigenous and settler peoples. Indigenous peoples were taught that their presence on the land was transitory, part of a continuum from their ancestors to the 'coming faces', the unborn generations. European land ownership involved placing the name of the present owner in a registry book, so that he could then do with the land as he wished. Where the indigenous peoples held the land communally, the Europeans held it individually. In the relative freedom of the Americas, that individuality was being expressed even more strongly than it had ever been in Europe.

The shared dish of beaver tail stew meant that the hunting grounds ÿ as distinct from the cultivated lands and clearings ÿ were like one dish or bowl, intended to feed everyone equally. If you were hunting for food in the territory of another nation of the Confederacy, you were within your rights under the Great Law.

The chiefs, as symbols of their people, were to share in the stew, using only one wooden spoon. This reinforced the sharing, but it also meant that there were to be no knives ÿ no sharp edges ÿ used, so that there would be no conflict or bloodshed over hunting for food.

Much of the Great Law brought ways to prevent or avoid bloodshed and conflict for the future. The sharing of the hunting grounds was an important way.

This part of the Great Law of Peace was preserved on a wampum belt, as were many other crucial elements of the law. The belt is short, narrow, plain and very old. It bears a round purple area ÿ the dish with one spoon ÿ on a field of white.

This agreement, originating in the laws of the Haudenosaunee, was then extrapolated to other levels and nations as the Confederacy was expanded in influence and scope. From the point of view of the Haudenosaunee, the power of the Great Law of Peace, and the rationality of its structures and laws, made its acceptance by other peoples a natural and expected occurrence.

The first European record of the dish with one spoon is found in the Jesuit Relation of 1644-45, at a council between the Haudenosaunee and the French:

"Things are going well" said all the guests; "We eat all together, and we have but one dish".¹⁰⁴

On 7 April 1757, Thomas Butler wrote to Sir William Johnson about a meeting between the Haudenosaunee and the French at Montreal. According to his report, the Haudenosaunee told the French:

...we can't write but know all that has past between us having good memories.

After the Warrs & troubles we together met you at this place where every trouble was buried & a fire kindled here. Where was to meet and Treat peaceably; you are daily now working disturbances and Seem to forget the old agreement &c. The Tree Seems to be falling. Let it be now put up the Roots spread and the leaves flourish as before. You formerly said take this bowl and this meat with this Spoon let us Eat allways friendly together out the one Dish but you now forget and have separated the Indians very much So as they can't well come together To Eat out this Dish which is very hard as we have children here & there Scattered through ye Country by your Means.

The English your Brothers & you are the common disturbers of this Country. I say you white people together. We term the English your Brothers as you must have some. We Indians you call Children you both want to put us Indians a quarrelling but we the Six Nations know better if we begin We see nothing but an Intire Ruin of us as we would live of till all was Gone. So we are Resolved to keep Frinds on both sides as long as posible & not meddle with the Hatchett but indeavour allways To pacifie the white people Our arms shall be between you indeavouring to keep you a Sunder.¹⁰⁵

After the defeat of the French in 1760, the British soon found themselves looked upon as possible arbitrators in hunting territory disputes between the nations who had been allies of France. The Algonquins and Nipissings complained that the Mohawks were trespassing on their Ottawa Valley hunting grounds, which they (the Algonquins and Nipissings) had been harvesting in a gradual and deliberate manner. The British Indian department officials at first replied that the *Royal Proclamation of 1763* had reserved the territories west of the Quebec boundary to *all* the Indian nations together, so that there were no more hunting grounds that could be claimed by individual nations exclusively. The same kinds of conflicts arose when the Haudenosaunee in general began to hunt northward into territory claimed by Kahnawake. The principles of the dish with one spoon began to be mingled with the terms of later treaties between Aboriginal nations and communities, with the French, and with the British. In these disputes, though, the issues were generally those that involved commercial trapping or hunting. The fundamental principle of the land being a source of food for all was never at issue.

On 30 August 1765, Daniel Claus, the deputy superintendent general of Indian affairs, wrote to Sir William Johnson about the hunting rights of the people of Kahnawake and potential conflicts with the Mohawks, Oneidas and Onondagas. Claus and the Kahnawake people linked

the dish with one spoon to the general peace treaty with the French in 1701: he asked Johnson to "interfere"

and remind those Nations of the old Agreement made before the French Governor many Years ago, in the presence of Five Confederate, and all the other Nations in Canada, ȳ that when a general Peace was made, and concluded between these Nations, the Governor told them, that as they were become one body, and of one mind, the Woods, and Hunting Grounds could be no otherwise than in common, and free to one Nation as to another, in the same manner as a large Dish of Meat would be to a Company of People who were invited to eat it, when every Guest has liberty to cut as they pleased, wherefore they hoped you would make these three Nations abide by that Agreement.¹⁰⁶

On 4 October 1767, the Haudenosaunee communities of Kahnawake and Kanasatake met with the British governor of Quebec (known by his Mohawk title, Asharekowa):

In the afternoon they met and the Cagnawageys opened the Council Pr. Assarigoa with respect to their Message wch. is to put them in Mind & renew the old Agreement wch. was that all the Nations in Canada should enjoy a free hunting wherever they thought proper that there should be no claim of property of any particular Spot, but all Indians in General should equally enjoy the Liberty of hunting in the woods [whenever they thought proper] which their wise forefathers concerted & agreed upon in order to prevent Jealousies & Envy wch. they but justly foresaw must produce Disputes & Quarrels & finally bring on their Destruction. And therefore have them their advice to [hear] use the Woods with the same freedom as they would a Kettle with Victuals when invited to a feast and with one Spoon & Knife to eat all together sociably & without begrudging those that had a better appetite & eat more than others.¹⁰⁷

In the early 1790s, after the American Revolutionary War, the Indian Confederacy was meeting to explore ways of creating a united front to prevent further encroachment from the United States. This Confederacy ȳ the term some of the speakers used was "the people of our colour" ȳ included most of the nations east of the Mississippi, from the Creeks of the southeast to the Ojibwas of the Great Lakes to the Seven Nations of Canada on the St. Lawrence and the Sauks and Foxes in the west.

Since part of the Haudenosaunee homelands were now within the boundaries of New York state, there was pressure on their deputies to secure peace. Thayendenegea, or Joseph Brant, brought news of his negotiations with the United States at Philadelphia to a council held at the rapids of the Miami River in May 1793. Speaking on behalf of the Six Nations, he said that

...we placed a Moon of Wampum and a Dish with One Spoon in the Council which Signified that the Country was in Common.

Captain Johnny of the Shawnees replied for the Western Nation (for in this council, mirroring those of the Haudenosaunee, there were two sides, alternating in presenting their views).

Thayendenegea's record of the Council states:

...about this time the Creeks arrived, after repeating what the Six Nations had said some days ago respecting the Moon of Wampum and the Dish with One Spoon, he produced four strings of Wampum and a Pipe and tobacco which a Warrior of the Creeks took and spoke as follows:

BROTHERS: I am happy that a Council was held in the Glaize last fall and that in consequence thereof the Confederacy are now met, and I am now come to strengthen the Union and altho' these our Strings are small they are full of meaning, our Confederacy is like a house with four Doors and all the Indian Country is in common, it appears most exposed to the Eastward but we are determined that no part of it shall suffer if in our power to support it.

4 Strings Wampum¹⁰⁸

By the 1840s, other indigenous nations were also using the dish with one spoon as a means of resolving their land issues. In November 1886, the Chippewas of the Thames and the Munceys of the Thames were involved in a dispute over lands the Munceys had occupied in southwestern Ontario. Chief William Waddilove of the Muncey Delawares described how his people had come into the country in the late 1700s and said,

Our forefathers ever since they came to this country has always been on friendly terms with the Ojibway, and were made to understand that they have equal rights with the Chippewas to the land...and also eating out of the same bowl, which meant that the produce of the land was held in common.¹⁰⁹

On 23 January 1864, the local Indian superintendent on Manitoulin Island reported on a meeting of the chiefs of the Island. Wakegijik, one of the chiefs of the eastern community, Wikwemikong, had said,

My friends, we want to eat out of one dish as it were y we do not wish to break a part of it to give away. All of us who met together at Grand Council there, agreed that we should eat out of one dish.¹¹⁰

In 1887, Skanawati (John Buck) was the keeper of the wampum at the Grand River Territory. His reading of the dish with one spoon was recorded by Dr. David Boyle of Toronto:

...The firekeeper told the first belt, all white except for a round purple patch in the centre. This represents all the Indians on the continent. They have entered into one great league and contract that they will all be one and have one heart. The pot in the centre is a dish of beaver, indicating that they will have one dish and what belongs to one will belong to all.¹¹¹

Significance of this Treaty

The dish with one spoon is an example of a principle of the Great Law of Peace that has been accepted by other Aboriginal nations, through treaties with the Haudenosaunee.

It is an example of how wampum is used to assist in preserving treaty commitments and principles of law. It is evidence of the way the people view the land and property rights in the land and its resources.

Though the dish with one spoon may have been among the first of the 'treaties' between the Haudenosaunee and other indigenous nations, it was not the only one. It would be wrong to believe that there were 'treaties' with the European nations and nothing similar with the neighbours. Instead, from a Haudenosaunee point of view, *all* the nations were being brought within the Law, the Union. The dish with one spoon does that for one aspect of the Law. The Covenant Chain does it for another.

By the 1790s, there was a functioning Indian Confederacy with its council fire in the Ohio Valley, taking in most of the nations of the Great Lakes area, stretching far in all directions. The council at which the Creeks mentioned the dish with one spoon was a meeting of that Confederacy. As the Euro-Americans increased in numbers, the indigenous nations saw the need to gather together "the people of our colour". The structure around which they focused their gathering was the *Kainerekowa*.

The Kaswentha or Two Row Wampum

Lying close to the beginning and to the heart of the relationship between the Haudenosaunee and the British Crown is the Kaswentha, also known as the Two Row Wampum.

The symbol of the relationship is a wampum belt nine rows wide, with two parallel rows of dark wampum running its entire length. The two dark rows symbolize the sailing ship of the British and the bark canoe of the Haudenosaunee. Their paths are parallel because, while they are to remain close allies, they are not to interfere in each other's course. The three white rows separating the two dark rows signify peace, trust, and respect and friendship (that is, trust and friendship can be interchanged). These three concepts, it is said, are what keeps the two craft close together, yet at a respectful distance from each other. They are also the links of the Covenant Chain.

Chief William Jacobs of the Grand River Territory explained the relationship in a letter to the superintendent general of Indian Affairs on 7 May 1872:

You sail your own Boat and we'll paddle our own canoe Side by Side I was not to enter in your Craft and you was not to enter in my canoe. Gale and calm we must be side by side...when the pail fase man saw my laws he says to the read man's

face your laws of the Six Nations is good that your forefathers made for you we will always keep our laws separate from your laws.

The pail face man said to the read face I don't understand the way your canoe runs the Six Nations chiefs said I don't understand the ways of your boat runs the pail face said to the read man I don't understand the Birch Canoe runs if I enter in it it might upset, the read man says yes if you enter in my Birch Canoe it will upset the Read man said to the pail face that is the runs and laws the Great Spirit gave us...¹¹²

There are several wampum belts that illustrate the Two Row concept. Probably each one was given to reinforce, restate or repolish the original commitment. The principles embodied in the Kaswentha are also to be found in written agreements, as well as in other forms.

Perhaps the most dramatic and graphic illustration that the British knew and accepted the meaning and spirit of the Kaswentha is the personal seal that Sir William Johnson designed for himself as imperial superintendent general of Indian affairs. The seal is full of symbols that would be recognizable to the Haudenosaunee, and the record indicates that Johnson sent a picture of it to the Oneidas. Around the outside of the seal is an endless chain, grasped by seven arms (one of them, wearing a shirt and coat, must be Sir William himself, and the others the Six Nations); within the circle formed by the chain are no doubt the Covenant Chain are a pine tree (the Tree of Peace), a pipe (the calumet or pipe of peace, a lodge (the council house), and a sailing ship and a canoe, side by side.¹¹³

The first written agreement consistent with the principles in the Two Row Wampum is the Treaty of Fort Albany of 24-25 September 1664, made between Colonel George Cartwright, the commanding officer at Albany, and sachems of the "Maquaes" and "Synicks":

That if any English, Dutch, or Indian (under the protection of the English) do any wrong, injury or violence to any of ye said Princes, or their Subjects, in any sort whatsoever, if they complained to the Governor at New York or to the Officer in Chief at Albany, if the person so offending can be discovered, then that person shall suffer punishment and all due satisfaction shall be given, and the like shall be done for all other English Plantations.

That if any Indians belonging to any of the Sachims aforesaid, do any wrong, injury or damage to the English, Dutch, or Indians under the protection of the English, if complaint be made to ye Sachims, and the person be discovered who did the injury, then the person so offending shall be punished and all just satisfaction shall be given to any of His Majesties subjects in any Colony or other English plantation in America.¹¹⁴

The terms that governed the Two Row Wampum and the Covenant Chain created a situation in which jurisdiction over and responsibility for the actions of individuals belonged to

their nations. Separate personal jurisdiction in criminal matters suited both the British and the Haudenosaunee. For the British, it meant leverage: it meant that the entire Confederacy would be responsible for atoning for the actions of any wayward individuals. British law for at least a hundred years after 1664 was not in a position to enforce criminal sanctions in the frontier territory. For the Haudenosaunee, it was an extrapolation of a principle of the *Kainerekowa*: just as the clan was responsible to other clans for actions and injuries of its members, and the nation was responsible to other nations, so was it true at the international level between the British and the Haudenosaunee. Separate criminal jurisdiction, with each side liable to give 'satisfaction', was consistent with the spirit and intent of the Great Law of Peace and another indication that the British were governing themselves by the spirit of that law. Separate jurisdiction meant that territory was irrelevant: it was the individual, rather than his location, that mattered.

Thomas Gage wrote to Guy Johnson on 18 September 1774:

I imagine there must be some Mistake in what you mention respecting the Indians of Canada being subject for the future in all Things to the Laws of England. Indians are commonly left to their own Usages and Customs in most things; perhaps they may have been informed that in Cases of Murder, or Robbery, they would be tried agreeable to English Law.¹¹⁵

In 1872, George Monture, a sachem of the Grand River Territory, wrote to Queen Victoria:

...I may ask of your Majesty to interfere in my behalf and those of my people who still adhere to the faith and customs of my forefathers from the encroachments [on] the rights of your petitioners by your subjects and servants administering the gov't. of the Canadas. It was granted to your Red Children the right to enjoy their religion and the customs of their fathers without molestation of your subjects in Canada. In short your children was "to paddle their birch canoe" so long as the "sun shines, the grass grows and water runs" along with your white subjects who sail in great ships.¹¹⁶

In 1890, the chiefs of the Confederacy at the Grand River Territory explained to the governor general:

And we always want to be free and satisfied to be governed by our own laws and customs; for we have laws of our own. And those that are in favour of your laws and customs we have nothing to do with suppose they are to be governed by it. But we cannot help them in no way, for they broken our word rules and customs. Here is law of our forefathers laid down for us.

Wampum belt having two white rows, parallel and represents the two Governments, namely the Five Nations and the British Government will exist and will not interfere with each other. Of which the British made an illustration that the British will remain in their vessel, that is their government. while the Five

Nations will also abide in their birch bark canoe, meaning their Government. The British will never make compulsory any door way laws for the Five Nations to enter in so that should become a British subject.¹¹⁷

The statement explains that people who pass from the Haudenosaunee canoe to the sailing ship ÿ who place themselves under British law ÿ have "broken our word, rules and customs" and cannot be helped.

In modern explanations of the Two Row Wampum, speakers sometimes refer to the people who have one foot in the canoe and one in the sailing ship. They say that there will be high winds coming, which will buffet both craft. The people who are between the ship and the canoe will be swept away.

In 1983, the House of Commons special committee on Indian Self-Government published *Indian Self-Government in Canada* (known as the Penner Report, after Keith Penner, the chairman of the special committee). Its cover was a painting by Leo Yerxa, an Algonquin artist, showing the two purple rows of the *Kaswentha* against a distant sunrise. The symbol was used deliberately: the committee was recommending that the principles of the Two Row Wampum should guide Canada in its dealings with Aboriginal nations. A decade later, the *Indian Act* had been amended to permit limited taxation powers for band councils; a proposal to recognize an inherent right of Aboriginal self-government had failed to receive approval along with the rest of the Charlottetown Accord, and the government of Canada was willing to negotiate 'self-government' with Indian bands in a limited sort of way, working from the assumption that the extent of a band's power was a 'devolution of authority'. There have been few takers, on those terms.

The Nanfan Treaty of 1701

The Nanfan Treaty was part of a two-pronged diplomatic initiative by the Confederacy, which was facing pressure from military enemies on several sides. In mid-1701, at the same time as a delegation went to Montreal to arrange peace and neutrality with France and the Aboriginal nations allied with the French, the Confederacy was meeting with Lieutenant Governor Nanfan of New York to place the 'Beaver Hunting Ground' under British protection.

The combined treaties brought a generation of peace for the Haudenosaunee. The Nanfan Treaty has been held to protect hunting rights against provincial laws in Ontario, but its land provisions and protections remain unresolved.

Background

By the late 1600s, the Haudenosaunee were pressed from many sides.

From the east, the French were sending active armies, as well as invitations to join forces against the British. The pressure on the Senecas, who had absorbed many of the former Wyandot allies of the French, was the greatest.

From the north, the Mississaugas and other Ojibwas were moving into the area once occupied by the Wyandots and Attiwandaronks, and the Confederacy was having difficulty defending the territory. To the west, other friction continued.

The French claimed to have conquered what is now southern Ontario and much of the Haudenosaunee homeland. When asked about this by the British, on 13 February 1688, the Confederacy chiefs replied:

...the French can have no title to those places which they possesse, nay not to Cadarachqui and Mount Royall nor none of our lands toward the Ottawas, Dionondadas, Twichtwis; for by what means can they pretend them, because they came to the Maquase country formerly and now laterly to the Sinnekes country and burnt some bark houses and cut down our corne ÿ if that be a good title then we can claim all Canida, for we not only did soe, but subdued whole nations of Indians who liv'd there, and demolished there castles in so much, that now great oake trees grow where they were built, and afterwards we plyed the French home in the warr with them, that they were not able to go over a door to pisse.¹¹⁸

This 1688 statement goes on to suggest that "wee are the just and rightful owners of all our lands" and that the lands were "given and granted" to the King of England, who was asked not to "suffer any encroachment" on them. It has been suggested that it is inconsistent for the Haudenosaunee to claim both ownership of the lands and a grant to the King of England. In fact, the inconsistency is removed or clarified if the act is understood as placing the lands 'under' the King for his protection of the Confederacy's rights. The 1688 statement may be an expression of wishful imperial thinking by the British recorder, combined with some righteous boasting by the Haudenosaunee (and the very last part of the statement may be just a misinterpretation of the effects of indoor plumbing). Nevertheless, the idea of conquest giving title to territory lies behind the agreement made by the Haudenosaunee with the British in 1701.

The 1701 Treaty Conference

Lieutenant Governor John Nanfan had succeeded the Earl of Bellomont as the governor of New York. In early July 1701, "all the Sachims of the Five Nations" arrived at Albany and met with Nanfan "and told him that they were heartily glad to see him in that station". Nanfan replied to their hope that he would continue "the love and affection that former Governours sent by the King of England have had to us the Five Nations":

...you may be assured not only of the favour and protection of the great King of England my Master the demonstrations whereof you will finde before you goe hence, but of my rediness to serve you on all occasions.

Nanfan invited the chiefs to meet with him the following morning at the court house. The record of the first day's conference is dated 12 July 1701. Present were the mayor and aldermen of Albany, Nanfan, and Colonel Peter Schuyler "of His Majesties Councill". (Schuyler went to London with the 'Four Indian Kings' nine years later.) Robert Livingston, the secretary of Indian affairs, kept the records.

Nanfan raised several issues in the first day, noting that he would "discourse further upon another subject" once he had received their answer.

He wanted to know about the "business and negotiation" transacted by two French agents at Onondaga.

He wanted to know about the progress the Haudenosaunee had made in making peace with the "Farr Nations of Indians whom the French have soe long employ'd to kill your people".

He said he was glad the Haudenosaunee had refused to accept a Catholic priest and promised Protestant ministers for them soon.

Finally, he wanted to know of the success of the Haudenosaunee in attracting home "your brethren that deserted you and went to the French".

The Haudenosaunee delegates conferred for the rest of that day, considering how to reply. On the following day, in conformity with custom, council resumed. The Five Nations replied to Nanfan on the matters he had raised, in the order he had addressed them:

Brother Corlaer

Wee are glad to see you in this station to command this province, wee must own ourselves very happy under so gracious a King who was so prudent to send over two Governours the one to succeed the other wee take it to be his great care and love for us.

In Haudenosaunee structures, there is a sub-chief who sits behind the *royaner* of each title. This person is sometimes asked to act in the place of the *royaner* in times of sickness or trouble. When the title becomes vacant as a result of the death or removal of the *royaner*, though, it is not automatic for the sub-chief to assume the title. The clan mother and the women of the clan still observe the men of the appropriate families for a successor. The Haudenosaunee were glad to see that the British had replaced Bellomont so quickly, since there had been times when the colony's government was slow to act while a new governor was being chosen and sent from England.

Wee are sorry for the death of our late Govr. the Earle of Bellomont, wee hope his soul is in heaven, and on the other hand wee are glad to see that soe good a man as yourself succeeds him.

Was this the British scribe's shortened form of a condolence? Possibly, but at the same time, it is unlikely that words like "soul" and "heaven" would be direct translations of what was said.

Wee must esteem ourselves extream happy that our Brother Corlaer is a young active man expert in warr itt is the joy of all our young people to see a Governour fitt for service and that can travell and endure fatigue, wee will all have our eys fix't upon you the rather because wee meet with great difficultys daily from the French of Canada.

Brother Corlaer

Wee doubt not but you will be carefull to keep and maintain the covenant chaine firme as the late Govr. has done, who is now in heaven, and our earnest desire and prayer is that you may continue long with us in the station His Maj'ty has been pleased to place you in and that wee may frequently see one another in this City the Generall place of Treaty of all the five nations.

Wee doe with all sincerity acknowledge the great kindnesse, that His Maj'ty our great King has done for the five nations. Wee will endeavour to behave ourselves as such that may meritt his Majesties esteem by our faithfullness to the English Crown. Wee cannot sufficiently express our gratitude to soe gracious a prince and wee shall never faile to obey your Commands who are his Lieut't and doe hope that in some respect you will also hearken to us as the case may require.

On the literal level, these appear to be words of subjection and obedience. They can also be seen as words of thanks and acknowledgement, followed by words that concentrate on opening the channel of communication ÿ a channel that would flow in both directions, with each side harkening to the other.

You are desirous to know what the French agents have done in our country ÿ their principal business was to settle a priest among us to teach us Christianity but wee have soe often had experience of their wickedness and fallacy, that wee have possitively denied him any access there, for by the priests means, wee have been brought very low, they have been the occasion of the death of many of our men and of a great breach in our country by seducing our people to Canada.

"Seducing our people to Canada" was a constant problem: many of the Mohawks had moved to the two `praying Indian' villages near Montreal, the predecessors of the present Kahnawake and Kanesatake. As for the priests being bringers or causes of death, this may be a reference to the European diseases that swept Haudenosaunee territory.

You are also desirous to know what private negociations or underground darke dealings there has been with the French in our country; We have made strict enquiry among all our people and can learn nothing but what the people you sent thither are privy to, and what they entred down in writing, if you know of any thing else then what they have given you an account of pray tell us, wee shall be glad to be informed. You know Brother, that as often as the covenant chaine has been renewed itt has allways been agreed that neither party was to listen to any story's or falsehoods.

The skill of the Haudenosaunee speaker is apparent here: the speech, even as written in English, is masterful in its indirection and incompleteness. It is limited to dealings with the French "in our country": in fact, there had been dealings with the French *at Montreal* in preparation for the neutrality treaty there in the fall. Similarly, the speaker did not deny that there had been dealings with the French. The British were fully aware of some of those dealings, and about others the speaker was purposefully vague. The reference to not listening to any stories or falsehoods reflects the provision of the *Kainerekowa* that the *rotiianeson* are not to listen to the birds twittering in the branches overhead in making their decisions. Gossip, rumours and lies are sometimes called the songs of 'bad birds' in the treaty protocol of the first two centuries of British-Haudenosaunee relations.

As for the satisfying you of what treaties wee have made with the Dowaganhaes and other Farr Indians, wee have endeavoured to acquaint you by the sending of a large skinn upon which the Castles are painted with whome wee have concluded a peace, meaning that Elk skin sent by Capt. Bleeker and David Schuyler where there is two Castles painted with red upon itt, adding: they have made peace with seven nations and that the two nearest nations are only painted as being the principall the names of the said seaven nations wee have made peace with are Skighquan, Estjage, Assisagh, Karhadage, Adgenauwe, Karriahet, Adirondax.

The speaker did not mention ŷ he continued to proceed on a 'need to know' basis in his speech to the English governor ŷ that peacemaking with those Algonkian nations was being brokered by the French governor at Montreal, by the ancestors of present-day Kahnawake and Kanesatake, as well as being pursued through direct negotiations by the Haudenosaunee.

The nations mentioned are the Nipissings (Skighquan or Skequaneronon, the 'nation of sorcerers'), the Saulteaux (Estjage or Estiagigronon, the people of Sault Ste. Marie ŷ Skiaé), the Mississaugas (Assisagh, or Assissagheronon, the people of the river mouth ŷ an Iroquoianized version of the Ojibwa word), and the Algonquins (Adirondax ŷ 'they eat bark', the Mohawk word for porcupines, but perhaps also a reference to the art form of bark biting). The term 'Dewagenhaes' ('They gulp when they speak') is used in reference to many Algonkian nations ŷ

it refers to the great difference between the languages, since Haudenosaunee languages have no labial sounds, while Algonkian languages have many.

As to our Indians debauched to Canada by the French wee have used all endeavours imaginable to gett them back but cannot prevaile, the Jesuits have soe great influence upon them that they stop their coming to their own country and the Gov'r of Canada has them now wholly devoted to his service.

This was, to a great extent, true. The Haudenosaunee maintained friendly relations with the Christian Mohawk villages but did not succeed in bringing the people back to their original homeland. There is historical documentary evidence of the efforts to bring people home ŷ for in greater numbers there is greater strength ŷ but there is also an undercurrent that suggests that the Haudenosaunee wanted to maintain a presence and a relationship with the French through these settlements.

The Lieut't Gov'r told the five nations that he was glad they had made peace with soe many of the farr Indians and hop'd it might be lasting, and desired to know, how many nations their were still in warr with them.

They answer their are six nations still that make warr upon us that wee know besides those wee do not know.

The British concerns about the Haudenosaunee wars with the nations of the western Great Lakes were sincere. It was not simply that the British valued peace: it was also that Haudenosaunee lives and resources spent in fighting those nations would serve British purposes better if they were concentrated on the French instead.

On the following day, Governor Nanfan replied to the Haudenosaunee, once again following the structure that had been laid out, answering their statements in the order they had been made:

Brethren

I am glad to see you soe sencible of your happiness in being under the protection of soe glorious and puissant a Monarch as our great King William is, whose wisdome and conduct is admired in Europe as well as here in America and though he reigns over many Kingdoms and dominions yett you see he has not been unmindfull of you soe that you may be assured of his kindness and that he will support you against all his and your Ennemies.

I am thankfull to you for your kind expressions and being soe well satisfye of the King's choice of me to succede the late Earle of Bellomont in the Governm't of this province, and as you are satisfied of my sincere affection to you soe you may be also assured that I will make itt my utmost study to deserve His Majtys gracious favour by defending and supporting you while itt shall please the Great King my master to continue me in the Governmt neither shall I count itt any

hardship to expose my person to the utmost hazard and fatigue for the Brethrens safety.

These were reassuring words: the French had begun to establish a reputation for joining their Indian allies in warfare – a practice begun by Samuel de Champlain in an expedition against the Mohawks in 1609, while the English were often content to provide their allies with firearms and ammunition and let them fight alone. For the governor to promise to expose himself to "hazard" could have been an important show of commitment.

I have perused the journal of these two Gentlemen that were sent to your Country when the French agents were there I cannot approve of the late negociation some of your people have had at Canada with the Governour there, itt is a disparagement to the Five Nations to goe to the French to complain when any of the farr Indians kill your people, you ought to defend yourselves like men and resist force with force and not to creep to those whome you know sett those very Indians upon you on purpose to extirpate your name and memory, and in order to support and defend yourselves the King has sent you some choice arms and ammunition, which shall now be given you.

The matter of the Haudenosaunee negotiation with the French was not raised again in this council. The English were fully aware of the importance of the prisoners to the Haudenosaunee and of the role the French could play in returning them. The English also knew that they were powerless to stop the negotiations and could hope only to persuade the Haudenosaunee of their military commitments for the future.

I wonder that I have not heard of that design of the French's and that you are not more zealous to oppose itt (viz't) their building a Forte at Tjugsaghrondie als. Wawyachtenok the principle pass where all your Beaver hunting is. You must not suffer it by any means, I am inform'd it is your Land and you have won itt with the sword at the cost of much blood, and will you lett the French take itt from you without one blow. You can never expect to hunt beaver any more in peace if you let them fortifie themselves at that principall pass, if you are minded to secure your posterity from slavery and bondage, hinder itt: Remember how they gott Cadarachqui and what a plague that place has been to you ever since.

Teuchsaghrondie is Detroit. The French had made a proposal on a wampum belt that they should build three trading forts – Cadaraqui (the present Kingston, Ontario), Niagara and Detroit. The French had assured the Haudenosaunee that the forts were for trade, not military purposes. In fact, the entire third floor of what was supposed to be a trading post at Niagara bristled with cannon. (The French had told the Senecas they couldn't go up there – it was where their powerful medicine was kept.) Nanfan, in mentioning this development, was apparently revealing that he

knew more of the French-Haudenosaunee negotiations than the official Haudenosaunee revelations to the English had communicated.

Itt would seem by proposals I have lately heard were made att Canada that there has been some overtures of trade offer'd, which I can not believe being well assured that there is much better pennyworths here, they never being able to afford their goods soe cheap as wee, I fear its with design to delude you for which in time the brethren may become sufferers.

I hope you have maturely considered the Govr. of Canada's answer to Dekanissore how he puts you of with shams for your blood by him caused to be shed by the Farr Indians, and what frivolous pretences he makes of his agent not being return'd from Ottowawa, and that is all the redress you must expect from him, if you can not see his deceit by all this you must be willfully blind.

He tels you he will make a Forte att Tjughsaghrondie or Wawyach-tenock to supply you with necessaries when you are a hunting, and to secure you from the Ottawawaes, but when the Forte is made then he will command you and your beavers too, nay you shall never hunt a beaver there without his leave.

Doe you not remember how the French long ago desired but leave to make a hutt at Cadarachqui for a smith to be there to mend your arms, and when that was granted, they built such a stone forte, that has since been a prison for your people trapan'd.

The Gov'r of Canada is soe much troubled att your happyness in our union and your firme adhering to the crown of England that he studies allwayes to make a breach of that harmony and to rend (if itt were possible) our covenant chaine a pieces, and therefore would insinuate to you to sitt still if a warr should happen between us and the French, but wee hope you need not be told att this time of day how pernicious that would be for the brethren who are often to secure and careless, if the French (who are a subtile and vigilant enemy) should come unawares and cutt you off at once, its true itt is now peace but remember I tell you, you are not to receive any directions from the French, how you are to behave yourselves in case a warr breaks out between us and the French, that you shall have from me.

There is a Covenant chain wherein all His Majesties Christian subjects on this main of America and the Brethren are included which I am now come to renew, according to the ancient custome, lett that be kept cleane and bright on your parts as itt is and shall be on ours, and then you need not fear butt all will be well and you shall never want powder and arms to defend yourselves and good security for your wives and children to retreat to upon occasions where they shall have provisions provided for them.

The renewal of the Covenant Chain was one of the first functions of a new governor of New York, a successor to the title of Corlaer. If the Covenant Chain had been made in 1664, it is

interesting that Nanfan would refer to its renewal as being "according to the ancient custome" only 36 years later. The custom he may have been referring to was truly ancient ÿ the Haudenosaunee custom of maintaining and renewing the law itself, as well as any basic commitment.

I finde you have sent some of your Sachims to Canada whom its believed the Governour of Canada will practice upon to take Popish priests into your country and you seem to be jealous they will agree to itt because they fear the French; I doubt not but you have given directions to the contrary for I cannot admit of a popish priest in our territories itt is against our laws as well as your own interest, and therefore let me not hear that any of your people have such thoughts, the King will take care to send protestant Ministers to instruct you in the true Christian religion.

The indirectness of Nanfan's language is noteworthy. He does not presume to order the Haudenosaunee not to take Catholic priests: instead he says that he assumes they would not think of doing so. Haudenosaunee diplomatic and council language requires this indirectness.

The Great King of England my master is soe much concern'd for your security that he hath been graciously pleased to give a considerable sum of money to be expended in building a stone Forte here and att Schenectady to defend you from the attempts of an Ennemy. The Forte here will be made soe large to harbour all your wives and children upon occasion where you may freely make your retreat and be supplied with provisions and other necessaries. I would have began now if the Ingeneer was here and as soon as he returns from Boston I design to sett three or four hundred men at worke about itt and when these Forts are built I doubt not butt itt will be a means to induce those of the Five Nations that are gone to live att Canada to return and settle again in their own Country.

In 1664, in the original treaty at Fort Albany, the British had offered refuge to the Haudenosaunee in the event that the Haudenosaunee were beaten in war by the "River Indians". The offer of refuge and protection for Haudenosaunee dependents in the 1701 treaty is another precursor of the promises made by the British in the American Revolutionary War ÿ promises that led to the creation of the Grand River and Bay of Quinte territories.

I am glad you have made peace with seaven nations of the Farr Indians, try to make peace with the rest as soon as you can, for that will much contribute to your future tranquility.

The Haudenosaunee were following this advice. The British agenda was in part to have the Haudenosaunee make peace with their enemies to the west so that they could concentrate better

on the French. The Haudenosaunee also wanted peace to the west and were prepared to accept neutrality with the French as part of its price.

And now brethren let me conjure you to an inviolate fidelity and obedience to the King my master and to continue in a steadfast affection and friendship with your brethren and fellow subjects. You can not give the King a better testimony of your Loyalty to him than by rejecting all Popish priests, that may come into your country and hindering the French to build forts upon your land, upon these terms I doe take upon me to assure you of the King's fatherly care and protection of you and in token of His Majesty's grace and favour to you I have brought you a present which he has sent to give you vizt. 150 gunns, 25 kettles, 16 dozen knives, 25 looking glasses, 3 ps. red and 3 ps. blew strouds 2 pr duffels 1 pt blankets, 40 kegs of rum, 1000 barrs lead, 200 bags powder 15 Rolls Tobacco, 50 Hatchetts, 50 Shirts, 120 pair stockings, Gross pipes, 5 Vatts of bear, 200 wheat loaves.

This was given besides private presents of gunns strouds Blankets shirts powder lead letc to each particular Sachim.

That afternoon, the Confederacy delegates withdrew to consider their reply to Nanfan, while the Mahicans ("River Indians") had a conference with the governor and council. (In contrast to the Confederacy, the called the Governor "Father Corlaer".) The Five Nations delivered their reply the following day:

Brother Corlaer

Wee condole the death of the late Earle of Bellomont our Governor and wipe off your tears praying that you may be comforted and wee give you ten Beavers to be sent to the King to acquaint him that wee have condol'd the loss of our deceased Brother.

Al wee Five Nations are comforted and glad to see soe young a man to be our Brother Corlaer to succeed the late Gov'r., and as you are a souldier bred soe wee doubt not but you will be active if a warr should break out, and wee do assure you of our reall intentions to cleave close to you and never to separate our interest nor affections from you. Doe give ten beavers.

Brother Corlaer

Wee complain of the French of Canada's incroaching upon our territories and that they goe and build Forts upon our land without our consent, Wee pray that the great King of England may be acquainted with itt, and that he will be pleased to take care to prevent itt. Doe give ten Beavers.

Wee doe renew the covenant chain and make itt bright and clear which has been kept soe by our ancestors for many years, and wee fasten the covenant chain to the hills which lye round this city of Albany, for trees rot and decay but the hill will remaine unmovable. Wee doe also bemoan the blood you lost last warr with French. Doe give ten Beavers.

Lett the covenant chain reach from New York to Sinnondowanne or the Sinnekes Country that all the people that live under itt may be secure from all attempts of an enemy. Wee would remove the end of the chain to Tiochsaghrondie or Wawyachtenok were itt in our power, but the French would mock at itt for their

have taken itt in possession already against our wills sending people thither to make a Forte, but wee hope they will be removed speedily.

If the French make any attempts or come into our country to delude us, wee desire you to send men of wisdom and understanding to countermine them, for they to subtil and cunning for us and if you can convince them, that will be a means to stop their designs and soe prevent their ill intentions. Doe give ten beavers.

The structure of the speech is similar to the first reply of the Confederacy to Nanfan's speech of the first day. The subtle augmentations and differences are, in fact, what leads to consensus y gentle additions to what has already been stated, "and furthermore...wee desire...wee hope...".

Wee desire that our Secretary Rob't Livingston may be sent to Corachkoo the great King of England to acquaint how that the French of Canada incroach upon our territories by building a Forte at Tjughsaghrondie and to pray that our great King may use all means to prevent itt, else wee shall be tyed upp, wee shall not be able to live, they will come nearer to us every day with their Forts; Wee doe give and render upp all that land where the Beaver hunting is which wee won with the sword eighty years ago to Coraghkoo our great King and pray that he may be our protector and defender there and desire our secretary may write an instrument which wee will signe and seale, that itt may be carried by him to the King, wee fear if he does not goe, there is soe much business, this will be only read layd aside and forgott, but if he goes we are sure, wee shall have an answer. Doe give ten beavers.

Brother Corlaer. Pray lett goods be sold as cheap as formerly. The Governor of Canada draws many of our people by the means of selling better pennyworths than you doe, lett the Beavers come to their old price again, and lett the great custom upon them in England be taken of; wee doe give you ten beavers to send to the King praying His Majesty to make a Beaver hat of them and then wee hope all his good subjects will follow his example and were Beaver hatts again as the fashion was formerly.

Repeat the former proposition praying that orders may be taken that goods may be sold as cheap as heretofore, adding wee believe as you are Governour you have the command and that the traders must obey if you order itt, therefore let them begin today to sell good pennyworths. Doe give ten beavers.

Brother Corlaer

If a warr should break out between us and the French, wee desire you to come and stay here at this place, that you may be ready to assist and defend us y you live a great way of att New Yorke, wee have a great esteem for you and therefore wish you would come nearer to us to live if any accident should happen, for you are a Souldier and such men wee love therefore you must come and live here att Albany y doe give seaven Beavers.

Concerning French priests to be admitted in our country itt is a generall conclusion of all the Five Nations to expell them and to suffer none to come among us. Wee see you have ministers here and expect to be supplied from hence,

wee are inclined to be instructed in the Christian faith and rely upon you, leaving that wholly to our Brother; the French priests have been the ruine of our Country and therefore have no cause to suffer them any more, Doe give ten beavers.

Brother Corlaer

The Governor of Canada has sent a party of men who are gone behind our Country privately to build a Forte att Tjughsagherndie you are desirious to know what wee have done in that case, Your people that have been att Onnondage can tell you. Wee thought this Government would have done something in the matter and have found you busy in your Books and Mapps (meaning that the line should be run between the two Governments) wee can doe nothing in that case you know, wee have not power to resist such a Christian enemy, therefore wee must depend upon you Brother Corlaer to take this case in hand and acquaint the Great King with itt for what will become of us att this rate where shall wee hunt a beaver if the French of Canada take possession of our beaver country. Give nine beavers and two Otters.

There are several ways to read these statements. The easiest is to read them literally, as the begging of a desperate nation, besieged on all sides by strong enemies. More likely, though, is that the Haudenosaunee were emphasizing their own weakness as part of their invitation to the English to intervene in strength to protect the beaver hunting grounds. The Confederacy was acquiring a strong sense that it was being used by the British as a bulwark, being provided with arms and ammunition without any meaningful support from English armies. Hence both the placing of the land under British protection (if it was theirs, they would take better steps to protect it) and the invitation to Nanfan to move to Albany (ironically, the present Corlaer, or governor of New York, does move to Albany).

"Corachkoo" is probably *Korah-kowa*, which means 'the great person' (not *our* great person). That is what the King of England is called today in Mohawk. At times, written names in the 1600s and 1700s must be pronounced with an English or French accent ÿ of that time. The Haudenosaunee languages have also evolved over the past three centuries.

Instead of wampum to preserve each statement, the Confederacy's speaker was giving beaver and otter pelts. This was possibly because of a scarcity of wampum: later in the council, the English gave wampum to condole some Haudenosaunee deaths. It might also have been an indication of the tentative nature of the discussions that were taking place.

Having dealt with the major challenges, the Haudenosaunee turned to smaller issues that had not been mentioned before in the council:

Wee have a small right in the Maquase River att Canastagiowne, to witt Five small islands containing about five or six acres between Rosendael and Cornelis

Tymes's which wee give to Jan Baptist Van Eps and Lawrence Claese the two Interpreters to be equally divided between them, John Baptist to have the uppermost halfe and Lawrence the lowermost, and that in consideration, because they take much pains in interpreting.

This act of generosity is not singular. For example, Sir William Johnson was given islands in the Niagara River during the summer treaty councils of 1764.

Brother

Wee can not omitt to acquaint you of the deceit of the Smiths who takes our money and instead of putting steal into our hatches putte Iron, soe that as soon as wee come into our country to use them they fall to pieces and your traders are very ungratefull, as soon as they have gott our beaver turns us out of doors; lett us love one another and not suffer such things to be heard among us. Doe give ten beavers.

Instances of fraud between the King's subjects and the Haudenosaunee were discussed in this nation-to-nation council process, rather than through domestic English courts and procedures.

Wee Maquase have now two Castles that are begun to pray or turn Christians, wee desire that wee may have a good large Church made in the first or nearest castle called Ochniondage which was promised us by the late Earle of Bellomont and lett it be soe large as may contain us all, there is only a little Chappell made of barke now a small number makes itt full.

The traders have a bad custom to trust our people and when the men are dead come upon their widdows insomuch that they come to town to buy anything the traders take the beavers from them for debt. Pray lett that ill custom be remedied.

After the Five Nations had made an end of speaking His Honour the Lieut. Governor condoled the death of Sadaganahaties son and Osneragichtie of Onnondage and Sinnonnanuwan a Chiefe man of Cayouge by laying down three Belts of Wampum and was glad that there were good men put in there room.

Two days later, on 21 July 1701, five of the principal *rotiianeson* of the Confederacy met with Nanfan. Sadeganaktie of Onondaga was the speaker; Helletie Van Olinda was the interpreter. They had forgotten two important issues: the return of the prisoners and the proposed French fort at Quinte, on the north shore of Lake Ontario.

Brother Corlaer

Att such publick conferences as wee now have itt is very probable that some things may slip out of your memory and be forgott itt being difficult to remember every thing. When the late Earle of Bellomont came here with news of the peace wee were told that all prisoners on both sides should be sett at liberty and wee understood that each nation should enjoy there own people again and in order

thereunto, wee heard that both Kings as soon as the peace was concluded made what haste they could to send the news thereof to America, wee always expected that the fruits of that General peace would be that wee might have people back again from Canada, but wee have not been soe happy. The priests and the Governour of Canada detain them there upon pretence to make them Christians. therefore Brother pray see to gett our people here to this town and when they are gott soe farr the Ministers here will instruct them in the Christian Religion which will be a means that they will at last return to their own country again. When Queder (that is Coll. Schuyler) went to Canada, then wee were in hopes to have them all back but the French detains most of them still. Wee believe that our great King does not know, and is not rightly inform'd of this matter if he was wee doubt not but that wee should have a better account of itt, if you had told us that you dispair'd of any success wee would have prest harder to get them over to us again.

This speech is the precursor of a constant theme for the Haudenosaunee ÿ the British would make peace with the French or with the United States and would omit to make proper provision for their allies. In this case, the English made little or no effort to secure the return of the Haudenosaunee who had been captured by the French and their allies. The lack of return of prisoners was an important incentive for the Haudenosaunee to deal directly with and through the French.

There is another issue here that has not been mentioned before. The prisoners were probably more important and less expendable to the Haudenosaunee than to the English. There was no such thing as an 'acceptable' level of war casualties to the Haudenosaunee. Success in war was measured not only by damage done to the enemy, but also by a lack of injury to the war party. Haudenosaunee warriors would generally not participate in military activities that seemed futile or overly dangerous ÿ they were daring but not stupid.

Brother Corlaer

What shall wee doe if the French continue to draw away our people and inroach upon our country, they build forts around about us and pen us upp. Itt is now peace we can not hinder them, neither itt is in our power to resist them, they have drained us of our people, they all goe to Canada and that upon pretence of Religion and to be converted, wee see itt is only to enslave us, wee know very well how they did at Cadarachqui and see they come nearer and nearer. They are going about to make a Fort at Keenthee on the other side of Cadarachqui lake, another principle passage which our Indians can not shun when they come from their hunting. Wee hear that one of our Indians called Orajadicka that has been two years among the French in Canada and is there still has given consent to build this Forte, but wee Five Nations know nothing of itt, neither will wee give leave, for by such means the French possess themselves of our territories; therefore pray Brother hearken to us wee told you in our publick propositions too days agoe, soe

wee are again come to entreat you to send over our secretary Rob't Livingston with all speed to acquaint Corachkoa the great King of England how the French deal with us, he has been there formerly and knows all affairs, pray lett there be a good large canoe (such as the English sayle with over the great salt waters) provided for him, that sayls well that wee may have an answer with all expedition, doe not defer itt till the fall or the Winter till itt snows or till Spring butt let him be sent forthwith and then wee are in hopes we shall have a good issue of our business.

The said five sachims were asked whether that letters writt by their Secretary and sent by their brother Corlaer the Lieut. Governour to the King would not be sufficient and does as well. They replied: what a question is this, did wee not tell you in our publick propositions on Saturday last that itt was concluded by all the Five Nations that our Secretary Rob't Livingston should goe to the King, and did not wee then tell you his business; And wee are now come again to insist on purpose that he be dispatched to England in a good large Canoe that has good sayls to acquaint Corachkoo (meaning the great King) of our condition and what wee have done and how the French dayly incroach upon us, and decoy our people away from us, and wee pray you to send us word when he is gone and when he returns for we expect him again in the spring. Doe give ten beavers.

This was a private conference ÿ hence the repeated references to the "publick" one or two days earlier. Nanfan had not replied directly to the Haudenosaunee request, and the *rotiianeson* had returned to ensure that he was taking the action they had asked for. The lieutenant governor replied in vague terms ÿ but terms that would lead the Haudenosaunee to believe he had not disagreed with their proposals:

The Lieut't Gov'r told them he would consider of this their proposition and would doe any thing that was proper for him to doe for their ease, satisfaction and future tranquility.

The 'deed' on which the *rotiianeson* put their marks stated:

To all Christian & Indian people in this parte of the world and in Europe over the great salt waters, to whom the presents shall come ÿ

Wee the Sachims Chief men, Captns and representatives of the Five Nations or Cantons of Indians called the Maquase Oneydes Onnandages and Sinnekes living in the Government of New Yorke in America, to the north west of Albany on this side the Lake Cadarachqui sendeth greeting ÿ

Bee it known unto you that our ancestors to our certain knowledge have had, time out of mind, a fierce and bloody warr with seaven nations of Indians called Aragaritkas whose chief comand was successively called Chohahise ÿ

The land is scituate lyeing and being northwest and by west from Albany beginning on the south west side of Cadarachqui Lake and includes all that waste

tract of land lyeing between the great lake off Ottawawa and the lake called by the natives Saquihage and by the Christians the Lake of Swege and runs till itt butts upon the Twichtwicks and is bounded on the right hand by a place called Quadoge conteigning in length about eight hundred miles and in breadth about four hundred miles including the country where the beavers the deers Elks and such beasts keep and the place called Tieuchsachrondio, alias Fort de Tret or wawaychtenok and so runs round the lake of swege till you come to place called Oniadarondaquat which is about twenty miles from the Sinnekes Castles which said seaven nations our predecessors did four score years agoe totally conquer and subdue and drove them out of that country and had peaceable and quiet possession of the same to hunt beavers (which was the motive caused us to war for the same) for three score years it being the only chief place for hunting in this parte of the world that wee ever heard of and after that wee had been sixty years sole masters and owners of the said land enjoying peaceable hunting without any internegotiation, a remnant of one of the seaven nations called Tionondade whom wee had expelled and drove away came and settled there twenty years agoe disturbed our beaver hunting against which nation wee have warred ever since and would have subdued them long ere now had they not been assisted and soccoured by the French of Canada,

and whereas the Governour of Canada aforesaid hath lately sent a considerable force to a place called Tjeughsaghronde the principall passe that commands said land to build a Forte there without our leave and consent, by which means they will possess themselves of that excellent country where there is not only a very good soile but plenty of all manner of wild beasts in such quantities that there is no maner of trouble in killing of them and also will be sole masters of the Boar hunting whereby wee shall be deprived of our livelyhood and subsistance and brought to perpetual bondage and slavery, and wee having subjected ourselves and lands on this side of Cadarachqui Lake wholly to the Crown of England wee the said Sachims Chief men Captns and representatives of the Five Nations after mature deliberation of a deep sence of the many Royall favours extended to us by the present great Monarch of England King William the Third, and in consideration also that wee have lived peaceably and quietly with the people of albany our fellow subjects above eighty years when wee first made a firm league and covenant chain with these Christians that first came to settle Albany on this river which Covenant chain hath been yearly renewed and kept bright and clear by all the Governours successively and many neighbouring Governments of English and nations of Indians have since upon their request been admitted into the same.

Wee say upon these and many other good motives us hereunto moveing have freely and voluntarily surrendered, delivered up and forever quit claimed, and by these present doe for our heires and successors absolutely surrender, deliver up and for ever quit claime unto our great Lord and Master the King of England called by us Corachkoo and by the Christians William the third and to his heires and successors Kings and Queens of England for ever all the right title and interest and all the claime and demand whatsoever which wee the said five nations of Indians called the Maquase, Oneydes, Onnondages, Cayouges and

Sinnekes now have or which wee ever had or that our heires or successors at any time hereafter may or ought to have of in or to all that vast tract of land or Colony called Canagariarchio beginning on the northwest side of Cadarachqui Lake and includes all that vast tract of land lyeing between the great lake of Ottawawa and the lake called by the natives Cahiquage and by the Christians the lake of Swege and runs till it butts upon the Twichtwicks and is bounded on the westward by the Twichtwicks by a place called Quadoge containing in length about eight hundred miles and in breadth four hundred miles including the Country where Beavers and all sorts of wild game keeps and the place called Tjeughsaghrondie alias Fort de Tret or wawyachtenock and so runs round the lake of Swege till you come to a place called Oniadarundaquat which is about twenty miles from the Sinnekes castles including likewise the great falls oakinagaro, all which was formerly possest by seaven nations of Indians called the Aragaritka whom by a fair warr we subdued and drove from thence four score years agoe bringing many of them captives to our country and soe became to bee the true owners of the same by conquest

which said land is scituate lyeing and being as is above expressed with the whole soyle the lakes the rivers and all things pertaining to the said tract of land or colony with power to erect Forts and castles there, soe that wee the said Five Nations nor our heires nor any other person or persons for us by any ways or meanes hereafter may claime challenge and demand of in or to the premises or any parte thereof alwayes provided and it is hereby expected that wee are to have free hunting for us and the heires and descendants from us the Five Nations for ever and that free of all disturbances expecting to be protected therein by the Crown of England but from all the action right title interest and demand of in or to the premises or every of them shall and will be utterly excluded and debarred for ever by these presents

and wee the said Sachims of the Five Nations of Indians called the Maquase, Oneydes, Onnandages, Cayouges and Sinnekes and our heires the said tract of land or colony, lakes and rivers and premises and every part and parcell thereof with their and every of their appurtenances unto our souveraigne Lord the King William the Third & his heires and successors Kings of England to his and their proper use and uses against us our heires and all and every other person lawfully claiming by from or under us the said Five Nations shall and will warrant and for ever defend by these presents y

In witness whereof wee the Sachims of the Five nations above mentioned in behalf of ourselves and the Five Nations have signed and sealed this present Instrument and delivered the same as an Act and deed to the Honble. John Nanfan Esqr. Lieut't. Gov'r. to our Great King in this Province whom wee call Corlaer in the presence of all the Magistrates officers and other inhabitants of Albany praying our Brother Corlaer to send it over to Corachkoo our dread Souveraigne Lord and that he would be graciously pleased to accept of the same Actum in Albany in the middle of the high street this nineteenth day of July in the thirteenth year of His Maj'ys reign Annoque Domini 1701.

The deed was signed by 20 sachems of the Five Nations and by 18 'Christians', including Nanfan himself, the two interpreters, the mayor and aldermen of Albany, and Robert Livingston, the secretary of Indian affairs.

Was the 1701 'Trust Deed' a Surrender?

The Confederacy placed the Beaver Hunting Ground under British protection in 1701. Later commentators have entered into a discussion of what was intended by this. An Ontario court, in *R. v. Ireland and Jamieson*, suggested that what was involved was a surrender of the territory ŷ though the effect of the transaction on the land was never an issue in the case, which dealt only with hunting rights.

Other, later commentators were not so sure. Richard Haan suggests that In 1701, during the councils that produced what scholars called the "Grand Settlement", arrangements with New York were further adapted to meet new conditions. New York, eager to confirm its alleged sovereignty over the Iroquois against similar French claims, promised England's protection of Iroquois hunting grounds in the west. The formal records list a "Trust Deed" that implies English sovereignty, but the Iroquois probably read the agreement as brotherly assistance to defend their lands, not as a new relationship cementing English hegemony over the Five Nations. The misunderstanding persisted, however, as New York officials by the 1720s understood the deed of 1701 to convey ownership of the territory to the Crown. Meanwhile the Iroquois complained that New York failed to live up to its promises to defend them in the west, especially as the French establishment at Niagara grew from a small trading post into a substantial stone fort.¹¹⁹

New York had an interest in claiming ownership of the territory, including being able to maintain a claim against other English colonies, especially Massachusetts. In the 1780s, for example, New York was using the 1701 Treaty to claim the Ohio Valley, as well as authority to enter into treaties in its own right.

Governor William Shirley of Massachusetts gave Sir William Johnson instructions on 16 April 1755 that were calculated to reassure the Haudenosaunee of the intentions of the British concerning these lands:

You are to acquaint the Indians of the Six Nations, if you shall judge it from the Temper you find them in, proper to do so, with his Majesty's design to recover their Lands at Niagara and upon the River Ohio out of the Hands of the French, and to protect them against future Incroachments for the benefit of their Tribes.¹²⁰

Shirley's instructions were echoed by instructions from General Braddock to Johnson, who held the rank of colonel, later in 1755. Those instructions fell into the hands of the French:

...as it appears that the French from time to time by fraud and by violence have constructed strong forts within the limits of the aforesaid lands in contravention of the agreements expressed in the said contract and treaty, you will assure the said nations in my name that I have come on the part and in the name of His Majesty to destroy all the said forts and to build some which will suffice to protect the said lands and to insure them to them and their successors for ever agreeably to the object and the spirit of the treaty. and, for this purpose, summon them to take up the hatchet and to come and take possession of their own lands.¹²¹

A report of the Lords of Trade was read in council at the Court of St. James, 23 November 1761. It states:

That it is as unnecessary as it would be tedious to enter into a Detail of all the Causes of Complaint which, our Indian Allies had against us at the commencement of the troubles in America, and which not only induced them tho' reluctantly to take up the Hatchet against us and decimate the Settlement on the Frontiers but encouraged our Enemies to pursue those Measures which have involved us in a dangerous and critical war, it will be sufficient for the present purpose to observe that the primary cause of that discontent which produced these fatal Effects was the Cruelty and Injustice with which they had been treated with respect to their hunting grounds, in open violation of those solemn compacts by which they had yielded to us the Dominion, but not the Property of those Lands. It is happy for us that we were early awakened to a proper sense of the Injustice and bad Policy of such a Conduct towards the Indians, and no sooner were those measures pursued which Indicated a Disposition to do them all possible Justice on this head of Complaint than those hostilities which had produced such horrid scenes of devastation ceased, and the Six Nations and their dependents became at once from the most inveterate Enemies our fast and faithfull Friends.¹²²

Sir William Johnson, who as superintendent general of Indian affairs understood the significance and history of the transaction, wrote in about 1775:

That memorable and important act by which the Indians put their Patrimonial and conquered lands under the Protection of the King of Great Britain their Father is not understood by them as a cession or surrender as it seems to have been ignorantly or wilfully supposed by some, they intended and look upon it as reserving the Property and Possession of the soil to themselves and their heirs. This property the Six Nations are by no means willing to part with and are equally

averse and jealous that any Forts or Settlements should be made thereon either by us or the French.

These are their Hunting Grounds, by the profits of which they are to maintain themselves and their families, they are therefore against any settlements there because the consequence would be the driving away Game & destroying their Livelyhood & Riches.¹²³

Significance of the 1701 Nanfan Treaty

The Nanfan Treaty was a council in which the Confederacy notified the English authorities at New York of the growing French threat and sought by various means to encourage the English to take a more active part to stop that threat.

Nanfan was encouraged to move to Albany himself, to make war himself, to send the secretary of Indian affairs to England, and to lower prices of English trade goods and provide Christian ministers to help stem the emigration of Haudenosaunee from their homelands to French territory.

The Nanfan Treaty's 'trust deed' stands among the first land transactions between the Crown and the Haudenosaunee. On its face, it is a document in English legal language in which subject tribes abjectly surrender a territory to their "dread Lord Sovereign", in exchange for protection of their hunting rights. Contemporary and later analysts, including those close to the Haudenosaunee, understood the 'deed' as a means of securing English protection of the land, without relinquishing title.

What did the Haudenosaunee who put their marks on the trust deed think they were doing? Selling ownership of the land? Granting a right of pre-emption? Putting the land under English and New York protection without handing over ownership? It is hard to tell ÿ but it is certain that many of the technical English words, legal words with specific meanings in English law, had no counterparts in Haudenosaunee languages. The words stating the sovereignty of the King of England would likewise have caused problems if they had been translated accurately.

Seventy years later, a reinvigorated Confederacy was intent on preventing both the British and the French from building forts in the territory ÿ evidence of Haudenosaunee understandings of the effect of the 1701 treaty. No doubt the failure of the English to remove the French forts or to support the Haudenosaunee with proper vigour against the French and their allies contributed to that understanding.

The failure of Nanfan to act quickly as suggested by the Haudenosaunee delegates probably helped to set the stage for the peace with the French at Montreal that fall. Livingston was not sent to England. Nanfan did not move to Albany. The price of English trade goods was not substantially reduced. And the French forts at Niagara and Detroit continued to grow.

The territory involved is not just the former land of the Hurons ÿ it is the triangle of southwestern Ontario between Lake Ontario, Lake Erie and Lake Huron, as well as the Ohio Valley. A major element of the 'deed' was an effort to have the English remove the French fort at Teughsaghrondio, or Detroit.

The 1701 treaty did not prevent the Ojibwas, including the Mississaugas, from entering what is now southwestern Ontario. By 1784, Governor Haldimand felt he had to get a surrender from the Mississaugas before granting land to the Six Nations in the present Six Nations Grand River Territory. In 1793, Lieutenant Governor Simcoe used the incompleteness of the Mississauga surrender as his reason for reducing the size of the Haldimand grant by about one-third. But the Grand River Territory is within the tract covered by the 1701 Treaty. If the land had been validly delivered to the Crown, free of Indian title, in 1701, there would have been no further need to buy the land before it could be granted to the Six Nations. If the 1701 treaty instead preserved and protected the land for the Haudenosaunee under the Crown, once again there would have been no need to clear anyone else's title.

The Great Peace of Montreal of 1701

There had been war for nearly a century between the Haudenosaunee and the French ÿ since Samuel de Champlain accompanied an Algonquin-Montagnais-Huron war party into Mohawk country and introduced the Mohawks to firearms.

The Hurons (Wyandots), Neutrals (Attiwandaronks), Tobaccos (Tiionontates), Eries, and other nations had been scoured out of what is now southern Ontario, which had become the Haudenosaunee Beaver Hunting Ground. While the Haudenosaunee were dealing with pressure from nations to the south and east, northern and western nations from the *Pays d'en Haut* ÿ the Upper Country ÿ began to move into the Beaver Hunting Ground and other Haudenosaunee territory. Pressed on all sides, and recognizing that their English allies were not going to provide the degree of military support they had promised, the Haudenosaunee pursued peace, both bilaterally and multilaterally with other nations.

The Peace of Montreal, according to some modern historians, was brokered by the French between the Haudenosaunee and about 30 other indigenous nations. Other evidence suggests that it capped efforts that had occupied the preceding 20 years, confirming or reaffirming alliances and peaces that had been developed between the Haudenosaunee and individual nations.

In 1673, the Haudenosaunee, without French or English knowledge or help, had made a trade treaty with the Ottawas. It is likely that other peace initiatives were being pursued to the west, as well ÿ though since no Europeans were present, we have no written record of them today.

In 1684, the Confederacy had imposed neutrality upon the French at a council at the Rivière de la Famine, when what had been intended as a punitive French military expedition turned into a disaster when the French army was struck by an epidemic. The effect of this treaty was to allow the Haudenosaunee to move against the Miamis and Illinois without French intervention – a development that caused several of the western nations to re-evaluate their alliance with the French.

Between 1685 and 1695, governors Denonville and Frontenac of Quebec sought to negotiate a general peace with the Haudenosaunee and to broker a peace between the nations that were allied with the French and the Haudenosaunee.

In 1688, negotiations fell apart when the French refused to return several Cayuga and Oneida ambassadors they had kidnapped and deported to Marseilles the previous year. In retaliation for this, the Confederacy struck at French settlements, including the one at Lachine, in mid-1689.

Governor Frontenac returned the following autumn and began immediately to seek peace. He had brought back several Haudenosaunee prisoners, including Ourehare, a Cayuga chief. Despite several delegations of those prisoners sent to Onondaga, the Haudenosaunee would not begin negotiations – the hostages taken by the French, in violation of the international laws of the time, remained an obstacle. The Confederacy maintained its Covenant Chain relationship with the English, and in 1693 Frontenac was invited to join in a general peace, including the English, to be negotiated at Albany. He would not.

Through the summer of 1694, negotiations took place in Montreal, without success. The French were insisting on the inclusion in the peace of all the nations of the western Great Lakes.

In 1695, the Confederacy was conducting parallel negotiations – with the French at Montreal and with the western nations, seeking to detach them from their French trade and military alliance.

The negotiations of the winter of 1696-97 were the beginning of the process that led to the treaties of 1701. Though the European wars of the French and British had ended with the Peace of Ryswick in 1697, the Europeans in North America were unaware of that peace when the Haudenosaunee had begun negotiations in earnest toward a general peace.

The Confederacy had been weakened militarily as a result of the many years of war: the number of active warriors had dropped by nearly half. A French-led expedition struck Mohawk, Oneida and Onondaga villages in 1696, killing very few people but burning food stocks and the crops in the fields. The Senecas were struck from the west and at one point in the early 1690s had been forced to seek refuge with the Cayugas.

In September 1700, Governor Callière of Quebec met at Montreal with several nations – the Haudenosaunee and the Ojibwas and Hurons of Michilimackinack among them – and there

was agreement that a peace conference should take place there the following August. Four chiefs of the Haudenosaunee agreed to stay with the French (as "hostages", said the French) to guarantee the peace. Meanwhile, the French were proceeding to build a fort at Teuchsagrondio (Detroit) that would threaten the Beaver Hunting Ground.¹²⁴

The Documents

In May 1701, Dekanissorens, a leading Onondaga *royaner*, and several others met with Governor Callière in Montreal. The delegation demanded that the French at least delay the construction of the fort at Detroit until after the summer peace conference. Callière tried to depict the fort as a peacekeeping influence in the west as well as a source of provisions for the Haudenosaunee. He also proposed that the Five Nations should remain neutral in the event of any future war between the British and the French.

Meanwhile, English delegates were meeting with the Haudenosaunee, who were consistently critical of the Crown's unwillingness to defend the Confederacy's territory against the French. In the end, the Grand Council decided to pursue two sets of negotiations at once: with the French, they would seek peace and neutrality. With the British, they would seek protection and peace.

In June 1701, French representatives went to the Confederacy's council fire at Onondaga. They stopped several leagues away, at Gannentaha, and were welcomed and asked to rest. A little later,

...Teganissorens, with fifty or sixty young people of Onondaga, and by a quantity of women sent by the elders to carry the Frenchmen's baggage...came three leagues ahead of our ambassadors, whom he welcomed, according to custom, with three strings of wampum...By the first, he wiped their tears, the second unstopped their throats, and the third wiped clean the mat that had been bloodied.

After the Three Bare Words, the visitors were taken to Onondaga, where they were welcomed with musketry, as the Onondagas had been welcomed to Montreal the previous September and the French to Onondaga in July 1700.

On 21 June 1701, more than 200 Haudenosaunee delegates (from the western four nations: the Mohawks arrived on August 8, to ratify the agreement) came to Montreal. Dekanissorens was not among this delegation (or part of the delegation sent to Albany). The speakers for the Confederacy were the Senecas: Tekanouet, Aouenano and Tonatakout (French spelling). Other Haudenosaunee were at Montreal too, but as fur traders, not political delegates.

The nations of the western Great Lakes had also sent delegations: the Wyandots or Hurons; the Ottawas; the Ojibwas; the Potowatomis; the Sauks; the Foxes; the Winnebagoes (or Puants); the Menominees; the Miamis; the Mississaugas; the Temiskaming; the Crees; the

Kaskaskias; the Illinois confederacy; the *gens des terres* of the north shore of Lake Superior; the Abenakis and the Algonquins. More than 30 nations or sub-nations of the Great Lakes and the east were represented in this meeting with the Haudenosaunee and the French.

Thirteen hundred Amerindians ÿ the estimate is even more impressive since the French population of the island at the time was no more than two thousand six hundred, and of the town of Montreal was barely twelve hundred. For nearly three weeks, then, Montreal became a gaudy and colourful arena, where cultures, languages and costumes crossed paths and collided in an apparent atmosphere of conciliation and peace.¹²⁵

The Haudenosaunee delegations did not travel directly to Montreal. They stopped at the Mohawk village of Kahnawake (the French called it Sault-St-Louis) on July 21. It was 'the woods' edge'.

La Potherie describes how they built a small fire of dry twigs and smoked with the Mohawks for a quarter of an hour. A speaker for Kahnawake greeted them:

Brothers,

We are happy to see you here after you escaped all the perils which lay on your path; How many accidents might have happened? How many rocks or rapids where you might have perished, had you not the agility and constancy to surmount them, which you have always displayed in dangerous situations?¹²⁶

The speaker then condoled the delegates with the Three Bare Words, clearing their eyes, ears and throats. The delegates then went into the village, to be greeted and to eat and sleep.

The next day, as the Haudenosaunee delegation left for Montreal, the Ottawas and others arrived in Kahnawake from the Upper Lakes. A calumet dance was held to promote peace. Kahnawake was upstream from Montreal: did it function as 'doorkeeper' for all the nations coming to visit the French?

On the following day, 200 canoes of the Upper Lakes nations left Kahnawake for Montreal. At the same time, the Senecas arrived, with their old *royaner*, Tekanoet, standing in the front of his canoe, recalling the greatness of former *rotiianeson*. The French greeting party took him and the other chiefs by the arm, consistent with the ceremony of condolence, and brought them to the place of council.

On August 1, Kondiaronk, the Wyandot leader, became ill. Nevertheless, he spoke in council for more than two hours. He died the next day. His death cast a pall over the proceedings that followed.

Once the French had presented their respects, a delegation of 60 Haudenosaunee came to Kondiaronk's lodge. Tonatakout spoke for more than a quarter of an hour, walking back and forth, and then the *royaner* Aouenano gave the ceremony of condolence,

...drying the tears, opening the throats to pour down a "sweet medicine" to revive the saddened Hurons. The speaker, showing a belt of wampum, told the Wyandot chiefs: "The sun is today hidden, it is the death of our brother The Rat [Kondiaronk] which is the cause. We ask you to have the same spirit, the same feelings which he had, to be from now on one body, and one kettle with us..."¹²⁷

The funeral took place on August 3 ÿ barely a day after Kondiaronk's death. Immediately afterward, the French began the political work associated with making the peace treaty, which was ratified on August 4. Callière spoke first; his words, recorded in the peace treaty document, were as follows:

I am extremely happy to see here present all my children assembled, you Hurons, Ottawas of the Sable, Kiskakons, Sinago Ottawas, Fork Nation, Saulteaux, Potowatomis, Sauks, Winnebagoes, Menominees, Foxes, Mascoutens, Miamis, Illinois, Amikoue, Nipissings, Algonquins, Timiskamings, Crees, gen des terres, Kickapoos, people of the Sault, of the Mountain, Abenakis and you Iroquois nations, and that having each of you placed your affairs in my hands that I may cause you to all live in peace, I thus ratify today the peace that we have made in the month of August last, wishing that there be no more talk of all the blows struck in war, I gather once again all your hatchets and all your other weapons of war, which I place with mine in a pit so deep that nobody may take them up again to trouble the Peace which I re-establish among my Children, recommending to you that when you meet you treat one another as Brothers, and to make such accommodations in hunting so as not to have any friction between you. And so the peace cannot be troubled, I repeat what we have already said in the Treaty we have made, that if it happens that one of my children strikes another, he who has been struck will not avenge himself, nor anyone else on his behalf, but he will come and find me so I can make him accept reason, telling you that if the offender refuses to make reasonable satisfaction, I will go with my other allies on behalf of the offended party to force him, which I do not think will ever happen, because of the obedience my children owe me.

So that my children will remember what we are making here now, and will not forget, I attach my words to the belts which I give to each of your nations to have them ratified by your young people; I invite you all to smoke of this calumet of peace which I will begin first; and to eat of the meat and broth which I have prepared for you as a good Father for the satisfaction of all my Children gathered here.

I will keep this pipe which has been given to me by the Miamis so that we may smoke it when you come to see me.¹²⁸

The 31 wampum belts had been hung from a rod at the entrance to the meeting area, which was surrounded by an arbour of trees and branches. There were perhaps 4000 people present.

After Governor Callière, each of the nations in alliance with the French spoke through an orator. The French were highly amused at the ceremonial dress of some of the speakers. For example, the chief of the Foxes caused general laughter when he bowed low before Callière and doffed his scruffy powdered wig. In many cases, the speech was accompanied by a return of Iroquois prisoners.

In the written document, the chief of the Kiskakon Ottawas is recorded as saying, I did not wish to miss what I knew you would be asking for, Iroquois prisoners; here are four of them for you to do with as you please; it is with this wampum that I deliver them and here is a calumet which I give to the Iroquois to smoke together when we meet; I rejoice that the earth is not turned upside down and subscribe cheerfully to what you have done.

The Senecas spoke last, for the Haudenosaunee. Aouenano said:

We are assembled my Father as you wished, you planted last year a tree of peace and you put down roots and put leaves on it so that we might be sheltered, we hope now that everyone hears what you have said, that no one will touch the tree, that we will follow all you have arranged..We give you now two prisoners and will deliver up the others we have. We hope also that now the doors to peace are open, when the rest of our people are returned to us.

The Hurons said:

Here we are as you have asked. We give you twelve prisoners, of whom five wish to return with us, the other seven you will do with as you please; we thank you for the peace you have made and ratify it with joy.

Jean LeBlanc spoke for the Sable Ottawas:

I obeyed you my Father as soon as you asked in bringing two prisoners of whom you are the master. When you asked me to go to war I did so, and now that you forbid it I obey. I ask by this belt that the Iroquois untie my body which is with them (that is, those of his nation).

Sanguessy spoke for the Sinago Ottawas:

I did not want to miss your orders my father though I have no prisoners; nevertheless here is a woman and a child that I have bought, you will do as you wish with them, and here is a pipe which I give to the Iroquois for us to smoke together when we meet.

Chichicatalo of the Miamis stated:

I obeyed you my father in bringing eight prisoners to do with as you please, if I had more canoes, I would have brought more of them, though I see none of my people who are among the Iroquois, I will bring the others to you, if you wish, or I will open the doors so they may return.

Onanguisset spoke for the Sauks:

I am of one body with you my Father; here is one Iroquois prisoner I have taken in war; permit that in giving him I give him a pipe to carry to the Iroquois to smoke when we meet; I thank you for restoring the clear sun which was obscured in the war.

Onanguisset said, for the Potowatomis:

I will not make a long speech, my Father, I have only two prisoners whom I place at your two sides to do with as you please, and here is a calumet I give you to keep, or you can give it to these two prisoners so that they can smoke it among their people; I am always ready to obey you, unto death.

Miswensa, Chief of the Outagamis, said:

I have no prisoners to give you my father, but I thank you for the good day that you give all the world through peace; for myself I will never lose this clarity.

The Mascoutens said:

I bring you no Iroquois slaves because I have not gone against them for some time, having amused myself at making war with other nations, but I came to see you and thank you for the peace that you are bringing.

The Menominees:

I only came my Father to obey you and embrace the peace you have made between the Iroquois and ourselves.

The Saulteaux and the Winnebagoes:

I would have brought you Iroquois slaves, my Father, if I had any, wanting to obey you in all your orders, I thank you for the clarity you have given us and I wish it will endure.

The Nipissings:

I did not want to miss being here like the others, to hear your voice, I had one Iroquois prisoner last year which I gave you, here is a pipe which I give you to give to the Iroquois if you wish to smoke with us when we meet them.

The Algonquins:

I have no prisoners to give you my father, we are of those who have always been your children, and we pray the master of life that what you do today will last.

The Amikwa:

Having no will but to obey what you wish to do...

The Abenakis:

I see that I speak last; I am not less attached to my Father, you know that I have always been attached to you. I have no more hatchet, I have put it in a pit last year and will not take it up again until you tell me so.

The people of the Sault:

You know, you other Iroquois, that we are attached to our Father, that we stay with him and are in his breast, you sent us a belt three years ago to invite us to procure the peace; we sent you one in answer; we give you this one to tell you we have worked on it, and we ask no more than that it last as long on your side as it will on ours.

The people of the Mountain:

You have brought all the nations together our Father to make a pile of hatchets and to place them in the ground with yours; for myself who had no other, I rejoice at what you are doing today and I invite the Iroquois to look upon us as brothers.

The Haudenosaunee had brought only a few prisoners: twelve French, one Mohican and one Algonquin. The Haudenosaunee were reluctant to part with people who had been adopted, who were members of their families, and who often did not want to go 'home'. On August 7, as the delegations were leaving, Governor Callière gave the Senecas a belt, saying,

The Upper Nations have given me their prisoners of yours...I will give them to you soon, except for five who have wished to stay with the Hurons, so that you may return home happy with me, and I give you the Sieur de la Joncaire as you have wished, to bring me back their people, do not fail to repair the mistake you made by leaving them in your villages, to surmount all the difficulties that might be met by the people who have them, so that I may make my allies happy, and make them know of your sincerity, so that from this winter on you may hunt together in peace, and without them fearing you. I also ask again for the rest of my French people, so that matters can be entirely finished.¹²⁹

The peace document was signed. Presents were distributed. The peace conference ended with the smoking of the calumet, with dances and songs of peace.

During all this time, there had been individual meetings, between the French and the individual nations, and between the nations themselves 'talking behind the bushes', it is called in Haudenosaunee terms.

The Significance of the 1701 Treaty at Montreal

The treaty demonstrates that Haudenosaunee political activity was not simply a succession of councils with the British. There was effective diplomacy being carried out with the French and with many indigenous nations as well. Though the British at Albany attempted to curtail Haudenosaunee treaty making with France and to promote military activity in its place, the Confederacy maintained its independence to seek peace as best suited its purposes.

Though there was a written treaty document, which involved a recital of the delivery of prisoners, the giving of calumets, and the acknowledgement of the French governor as an intermediary for maintaining peace, the council was the culmination of a lengthy diplomatic process, which covered matters of trade, war, prisoner exchanges, and territory. Significantly, there was no written record of any direct Haudenosaunee-French discussion at this council of the proposed forts at Detroit and Niagara. If those discussions did happen, they were in private conferences rather than in the larger gatherings involving the western nations.

The written document was signed by each of the national representatives. Though the British 'trust deed' at Albany in 1701 was also signed, written documents recording treaty councils in the very early eighteenth century were rare. Usually, the record of council was the written minutes kept by the Europeans and the wampum belts. The record of the 1701 council at Montreal also shows the difference between the western nations, who delivered calumets as a record of peace, and the Haudenosaunee and Hurons, who delivered wampum. Both forms bear the same spiritual meaning, linked to peace.

As for the geopolitical implications of the council, ...if the French had preserved an effective barrier between the English and the Great Lakes, there was no longer any barrier between the "Upper" nations and the Iroquois, who were capable of acting as intermediaries between Albany and Michilimackinack. In brief, the general peace, due in part to French policy, created conditions for a commercial alliance between two old Amerindian enemies, as an extension of the friendship treaty between the Iroquois and the Ottawas in June, 1700.

These limits to the achievements of French policy also reveal the underlying Indian strategies of the general peace. For the Iroquois, peace was above all a matter of survival, but it also bore trade advantages to the west.

For the nations of the Great Lakes...there were also interests at stake. Peace with the Iroquois might be the beginning of a policy, not of realignment of the Covenant Chain, but of a neutralism which would consist of playing off European competition and avoiding as much as possible colonial pressures.¹³⁰

The 1701 Treaty of Montreal brought above all a generation of peace for the Haudenosaunee. During that generation, the population of the Confederacy more than doubled, both through natural growth and through adoption of other nations. Dekanissorens, who attended neither the Montreal nor the Albany treaties, was the architect of this balance between the

English and the French, and between the Haudenosaunee and the Algonkian nations. The sure hand of this Onondaga leader kept the peace for another 20 years.

The Visit to Queen Anne: 1710

Despite the relative peace that prevailed after the double treaties of 1701, both the Haudenosaunee and New York sought more active military support from the imperial government.

Three Haudenosaunee *rotiianeson* and one Mahican "River Indian" chief ŷ known in England almost from the time of their arrival as the Four Indian Kings ŷ arrived by naval ship at Portsmouth in the second week of April 1710. They were taken to London by coach and given apartments and new clothing.

With their interpreters, they met with Queen Anne on April 19. They were introduced by the Lord Chamberlain.

Gifts of wampum were presented and a speech made to Queen Anne through the interpreter Captain [Peter] Schuyler, which was read to the Queen in English by Major Pigeon.

Great Queen, they began, 'We have undertaken a long and tedious Voyage, which none of our Predecessors could ever be prevail'd upon to undertake. The Motive that induc'd us, was, that we might see our Great Queen, and relate to her those Things we thought absolutely necessary for the Good of Her, and us her Allies, on the other side of the great Water. We doubt not but our Great Queen has been acquainted with our long and tedious War, in conjunction with her Children, ...against her enemies the French; and that we have been as a strong Wall for their security, even to the loss of our best Men...And in Token of our Friendship, we hung up the Kettle, and took up the Hatchet'. They were disappointed that no ships had come from England to attack Quebec nor support for their proposed overland expedition to Montreal with Schuyler and Nicholson. The 'reduction of Canada' and subsequent free hunting and trade were of such importance that if help were not forthcoming, they would have to leave their country or 'stand neuter; either of which will be much against our Inclinations'. Their alliance had brought them some knowledge of Christianity and if the Queen would 'send over some Persons to instruct us, they shall find a most hearty Welcome'.

The Queen instructed that gifts be made to the Indians and that they be entertained at her charge. The request for missionaries she passed on to the Archbishop of Canterbury who was President of the Society for the Propagation of the Gospel in Foreign Parts.¹³¹

Significance of the Treaty

When the *rotiianeson* went to England, they were treated as kings, or at least as princes. In itself, this was a recognition of the existence and sovereignty of their nations. When they met with the Queen, they did so as allies, not as subjects.

The Queen promised nothing in particular. The visit had been as much a lobbying trip as anything else. There was no appreciable increase in British military backing for the next 20 years.

On the other hand, there were some important results of the trip. Te Ye Neen Ho Ga Row, of the Mohawk Wolf Clan, also known as 'King' Hendrick, became the mentor of Sir William Johnson several decades later. (In fact, he probably told Johnson about London: though Sir William's descendants sat in the House of Lords, he never visited England himself.) An influential Upper Mohawk *royaner*, he was crucial in maintaining the alliance with the English in later years. Another of the three Mohawk emissaries was the grandfather of Thayendenegea and may have had some influence in the British-Mohawk alliance of the later 1700s.

The Anglican missionaries were sent to the Mohawks: the Society for the Propagation of the Gospel operated schools within Haudenosaunee territory for nearly two centuries afterward. The silver communion set given to the Four Kings by Queen Anne is now in the only two royal chapels in North America: the Mohawk Chapel at the Six Nations Grand River Territory and the chapel at the Mohawk Bay of Quinte Territory.

The colourful portraits of the Four Kings were acquired by the Public Archives of Canada in 1980.

Other groups of Haudenosaunee leaders went to England in later years, but they travelled without the official sanction of colonial or dominion governments.

Thayendenegea (Joseph Brant) visited London in 1788, to press the government for a proper deed to the Grand River Territory and also to ensure full powers over the land. There is a story that he would not bow to the King, "for I am a Prince in my own country, and I bow to no man, but I would gladly kiss the hand of the Queen". His mission about the land was a failure, though.

In 1804, the Grand River Chiefs sent Teyoninhokarawen (John Norton) to London to argue the Grand River rights again. Once again, the mission attracted social but not political attention. In two months, he translated the Gospel of St. John into Mohawk, met a number of influential people, addressed Trinity College at Cambridge University. One of the people who worked to support the Mohawks after Teyoninhokarawen left England was the Duke of Northumberland, Thorigwagheri, who took his adoption as a Mohawk seriously enough to continue to write about "our people" and their future. This mission was even less of a political success than Thayendenega's had been.

The Kahnawake and Kanesatake chiefs went to England in the 1820s. They were told that the King was on vacation and could not see them. They presented their petitions to colonial officials and went home.

After the government of Canada ordered the Royal Canadian Mounted Police to establish an outpost in the Grand River Territory, Deskahe (Levi General) went to England to seek redress. He was refused access to members of the government and was refused an audience with the King, but his speeches to the general public were covered by the press.

When Grand River Territory representatives went in 1930, they met with a committee of the British Parliament, which later refused to meet them after the government of Canada protested. The secretary of state for the colonies at the time – the minister responsible for dealing with the issue – was Winston Churchill. His mother, Jenny Jerome, was from upper New York state. It was said that her grandmother had been a Mohawk. If this was so, then according to Haudenosaunee law, Churchill would have been Mohawk, too. Then the only person in the British government who could have claimed kinship with the Haudenosaunee delegates, Churchill refused them access to any remedy. The 1930 delegation was also refused an audience with the King.

Kahnawake, 1760

In the late 1750s, the military tide was beginning to turn in favour of the British. Working through the Mohawks and through the Onondagas of Oswegatchie, Sir William Johnson secured the neutrality of the Seven Nations of Canada – the ring of Indian villages that protected the French settlements of Montreal and Quebec. When the British attack came, it came directly at the French, and the Seven Nations of Canada stood aside.

Part of the price of securing their neutrality had been a series of land guarantees. In Kahnawake, near Montreal, and shortly after the official peace with the French, Sir William Johnson met with the Seven Nations of Canada. Official representatives of the Haudenosaunee were present at the council that took place. The Mohawks of Kahnawake spoke for the Seven Nations and addressed Johnson as "Warraghyhagey". The notes were taken by Daniel Claus, Sir William's son-in-law, who later became deputy superintendent general of Indian affairs in that area.

The Council

The transcript of the council that exists is the reply of the Seven Nations to the propositions put to them by Sir William Johnson a day earlier. The council began with a thanksgiving. The part Claus reproduced was the welcome and thanks to the Creator for allowing the people to bring their minds together and meet.

1. Br. Warr'y.

We are glad to meet you and thank you for your friendly Advice sent us from Oswego, that we should keep out of the Way; we have paid a due Regard thereto and thank the Great Spirit above who allows us to meet together this Day in so friendly a manner.

A string.

2. Br'n of ye Nations:

It gave us great pleasure at your having resolved at Swegatchy to accompany our Brother Warr'y as far as here. Your coming along was very necessary and of Mutual Service. We therefore most sincerely return you our most Hearty Thanks for it.

A Belt.

In stating this, the speaker probably recognized the role of the rest of the Confederacy in protecting the eastern `praying' Mohawk settlements. That summer, the British army had passed through Oswegatchie and, despite its neutrality, had burned the Onondaga houses to the ground.

3. Br. Warr'y.

We heard and took to heart the good Words you spoke to us yesterday; We thank you most heartily for renewing and strengthning the old Covenant Chain which before this War subsisted between us, and we in the name of every Nation here present assure you that we will hold fast the Same, for ever hereafter.

4. Br. Warr'y.

We are greatly oblinded to you for opening the Road from this to your Country we on our Parts assure you to keep it clear of any Obstacle & use it in a friendly Manner.

"Opening the road" means ensuring that people travelling between the territories of the parties to this treaty would be safe. More important and less literal, though, it meant opening the channels of communication, the road to peace. Just as the Condolence opens the senses, opening the road and keeping it clear of obstacles performs the same function politically.

5. Br. Warr'y.

You desired of us to deliver up your People who are still among us; As you have now settled all matters with us & we are become firm Friends. We who are present here as Representatives of 8 Nations do assure you that what you desired shall be fully agreed to as soon as possible.

A Belt.

In most treaties at the end of periods of war, prisoner exchanges or deliveries were an important element. The "8 Nations" were the Seven Nations of Canada plus the Onondagas of Oswegatchie.

6. Br. Warr'y.

We also agreeable to your desire yesterday will burry the French hatchet we have made Use of, in the bottomless pit, never to be Seen more by us or our Posterity.

A Belt.

In the language of Haudenosaunee law, these people were saying that the war they had conducted was not their own, but put in their hands and minds by others. The bottomless pit, of course, is an echo of the one lying at the foundation of the *Kainerekowa*, into which all the weapons of war between the nations were thrown and over which the Tree of Peace was planted.

7. Brethren of ye 5 Nat's.

In Return to your Belt of Yesterday Whereby you told us that as your Br. W'y. had finished every thing with us you on your part had something to say wch. was that as there had been during this War a Division & Disunion between us; and desired us to reunite and be firm Friends as heretofore, We hereby assure all here present that we with pleasure agree to your friendly proposal and reunite as formerly.

For a hundred years, the Haudenosaunee had despaired of bringing home the people who had settled near the French. Now, without having to bring them home, the communities were rejoining the Confederacy in an expanded territory.

There is some evidence that this reunification of the Confederacy was not as strong as the Haudenosaunee wished. The Seven Nations of Canada continued to act and speak separately from the other nations through the 1790s and early 1800s, and the Mohawk fire was moved to Akwesasne by the Onondagas only in the late 1800s. At a council between the Six Nations and the people of Kahnawake in 1773, Daniel Claus recorded the following exchange. The council had begun with a Condolence, and then the Six Nations gave

a large Belt whereby they told the Caghnaw's that the 6 Nat's. had come to a Resolution to unite all those Nations that heretofore belonged to the Confederacy & English Governments in particular those who [had] by changing their former place of Abode and thereby becoming Allies to the french King & in a Manner, alienated themselves from their own Nation & former Alliance, however that by a successfull War the English conquered the french & took Canada from them whereby those Ind's. that separated themselves from their natural Friends & Allies fell under the English Government again & having proposed to them the 6 Nat's to join the Confederacy some time ago it was recommended to the Warriors to look upon themselves for the future as one Body with those of the 6 Nat's...

The Belt.

The Caghnawageys considered ab't the Speech of the 6 Nations and were only puzzeld abt. the last Belt not remembering when they proposed to unite wth them again and put off the Answer to that Belt, but answered the ceremonial Part with thanking the 6 Nat's. for the Compliment.¹³²

8. Br. W'y.

With Regard to the String you spoke by yesterday of your Returning as soon as possible to your Homes and of your leaving two persons behind to transact Business in your Absence and at the same time told us to send some of every Nation with you to Albany in order to try ye goodness of the Road, we are ready whenever you go to accompany You.

A String.

9. Br. W.

As we have now made a firm Peace with the English & ye 6 Nat's. we shall endeavour all in our Power to keep it inviolably. There is one thing Br. which we understand you have great Plenty of, which is Liquor, as that is the only thing which can turn our heads and prove fatal to us, we who now represent 8 Nat's. here present entreat you in the most Earnest Manner not to suffer any of your People to sell or give any to us, as it

A large Belt.

10. With another large Belt they made the same request to the 6 Nat's not to bring any Liquor to their Country.

A Belt.

With a legal and social system based on people being of good mind, Haudenosaunee communities had serious problems with liquor. As the Kahnawake speaker said, it could "turn our heads". One expression used for liquor was 'the mind changer', and Haudenosaunee systems of social control were broken when a person could act completely irresponsibly and violently under the influence of liquor and then not have to account or repent for his actions, since he would not have been 'in his right mind' at the time.

11. Br. W'y.

Every thing being now settled between us in ye most friendly Manner which we rejoice at; We have only to acquaint you that our Young Men are soon going upon the hunt and perhaps may happen to come to [some] of your Posts, that you will give [a] strict charge to the Officers of every Post along [here] not to suffer any Person to dispose of any Liquor to any of our People that may come there as it might be productive of Disputes & ill Consequences between them & your People wch might shale the [Chain of] Friendship now so happily [concluded] strengthened and wch by all Means [you and] I will endeavour to avoid.

A Black Belt.

12. Br. Wy.

It is proper for you to know the Way our Affairs were managed while under the Care of the french wch is that Smiths &ca. were allowed to work for Us upon that Government's Expenche.

In an indirect way, this was a reminder to the British that the benefits that the Seven Nations had from the French had been promised to be continued by the British.

13. Br. W'y.

We are heartily thankfull to the Gen'l. for his Goodness in allowing our Priests to remain & instruct us as usual, and we shall endeavour to make a good Use of it, as

[the] He is now the head of all here, & had subdued our former Superiors, who maintained our Priests, they must now suffer & cannot subsist without your Assistnce; Therefore we beg you will not be worse than our former Friends the French. And also beg that you will regulate Trade so that we may not be imposed upon by ye People our new [Allies] Brs.

A Belt.

Here ended.

Then rose Ad'yadarony a chief of ye Warrs. of Caghnaw'y. and addressed himself to Sr. Wm. in the Follow'g. manner.

14. Br. W'y.

The Sachems having finished the Good Work of Peace wch is agreeable to all our Young Men, I shall offer something in behalf of them, wch I beg you will take Notice of. Should any of the Young People through Impudence or Liquor Drop or make use of any foolish or rash Express's to You or those you leave behind, we beg you will not take notice of them, but of Us now present who are their Chiefs.

A Warr's. Belt.

Some documents of the 1700s suggest that the `war chiefs' of the Seven Nations of Canada ÿ especially those of the Algonquins and Nipissings ÿ were representatives of `the young men', who deferred to the sachems in most political matters but who also had their own council and discussions. In this council, as in the one at Burlington Heights in 1815, the business of peace was left to the peace chiefs, the *rotiianeson*.

15. Br. W'y.

As we are now linked together in the Chain of Friendship; we the Warr's have one Request more to make which is that if Mr. Perthuit alias Ohowa late Interp'r to Onontio should apply to you to be further employed that Way, you will not hear to it, but let him go with his former Master over the Great Lake and let us have one of your own People to act as Interp'r.

Gave a String of W'm.

Here ended the Meeting.

M. Sept'r. 16th, 1760

Br. W'y.

As every Matter is now settled to our mutual Satisfaction we have one Request to make to You who now have the Possession of this Country. That as we have according to your Desire kept out of the Way [and been Neuter] of your Army, You will allow us the Peaceable Possession of ye Spot of Ground we live now upon, and in case we should remove from it, to reserve to us as our own.

A large Black Belt.¹³³

This last statement is important: it affects the lands of the Seven Nations. In Haudenosaunee council etiquette and procedure, a proposal like this would be understood to be accepted along

with the wampum belt that accompanied it. If the British were not prepared to accept the proposal, they would refuse the belt.

In typical understatement, the speaker made a request and referred to "the Spot of Ground we live now upon". How big is a spot? It probably means the areas of the villages and their environs. Within three years, Kahnawake was involved in a land controversy that led to the General Gage judgement and then to a series of land claims that have not yet been resolved. Kanesatake's conflicts with the Sulpicians led to the formation of the community of Wahta and the troubles of 1990, without the claims being resolved. As for the Algonquins and Nipissings, they never did surrender their territory. The issue of Aboriginal title or treaty rights to the land has not been properly resolved. The *Royal Proclamation of 1763*, which was used to assuage people's concerns about their lands, is now said by Canada and provincial governments to offer no protection for Aboriginal title to lands that were within the boundaries of Quebec as a result of the Proclamation.

The Royal Proclamation of 1763

With the capitulation of the French in 1760, there was a shift in the balance of power. British power led to legitimate fears that the British would abuse their trading powers or would move to take the lands of the indigenous nations without due process.

In Mohawk country, the burning issue in early 1763 was the purported sale by the Canajoharie Mohawks of nearly all their land to George Klock. Sir William Johnson argued that the signatories to the deed had been approached one by one instead of in open council and that they included people who had no right to the land, children, and people who had been so drunk when they signed that they later had no knowledge of their actions. The Mohawks were highly doubtful that they could get justice from the British, despite Johnson's assurances.

The British had moved into the forts the French had built in the Ohio country. Instead of destroying the forts, they were improving them; this led to apprehensions that "the British wish to take the place of the French" and, worse, that "they wish to enslave us". The British commander, Jeffrey Amherst, was openly contemptuous of the "savages", as he called them, and tended, through his actions, to alienate the Crown's allies and further infuriate its enemies. Also in early 1763, the Susquehanna Company, a group from Connecticut, had announced its intention to settle more than 300 families on the Susquehanna River. The Susquehanna was both Seneca hunting territory and the main war path to the south. The Senecas had not given up this land; Connecticut claimed it by virtue of its colonial charter from the King. Johnson's assurances were not enough to clear the minds of the Senecas. They had become the prime instigators of the war against the British, sending war belts out to their allies to the south and west. By the 1760s, the

Mohawks on the Mohawk River had only 160 fighting men left, while the Senecas had more than a thousand – more than the rest of the Confederacy put together.

By 1763, the Western or 'Lakes' Confederacy was at war with the British. Every post west of Detroit was destroyed; Detroit was under siege, and Niagara was threatened. The Haudenosaunee were considering joining the war against their former allies, and the people of the largest Seneca village, Geneseo, had already taken military action against a British supply train at the Niagara Gorge.

One ingredient necessary to bring peace to northeastern North America was a credible process for protecting unsundered land. As the keepers of the Eastern Door, the Mohawks were the most exposed to both the British and irregular and unscrupulous land dealings.

A royal proclamation was issued by the King in London on 7 October 1763. In that sense, it was a unilateral document, a promise without any compensation flowing from the other side.

When Sir William Johnson received a copy of the proclamation, though, he immediately declared it formally in effect in the territories of the Six Nations and their allies, had copies of the proclamation printed, and went personally to the Mohawks, Tuscaroras and Oneidas to deliver copies and explain how the proclamation protected their land for the future.

Documents

By 1757, Sir William Johnson had begun to think in terms similar to the eventual proclamation, as a result of the complaints of the Mohawks and other Indian nations. He wrote to Thomas Pownall on September 8 of that year:

If a Treaty of Limitation of Country with the Indians, upon Condition they should insist upon the French quitting their Forts along the Lakes & Rivers, or declare against them if they refused it, was thought adviseable, and would be submitted to on our Side, provided the Indians should insist upon our giving up a part of what is called our Frontiers; I say, if such a Treaty was thought adviseable, was directed to be put on Foot from proper Authority, and the Indians wou'd come into it, which I think they might; I believe 'tis the only Measure left us to overset the French Indian interest, and confound the plan of Dominion they are pursuing; unless we can weaken them by such considerable Conquests, as will force the Indians to side with us, as Conquerors upon this Continent. This plan will be so mortifying to the great Patentees, and to the Pestilential Thirst of Land, so Epidemic thro' all the Provinces, that I imagine it wou'd occasion too general an Opposition to be brought about.¹³⁴

By the early 1760s, with Quebec conquered and a new war against the former allies of the French raging in the west, Johnson had been asking for something he could use to bring

peace. He requested land guarantees, trade guarantees, and protection against fraudulent land transactions, as well as some form of fair redress for past frauds. The *Royal Proclamation of 1763* appeared to provide the first three, at any rate.

The proclamation itself was made at the Court of St. James on 7 October 1763. It took several weeks to reach North America. The parts that affect the rights of the Indian nations are as follows:

And whereas, it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom we are connected, or who live under our Protection, should not be molested or disturbed in the Possession of such Parts of our Dominions and Territories as, not having been ceded to or purchased by us, are reserved to them, or any of them, as their Hunting Grounds.

Even this introductory paragraph of the proclamation is full of ambiguity for later years. There has been little examination of the difference between the nations or tribes "with whom We are connected" and those "who live under Our Protection". In the 1664 Fort Albany Treaty, though, this difference was important, since the Haudenosaunee agreed in that treaty not to take revenge on Indians under British protection but to complain to the British about injuries done to the Haudenosaunee by such people. Do the words "Dominions and Territories" include all the colonies, so that land within the boundaries of any colony would be reserved to the Indians until "ceded to or purchased by us"? The phrase "reserved to them, or any of them" was used by Indian department officials in the 1820s to suggest to the Algonquins that the proclamation had converted their exclusive right to their traditional lands into a general right to be shared by all Indians. (The Algonquins had kept their printed copies of the 1763 proclamation but would not accept this interpretation.)

We do therefore, with the advice of our Privy Council, declare it to be our Royal Will and Pleasure, that no Governor or Commander in Chief in any of our Colonies of Quebec, East Florida, or West Florida, do presume, upon any Pretence whatsoever, to grant Warrants of Survey, or pass any Patents for Lands beyond the Bounds of their respective Governments, as described in their Commissions; as also that no Governor or Commander in Chief in any of our other Colonies or Plantations in America do presume for the present, and until our further Pleasure be known, to grant Warrants of Survey, or pass Patents for any Lands beyond the Heads or Sources of any of the Rivers which fall into the Atlantic Ocean from the West and North West, or upon any lands whatever, which, not haveing been ceded to or purchased by Us as aforesaid, are reserved to the said Indians, or any of them.

This drew the 'Royal Proclamation Line' along the Appalachian watershed and the boundary of the colony of Quebec. In the 1760s, the term "until our further pleasure be known" was important: it signified that the line was intended to be temporary, and with the Haudenosaunee it led to a second temporary line in 1765 and a 'permanent' line drawn by the Treaty of Fort Stanwix in 1768. In other places, the King's pleasure was never altered formally; Canadian law suggests that the protection of the Royal Proclamation unrolled like a carpet across the land, providing a degree of protection for Aboriginal rights as the Crown's claims to sovereignty over the land moved westward.

And we further
declare it to be Our
Royal Will and
Pleasure, for the
present as aforesaid,
to reserve under our
Sovereignty,
Protection and
Dominion, for the use
of the said Indians, all
the lands and
territories not
included within the
limits of Our said
Three new
Governments, or
within the Limits of
the Territory granted
to the Hudson's Bay
Company, as also all
the Lands and
Territories lying to
the Westward of the
Sources of the Rivers
which fall into the Sea
from the West and
North West as
aforesaid.

And we do strictly forbid, on Pain of Our Displeasure, all our loving Subjects from making any Purchases or Settlements whatever, or taking Possession of any of the Lands above reserved, without our especial Licence for that Purpose first obtained.

One important concept is to be seen in these words: the "Nations or Tribes of Indians" were not among the King's "loving Subjects". Their sovereignty was recognized implicitly by

this distinction. The 1763 proclamation had no real teeth, though; the King was not specific about the nature of the pain of his displeasure. In Quebec, for example, it took Sir Guy Carleton's proclamation of 1766 to clarify that offenders would be charged with a breach of the peace of the province (and that informers would receive a reward upon a successful conviction).

And We do hereby strictly enjoin and require all Persons whatever who have either wilfully or inadvertently seated themselves upon any Lands within the Countries above described, or upon any other Lands which, not having been ceded to or purchased by us, are still reserved to the said Indians as aforesaid, forthwith to remove themselves from such Settlements.

The government of Canada has maintained that the reservation of Indian lands applied only to the land west of the proclamation line and not to other lands that had not been ceded or sold to the Crown. Yet this paragraph prohibits settlement on the lands west of the line ("the Countries above described") and "any other" unsold lands, which were "still reserved to the said Indians as aforesaid".

And whereas great Frauds and abuses have been committed in purchasing Lands of the Indians, to the great Prejudice of our Interests, and to the great Dissatisfaction of the said Indians. In order, therefore, to prevent such Irregularities for the future, and to the end that the Indians may be convinced of our Justice and determined Resolution to remove all Reasonable Cause of Discontent, We do, with the Advice of our Privy Council strictly enjoin and require, that no Private person do presume to make any purchase from the said Indians of any lands, reserved to the said Indians, within those parts of our Colonies where We have thought proper to allow Settlement; but that, If at any time any of the said Indians should be inclined to dispose of the said Lands, the same shall be Purchased only for Us, in our Name, at some public Meeting or Assembly of the said Indians, to be held for that purpose by the Governor or Commander in Chief of our Colony respectively within which they shall lie...

These rules governing the purchase of Indian lands lie at the heart of Canada's *Indian Act*, more than two centuries later. The Mohawks remained unhappy ÿ the proclamation set out rules for the future but did nothing to resolve the great frauds and abuses they had already suffered, for which the Crown provided no reasonable remedy. These rules applied *within* the boundaries of the colonies, once again suggesting that the proclamation had reserved the unsundered and unsold lands within colonial boundaries as well as beyond them.

Almost immediately, enterprising individuals sought ways to get around the strict rules of the proclamation. Alexander McKee, deputy superintendent general of Indian affairs, used a 999-year lease as his vehicle to take Pelee Island in Lake Erie (since it was not a purchase). Sarah

'Sally' Ainese bought land in southwestern Ontario directly from the Ojibwas, probably on the basis that as an Indian herself, and not a "subject", she was not under the King's prohibitions.

And we do, by the Advice of our Privy Council, declare and enjoin, that the Trade with the said Indians shall be free and open to all our Subjects whatever, provided that every Person who may incline to Trade with the said Indians do take out a Licence for carrying on such trade from the Governor or Commander in Chief of any of our Colonies respectively where such Person shall reside, and also give Security to observe such Regulations as We shall at any time think fit, by ourselves or by our Commissaries to be appointed for this purpose, to direct and appoint for the benefit of the said Trade.

The western Indian nations had been concerned that the victory of the British and the Haudenosaunee over the French would result in a stoppage of trade to them; the French and other settlers at Detroit had expressed concern that they would be excluded from trading, as well. The promises of free trade ÿ the next paragraph of the proclamation specified that the licences should be "without Fee or reward" ÿ were essential to Sir William Johnson's peacemaking at Niagara the following summer.

The appendix to the proclamation required the King's officers, in the territories reserved for the Indians,

to seize and apprehend all Persons whatever, who standing charged with Treason, Misprisions of Treason, Murder, or other Felonies or Misdemeanours, shall fly from Justice and take Refuge in the said Territory, and to send them under a proper guard to the Colony where the Crime was committed of which they stand accused.

The King was not extending his criminal jurisdiction over the Indian territory. This provision applied only to people who had committed crimes within the boundaries of the colonies and who fled from those colonies to Indian country.

On 1 December 1763, Thomas Gage, commander of the forces, wrote to Sir William Johnson:

By the October mail which arrived last Night, I received Several printed Copys of His Majesty's Proclamation to make known the Arrangements which His Majesty had thought proper to make in Consequence of the Cessions Made to the Crown of Great Britain in America, by the late Treaty of Peace with France.

I think it right to inclose you one of those Copys of the Said Proclamation, for your Information of the Regulations which have been made, & particularly as they are So very favourable to all the Indian Tribes, a proper Explanation of the Articles which concern them, I imagine Must have a great Influence over their

Minds, and induce them to a Conviction that His Majesty is well disposed to favour & protect them. I am certain you will make the best Use of every particular which relates to the Indians, & that it's needless to say more to you on that Head.¹³⁵

Johnson wasted no time. Upon receiving the proclamation, he immediately issued his own declaration on 24 December 1763, stating that the King's proclamation was in effect throughout the territory of the Six Nations and their allies.¹³⁶ In the depths of winter, he was unable to travel far, but he met with as many communities of the Haudenosaunee as possible, bringing them the good news of the proclamation. He replied to Gage on 23 December 1763:

I am hopefull that...there Lordships will be able still farther to contribute towards the salutary Points in view relative to the Indians. This Proclamation does not relieve their present Grievances which are many, being calculated only to prevent the like hereafter, altho' there are numberless instances of Tracts which have indeed been purchased, but in the most illegal & fraudulent manner, all which demands redress. I have at this Meeting made the best use in my power of His Majesty's Proclamation for the convincing the Indians here of his gracious & favourable disposition to do them Justice, & shall communicate the same to all the rest.¹³⁷

On 20 January 1764 ŷ less than a month after receiving his copy of the proclamation ŷ Johnson met again with the Oneidas and the Tuscaroras. His records show that he told them: Brethernŷ

You need be under no Apprehension concerning your Lands, or Possessions after what I have lately informed you of his Majesty's Royal Proclamation, commanding that no Lands whatsoever should be taken from you, nor any Purchase attempted to be made, but with your Consents in a Publick Meeting of each Nation; and as I am getting Copies of that Proclamation printed, so soon as they are ready, I shall send one to your Nation (as well as to the rest) for your Satisfaction on that head.¹³⁸

Similar meetings were held on January 5 with the Onondagas, January 11 with the Geneseo Senecas, and January 23 with the Cayugas.¹³⁹ The proclamation was being used as a tool for peace and for war. Johnson wanted to reassure the eastern nations of the Confederacy that they "need be under no apprehension" concerning their lands, to prevent them from joining the war against the British, while at the same time encouraging them to join the British army that would punish the Shawnees and Delawares and others who had fought the British. The situation was delicate: the Senecas had also attacked the British, and the other nations of the Confederacy were reluctant to fight their own people.

A year later, Johnson was being reminded of his promises. He wrote about a squatter on Mohawk lands, a man named Maybe:

A Man who lives on the Indians planting lands without a Just claim & consequently in contempt of His Majesty's late Proclamation. The Indians are constantly with me about it, and imagine after hearing what was said by His Majesty's Proclamation, that we trifle with them.¹⁴⁰

People remembered this event for decades. In New York, on 23 January 1796, Colonel Lewis Cook of Akwesasne produced the printed parchment Proclamation as evidence of the King's promises and intentions.¹⁴¹ The Algonquins and Nipissings of the Ottawa Valley kept theirs even longer, finally giving it to Sir John Johnson to support their land rights petitions. (The Algonquin and Nipissing copies are now in the National Archives of Canada.)

The Royal Proclamation is viewed today by Canadian law as the document that established the "Lands reserved for the Indians" referred to in the *Constitution Act, 1867* and that created the procedure for Crown purchases of Indian lands. It did have other aspects that are also worth remembering.

In its distinction between "Nations with Whom We are Connected" and "Nations under Our Protection", the proclamation echoed the 1664 Fort Albany Treaty: nations under the Crown's protection were also under the Crown's laws to a greater degree, while 'connected' nations retained their own autonomy.

The distinction has been missed or blurred even by those who sought to protect or promote the rights of Aboriginal nations. The Royal Commission on Aboriginal Peoples wrote in February 1992:

...while the Royal Proclamation asserted suzerainty over Aboriginal peoples living "under Our Protection", it also recognized that those peoples were "Nations" connected with the Crown by way of treaty and alliance.¹⁴²

The proclamation is a constitutional document of Canada. It created the new colony of Quebec. In the *Constitution Act, 1982*, however, the proclamation is not listed as a constitutional document – some say that this is because of the protection it affords Aboriginal title to land.

The proclamation created a temporary boundary ("at pleasure") between the Crown's colonies and Indian country, to be made permanent in the 1768 Fort Stanwix Treaty. It was a move to prevent "great Frauds and abuses" for the future, but it did nothing to remedy frauds that had already occurred. As it turned out, the Crown would do nothing further. Over time, the rules for taking purchases of Indians lands relaxed, so that the standards used by the Crown itself moved away from the high standards set in 1763.

The proclamation on its own is not a treaty, say the courts. It is a unilateral promise from the King and presumably (despite the flexibility in some of its language) binding on those to whom the promise was made.

When the imperial superintendent general of Indian affairs met in formal council with the Crown's allies, though, and produced the proclamation as evidence of the King's commitment to secure them justice in land issues, those transactions met all the legal requirements of a treaty, and the proclamation's promises became an element of that treaty. The consideration flowing from the Haudenosaunee? For one thing, not joining the western nations in the war against the British; for another, joining Johnson in the effort to restore peace.

The Treaty of Niagara, July 1764

Background

The *Royal Proclamation of 1763* gave Sir William Johnson some of the tools he needed to re-establish peace in the northeast. It allowed him to reassure the Haudenosaunee that there would be no new land frauds and that a permanent boundary line would be made as soon as peace was restored.

Peace with the western nations ÿ and with the Senecas ÿ was Johnson's next step. To accomplish this, he needed the clear support of the other nations of the Haudenosaunee. By January 1764, Johnson had delivered printed copies of the Royal Proclamation to the several nations.

In December 1763, General Thomas Gage wrote to Johnson, setting out a plan for "the best Manner of Making Peace with Indians":

Whether by Assembling the Several Nations together; or treating as much as possible with each of Them separately; By the First Method, it appears to me, that we should Strengthen their Confederacys, and cement their Alliances. By the last That we should raise up Jealousies of each other and kindle those Suspicions So natural to every Indian, and which it's now our Business to encourage, and foment as much as possible.... If they are Friends, they will all join to cut our Throats, whenever we are so unfortunate as to disagree with anyone of them. In short we have been forming Alliances between Nations at Variance in order to unite them against ourselves.¹⁴³

By February 1764, Johnson had begun to make plans for a major peacemaking effort. He viewed the Haudenosaunee as a bulwark against all enemies and intended to keep peace with the Confederacy and to keep the Confederacy together and strong. He had encouraged unity for too many years suddenly to adopt Gage's divisive strategy, though for Gage's consumption Johnson adopted a more cynical tone.

The most successful councils ȳ because the commitments made were more notorious and less easily broken ȳ were the multinational, memorable ones. The peace at Montreal in 1701 was such a milestone. Sir William Johnson accomplished two such councils in his lifetime: the Niagara Treaty of 1764, which involved 24 nations and established a new peace based on free trade and land rights, and the Treaty of Fort Stanwix in 1768, which aimed to create a permanent line between Haudenosaunee lands and the King's colonies. Each of these treaties strained British budgets for provisions, as well as British patience for getting all the participants in one place at the same time.

On 19 February 1764, Johnson wrote to Gage:

I mentioned in my letter of the 27th that I judged it too great a Compliment to treat with the [western] Indians in their own country, indeed was it not for the Expençe of bringing them down, it would probably be best to treat with them here, as they all consider this place as their Grand Fireplace for Treatys of that Nature; but I am induced to think that Oswego, or Niagara would answer very well, because great part of the Chipeweighs, & Missassagas, live on the north sides of Lake Ontario & Erie to which Niagara would serve as a Centre without being too distant for those who live in the neighbourhood of Detroit & if we treat with the Chenussios or any of that Quarter (which may probably be the case) no better place can be calculated. [In this case I would beg leave to propose that Deputys consisting of the Chiefs of each Nation should only meet, the rest being of no great consequence, and that] At this Treaty wheresoever held we should tye them down [in the peace] according to their own forms of which they take the most notice, for example by exchanging a very large belt with some remarkable & intelligible figures thereon. Expressive of the occasion which should always be shown at public meetings, to remind them of their promises; and that we should exchange Articles with the Signatures of the Chiefs of every Tribe [some of the Five Nations have but Three, the Western Nations several]. The use of frequent meetings with Indians is here pointed out. They want the use of letters, consequently they must frequently be reminded of their promises, & this custom they keep up strictly, amongst themselves, since the neglect of the one, will prove a breach of the other.

In my opinion, a Treaty of Offensive & Defensive Alliance would be the best, as we should then have a right to claim their assistance on occasion, & they would hardly ever desire ours for any thing more than Arms & ammunition which it would be in our interest to give them in a War with each other. That we should enter into this with each Confederacy against the other, which would put them more on their guard hereafter. That they should deliver up all prisoners, deserters & Frenchmen (of whom there are several) amongst them, Engaging never to admit any of the Two latter into their Castles. That they should agree to the removal of the Jesuits whenever it may be demanded. The occupancy of all the French posts &ca. to be left to our discretion & a free passage by land or water to them, as also the Navigation of the Upper Lakes &ca. The payment of debts, & free permission to all Traders to pass unmolested ȳ with regard to the Senecas, that they Guarranty the carrying place--That none of the Nations treat with the

Shawanese & Delewares for the future without our knowledge & permission, & that all intercourse be immediately stopt between our friends, & any who hereafter commit hostilities (this they call shutting up the road of peace) & that every Nation for the future shall on our requisition properly made deliver up, such of their People as may be Guilty of Robbery or Murder, that they may be tried according to English laws. This may & doubtless will appear very hard (& is contrary to the original Covenant) but is nevertheless a very necessary point to push and lastly that they ratify & confirm all their Engagements entered into by that Covenant, as well as those entered into between them & the French.

On our part I believe it will be necessary to assure them of a free, fair & open Trade, at the principal Posts, & a free intercourse & passage into our Country. That we will make no Settlements or Encroachments contrary to Treaty, or without their permission. That we will bring to justice any persons who commit Robberys or Murders on them & that we will protect & aid them against their & our enemys & duly observe our engagements with them.¹⁴⁴

The location selected was Niagara, not Oswego. While it was further from the Mohawk heartland and from Fort Johnson, it was closer to the western nations. By April 1764, Johnson had made a separate peace with the Geneseo Senecas, who had been the main adversaries of the British in the Niagara area. It was no longer as great a risk to select Niagara as the meeting place.

Also in January and February of 1764, Johnson had used the *Royal Proclamation of 1763* and a series of small councils to firm up his support among the nations of the Haudenosaunee and the Seven Nations of Canada. By the time the ice was melting and travel by canoe could resume, the Algonquins, Nipissings and Iroquois of the Lake of Two Mountains had agreed to carry the invitation wampum to the Niagara council to the people of the upper Great Lakes.

The Niagara conference of the summer of 1764 was probably the largest council ever held between European and indigenous nations. It involved most of the same participants as the 1701 council at Montreal, with the British taking an active role as a party (where the French had acted as mediators). Nations that were not directly represented by their own chiefs were spoken for by others, either because of distance (the Winnebagoes spoke for the Sioux) or because they were not sure what their reception might be (the Geneseo Senecas spoke for the Delawares).

Sir William Johnson listed 24 nations in attendance at the "General Meeting". (Interestingly, he placed the Algonquins and Nipissings at first with the Western Confederacy, which was mainly Algonkian in language, but then put them with the Iroquois Confederacy, ostensibly because the Seven Nations of Canada were part of the Haudenosaunee after 1760.)

Mohawks	Nanticokes	
Oneidaes	Canoyes	
Tuscaroras	Mohicanders	
Onondagaes	Algonkins	The
Cayugaes	Nipissengs	Six Nation

Senecas
Coghnawageys
Ganughsadageys

Confederacy

Chippawaes
Ottawaes
Menomineys
Sakis
Outagamies
Puans
Christineaux
Hurons
Toughkamiwons
[Algonkins]
[Nipissings]¹⁴⁵

The
Western
Confederacy

Cadwallader Colden was a representative of the colony of New York in the councils with the Haudenosaunee. He was also a skilled botanist and historian (and the author of a *History of the Five Indian Nations* , printed in 1727 and 1747). Johnson wrote to Colden on 23 August 1764:

The Nations who attended from the Westward were the Hurons, Ottawaes, Chippaweighs, Sakis, Puans, Reynards, Menomineys, & in short all ye Chiefs of the Western Nations, except about 300 under Pondiac at the Miamis River, and the Pottawatamies who did not choose to trust themselves down, the whole amounted to upwards of 2,000, including those of the 6 Nations who accompanied me they were the largest Number of Indian perhaps ever Assembled on any occasion ÿ the Shawanese & Delewares of Ohio did not attend, they are now up the River Sioto watching our motions, but I imagine that the transactions at the Congress will soon bring all to reason in case we are not able to effect anything against them.¹⁴⁶

Perhaps the most important purpose of the Niagara congress was peace ÿ peace between the British and the Western Confederacy, peace before the Haudenosaunee would have reason to join the western nations against the British. While most of Johnson's time was spent in conference with individual western nations (the meetings took more than a month, and went wildly over their original budget for provisions and presents), the Haudenosaunee participation was essential. When the invitations had gone out, the message received in Mackinack (for example) was that Johnson was going to come with a British army, accompanied by the Six Nations, if peace was not made. The presence at Niagara of an impressive Haudenosaunee delegation made Johnson's peacemaking with the western nations easier.

The western nations made peace in precisely the terms that Johnson had set out to achieve in February. Trade was reopened and guaranteed. Prisoners were returned, and the French were barred from the villages. Johnson delivered a belt of the Covenant Chain to the Ojibwas, to keep on behalf of the entire Lakes Confederacy at Michilimackinack. He also gave them a long belt showing the 24 nations holding hands, with a ship at one end and a rock at the other. This was the symbol of the annual presents the King promised to send the participating nations. The two belts remained together, moving from Mackinack to Drummond Island to Manitoulin Island. They were kept at Manitowaning and Wikwemikong for more than a century. In 1786 Sir John Johnson gave the Ojibwas a belt that resembled the 1764 belt his father had given. The new belt also showed two men holding hands, with a chain emerging at either end of them: it was a renewal of the Covenant Chain after the American Revolution.

The Niagara Treaty served several vital functions. It brought peace and re-established trade. It was also Sir William Johnson's first large council with the western nations ŷ conducted in the ways he had learned from the Haudenosaunee. His meetings leading up to the Niagara council were also experimental. They taught him how far he could push the Haudenosaunee themselves, taking advantage of the "wrongful behaviour" of the Senecas of Geneseo, and the way the entire Confederacy might make concessions in order to protect the Senecas from the British.

Beginning in April 1764, Johnson implemented a plan to secure the Niagara portage for the British. The land became known as the Niagara Strip, running between Lake Ontario and Lake Erie. One of the worst British defeats of the war that simmered from 1760 to 1763 was the Devil's Hole Massacre, in which the Senecas had caught a British supply train at the lip of the Niagara Gorge and, firing from cover, had killed most of the British soldiers. Gage would not let this happen again.

The Niagara Strip and Criminal Jurisdiction

On 27 January 1764, Johnson wrote to Thomas Gage:

The security of the carrying place of Niagara being the only Land carriage in a course of some 100 miles, is of the highest importance and should certainly be vested in His Majesty, & the possession thereof guarrantied to him by the Senecas...¹⁴⁷

Gage replied from New York on February 4:

It is difficult, and will take up a good deal of time, to Secure the Carrying Place of Niagara as effectually as we would wish. It is a post of the greatest Consequence & we must give very great attention to it.¹⁴⁸

On March 4, Gage wrote Johnson:

Nothing seems to me better calculated for our Interest, than the Terms you propose to demand at the Treaty. If any Articles should appear too harsh & rigid, we must yield a little on our Side. There is one Circumstance however I would Submit to your Consideration, which I think would tend much to the Benefit of the Crown if properly managed hereafter; and greatly reduce the enormous expence the King is now loaded with, for the Support of the Forts. What I mean is to demand a tract of Ground of four or Five Miles round some of the Forts particularly Niagara & Fort Pitt, to be ceded to the King.

If it should be thought reasonable that the King should give some Consideration for these Tracts of Land, the Price should be fixed, & left at His Majesty's option to purchase Them or not, as He shall adopt or not, the Measures proposed to Him on this Head.¹⁴⁹

On March 26, Cadwallader Colden wrote to Sir William Johnson:

Your meeting with the Chenessioes at this time must be of the greatest consequence. If they will not punish the persons who excited them to revolt & to commit so many cruel & barbarous murders can their friendship be depended on? ...Until they are made to have a better opinion of our strength & resolution no peace with them can be safe, nor while they retain any pretensions to molest the Passage between Oniagara & Lake Erie. One part of the atonement for the Injuries done should be giving up all Pretensions to the Country on both side the streights between the lakes Ontario & Erie.¹⁵⁰

On April 6, Johnson replied:

...I have the pleasure to acquaint you that they have agreed to the several Terms of which the General approved, they are to deliver up the 2 Murderers of Kanestio, all our People who are among them whether Prisoners, Deserters Negroes &c. & cede to His Majesty all the Lands from Niagara to the Falls on both sides of the Strait, with several other necessary points...¹⁵¹

On April 25, Johnson met with a delegation from the Haudenosaunee. The Senecas of Kanadasego stated in council:

Brother

I desire your serious attention to what I have now to inform you concerning the Resolutions of all our People made at home, not altered upon the Road, as some people have lately done, we having seriously considered our old Agreements & how dear Brethren ought to be to one another, are determined to abide by the same, & once more take hold of the Cov't. Chain which we will keep fast. We know the Great King is the head of these matters, & the Governors & General, here under him, & as we apprehend them well disposed, we heartily rejoyce at it & will agree to any thing you desire.

A belt 12 Rows.

Brother

We are now to assure you that we are sincerely bent on what is good and that our Warriors are resolved hereafter to lend their assistance to our Sachems for the promoting peace & the good of both the English, & ourselves, & as we are the Door of the Confederacy to the Westward, as our Brothers the Mohocks are on your side, we now acquaint all the Nations that we make a new Door at Chenussio for the benefit of the Public.

A Belt of 15 Rows, with Black Figures.

The conference continued, with each of the nations of the Confederacy showing Johnson both regret for the actions of a dangerous few and a commitment to keeping the Covenant Chain strong for the future. Johnson continued to isolate the Senecas from his approving language, and on April 1 he set out the terms for accepting the Senecas back into the peace:

Being all assembled Sir William explained to them, the Senecas, the several Articles distinctly in the Presence of all the Nations, and Delivered a Belt with each and desired an Answer to them before they left the Place...

At night 14 of the Chiefs of the disaffected Senecas came to Sir William, with one Mohock, and one Onondaga Chief, and desired a private Conference with him, which being granted, the Headman begged Sir William would repeat the several Articles to them again, lest they might not have thoroughly understood, or remembered them, which having done, they returned him many thanks for his compliance and then assured him that they would without delay take them into Consideration, and give their Answer the day following. Sir William spoke to them very strongly, and warmly on the Affair, as did also the Mohock, and Onondaga Chiefs, which made such Impression on them, after which they went to their several Encampments.

April 2d. At 3 P.M. The several Nations being assembled in the Council Room, the Onondaga Speaker, Tyawarunta was desired by the Senecas to speak for them, and the Bunt to assist him, which being agreed to he answered all the Articles, except two, as Sir William could wish, and exchanged Belts thereon.

Using the Onondagas as speakers was a warning to Johnson that the entire Confederacy was of one mind on this issue. On the other hand, it also sent the message that the Senecas were using this indirectness as a means of avoiding confrontation with Johnson.

Sir William then spoke to them, and insisted on their agreeing fully to every Article proposed, otherwise they must expect he would carry the War into their Country immediately. Whereupon they settled one Article, and desired time until the next day to consider of the other; being agreed to, Sir William after expostulating with them very Warmly on their late Conduct, and present backwardness in settling matters, invited all the nations to the War Feast prepared on the present Occasion, at which he sung his War Song, declaring War in a Solemn Manner against the Shawanese and Delawares, and any other Nations,

who might join them, which was followed by the Senecas, and all the Nations present in the most solemn Manner, and continued the whole night.

The Senecas had no choice: they *had* to join in what the rest of the Confederacy was doing, even if it meant turning on their former allies at the Western Door. Sir William Johnson worked safely within Haudenosaunee procedures throughout, even to the point of singing his personal war songs. He also pressed the Senecas hard in council ÿ beyond comfort or compromise ÿ a tactic he would use again four years later at Fort Stanwix. Johnson then communicated to the Geneseo Senecas the terms of the peace in a way that left the impression that they were not his to negotiate:

...I can only propose to you the Generals terms, on which he will receive you, ÿand I desire an immediate Answer to them without entering upon past Affairs for extenuating your Guilt which is so notorious, that we shall hear nothing but your direct answer.

The General proposes that, in Case you are really affected at what you have done, and determined to lead a peaceable life hereafter, You agree to the following Terms.

First, to Deliver up the Murderers of Kanestio.

Secondly, all the Prisoners, Deserters, and Frenchmen amongst you without Distinction, and that you engage never more to admit any amongst you.

Thirdly a free use of the carrying Place at Niagara, with the Lands from the Fort to the Creek above Little Niagra, the Breadth of 4 Miles from the River, and free liberty to Cut Timber for Building, Fire Wood, &c.

Fourthly a free open Road through your Country for the passage of the English with Cattle, Carriages or otherwise with the free Occupancy of the Lakes, Rivers, Creeks &c.

Fifthly the use of the Harbours of Orundequate and Asserotus with liberty of erecting Places of Security at them.

Sixthly, that you stop up the Road to the Shawanese and Delawares, and never treat with them without our Permission.

Seventhly, That you never hold any Conferences, correspond, or treat with any of His Majesties Enemies, but hold fast the Covenant Chain for ever.

Eighthly. To Observe the Several Articles and leave Hostages for the performance of them untill the Meeting of all the Nations at Niagra took place.

If you chearfully agree to these Proposals, they shall be considered as Preliminaries to a General Treaty with you, and the Army shall have Orders not to strike you.¹⁵²

The Senecas' agreement came at that very meeting, article by article. At a private meeting afterward, the Senecas explained that they would continue to have practical problems in delivering up the young men who had been involved in the Kanestio incident. Not only were they in the Ohio country, but they 'belonged' to someone over whom they had no control. The Senecas had avoided staining their own hands with the blood of these young men.

Article Seven of the document signed by the Senecas in April 1764 states: That should any Indian commit Murder, or rob any of His Maj'ty's subjects, he shall be immediately delivered up to be tried, and punished according to the equitable laws of England, and should any White man be guilty of the like crime towards the Indians, he shall be immediately tried and punished if guilty.

And the Senecas are never for the future to procure themselves satisfaction, otherwise than as before mentioned, but to lay all matters of complaint before Sir William Johnson, or His Maj'ty's Superintendent of Indian Affairs for the time being, and strictly to maintain and abide by the Covenant Chain of Friendship.¹⁵³

This term of the treaty contains the seeds of several later agreements, as it reflects several earlier ones. Indians would be handed over to British law only for offences against "His Majesty's Subjects". The implication is that the Senecas were not among those. There is a balance, a reciprocity here that harkens back to the 1664 Fort Albany Treaty, nearly a century earlier. The road for laying complaints ÿ to the superintendent general ÿ is also an echo of the earlier treaties, which maintained the executive-to-executive relationship while preventing private taking of revenge or `satisfaction'.

As time passed, the idea that the entire Confederacy had given the British jurisdiction over three matters ÿ robbery, murder and rape ÿ spread to other nations and communities. Gradually, too, the tradition became that this applied not only to situations where the victims were non-Aboriginal, but to all situations.

The concession must have been difficult. Capital punishment for robbery and murder was still common under British law, and was considered barbarous by the Haudenosaunee, who nevertheless continued to have problems with revenge-takings. British courts were not known for their fairness to Indian defendants. On the other hand, only those people who were "guilty" would be handed over for trial. It was a common sanction among the Haudenosaunee to banish people who had behaved very badly: it was consistent with Haudenosaunee beliefs to banish one who had killed, stolen or raped ÿ by turning him over to the British. As for rape, there are few references to it in the first two centuries of contact. It is said that men who were at war avoided sexual contact with women, since that might weaken them. Historically, it looks as if rape was the last of the "three matters" to be added. In the early years, it was not a problem...

In the same treaty, the Senecas gave the Crown a cession of a strip of land from Lake Ontario to Lake Erie, four miles on each side of the Niagara River. This was a forerunner of the

grant back to the Six Nations of the Grand River Territory, 20 years later, six miles on each side of that river.

The Seneca cession was limited, though. It was to be "only for the King's purposes", and the land was never to be patented to any private individual. While the King was to be empowered to build forts there, and to secure the land for military purposes, the land was also to remain Seneca hunting grounds. In this, the 1764 Niagara Strip resembled the Beaver Hunting Ground of the 1701 Nanfan Treaty.

Johnson wrote to Colden on 23 August 1764:

...The Senecas have likewise given up to His Majesty all the land from Lake Ontario to Lake Erie 4 Miles in Depth on each Side of the Strait for the use of the Several Garrisons which is more than Double the Quantity their Deputys agreed to last Spring, the Isleands (one of which is verry large) they insisted on my acceptance of, to show their esteem, & make my mind easy (as they called it) after the Delays I had met with.

The behaviour of the Senecas cannot fail, operateing Strongly on the Shawanese & Delawares, as well as all the Nations for they are a people of much power, & Influence over the rest...¹⁵⁴

The gift to Sir William Johnson of personally of the islands in the Niagara River was, by the laws of the day, invalid. In September 1764, Johnson was already involved in trying to get government affirmation of purchases he had made from the Mohawks. He did not need additional problems with Seneca lands. As a result, he converted the personal gift to himself into a gift or surrender to the King, something the Senecas had not intended and were unaware of.

On 1 September 1764, Johnson wrote Bouquet that:

I have settled Affairs with by much the Greater part of the Western Indians, and made peace with the Senecas who have delivered up Several Prisoners &c made a large Cession of Territory to His Majesty, of the land between Lakes Ontario, and Erie...¹⁵⁵

By September 16, Johnson had received notice that Colonel Bradstreet had made a treaty at Detroit with representatives of communities that had not gone to Niagara. Johnson wrote Gage that the Shawnees and Delawares were "only amusing Colonel Bradstreet by pretended overtures of peace". As for the Geneseo Senecas, he wrote that they "may be made more easy about the Carrying-Place".¹⁵⁶ On September 25, he suggested to Gage that this could be done by hiring the Senecas to carry over the goods and by giving them "something in presents".¹⁵⁷

Significance

The Treaty of Niagara reaffirmed the land rights confirmed in the *Royal Proclamation of 1763*.

The treaty was the formal commitment of "His Majesty's Bounty", the annual presents from the King that were delivered every summer until the 1850s.

The treaty contained a surrender of the Niagara Strip, which protected the Niagara Portage ÿ but "only for the King's purposes", not for any private use or occupation. The land on the Canadian side has been almost entirely patented to private individuals.

The treaty modified the Covenant Chain by providing the British courts with jurisdiction over Haudenosaunee people in cases of robbery and murder where the victims were non-Aboriginal.

The Treaty of Fort Stanwix, 1768

Background

The capitulation of the French, combined with Sir William Johnson's peacemaking work in North America, put an end to a century and a half of conflict:

The Treaty of Paris precipitated the largest mass human migration into the largest land area in history. The Western world doubled in area and mobilized globally to fill it all. The rush was massive and chaotic. Competing colonies raced to make the land theirs by placing homesteaders on it, according to the maps they had drawn. Entrepreneurial shippers filled boatloads with English and Germans and commanded their ships to sail inland until they ran aground in rivers like the Saco, Penobscot, Peedee and Apalachicola. Self-appointed developers herded immigrants onto muddy river banks and assigned them plots, in the hopes of becoming landlords by winning favor in Albany, Portsmouth and Savannah.¹⁵⁸

Now that the French threat had passed, the colonies no longer saw a need to restrict themselves to the eastern seaboard. Their burgeoning populations pressed westward.

The Royal Proclamation line had always been intended to be temporary. The words "for the time being" are not often seen as an important provision of the proclamation today, but in the 1760s they were an important indicator that a more permanent line between the British colonies and the Indian nations remained to be negotiated.

Negotiation of a more permanent line was necessary to prevent another war. Although people like Daniel Boone, striding bravely through the Cumberland Gap into Kentucky, where there was "an Injun behind ev'ry tree", became heroes to the colonists, they were lawbreakers to the British (by settling beyond the Royal Proclamation line) and interlopers to the Indian nations that still held the land.

The creation of the permanent line between the Haudenosaunee and the British took place at the Treaty of Fort Stanwix. The councils themselves took from October 22 to November 5,

with full preliminary ceremonies and a great deal of talking in the bushes, as collateral, informal discussions were called.

The fort overlooked a 15-mile-wide strip of land the Iroquois called De-o-waint-sta, or "Great Carrying Place", which served as the portage between the Mohawk River and Oneida Lake, a gateway to the west.¹⁵⁹

The records of the Treaty of Fort Stanwix are relatively complete, though, like other records of Sir William Johnson, they are somewhat self-serving. The transcript of the treaty is in the National Archives of Canada (Record Group 10, Volume 1826).

October 22

At 4 p.m. the chiefs of Conowarohares waited on Sir William, and paid him the usual compliments, which he returned, and after ordering them pipes, tobacco and a dram and paint for their warriors, they withdrew, after which several other sett did ye same.

The pipes were probably cheap white clay pipes, imported in great quantities from England. The pipes became an essential part of the annual presents in later years, and their fragility meant that many of them broke on the way to America. The "dram" was rum: while Johnson was on record as opposing liquor at Indian councils, a small drink in greeting was considered a part of hospitality. "The usual compliments, which he returned" may be a short form for the greetings, thanksgiving and condolences exchanged upon the arrival of a delegation to a major council.

This morning Bunt chief of the Onondagas, the speaker Ticawarunte, Ganaquiesia chief of the Oneidas, Senughsis and Nicholazera, Abraham chief of the Mohawks assembled at Sir William's quarters requesting to join him in the condolence for Onoghearidari, a chief of the Senecas who died lately. Sir William agreed to it as it would be a means of expediting the affairs of the Congress and settled matters with them accordingly.

This was an important delegation: chiefs of all the nations of the Confederacy, arranging a full condolence for a deceased *royaner*.

At 10 a.m. Gastrax with ten of his people brought up the rear, waited immediately on Sir William, and made several apologies for his long delay, such as old age, high water, the loss of a grandchild, to which he hoped would plead his excuse. Sir William thereupon told him the many inconveniences which their delay had occasioned, such as the extra-ordinary consumption of provisions which must be a heavy expense to the Government, and also the detaining of the several gentlemen from distant provinces at this late season of the year; for which he hoped they would make amends by their prudent and good conduct at this

congress. He then ordered him and his people provisions, some rum, tobacco, pipes and paint and then they parted.

Gaustrax was the leader of the Senecas of "Chenussio" or Geneseo, the largest Seneca village and the one least attached to the British. Johnson felt that Gaustrax had been a major contributor to the war against the British a few years earlier, and Gaustrax's lateness to this meeting was consistent with his late arrival at other councils, notably at Johnson Hall and Niagara in 1764. It is as if the Senecas, knowing they were not in Britain's good books, hung back until they were sure the rest of the Confederacy were present in sufficient numbers to protect them.

P.M.

The Cayuga chiefs waited on Sir William Johnson and paid him the usual compliments, and acquainted him that they were 48 in number now here, and that more of their nation were on the way after them. After Sir William returning the compliment and offering them pipes, tobacco, and paint etc. they went back to their encampment.

October 24th

At a treaty with Six Nations Shawanese and Delawares, Senecas of Ohio and dependants held at Fort Stanwix on Monday the 24th day of October,

Present:

The Honourable Sir William Johnson Baronet (Superintendent)

His Excellency William Franklin Esquire (Governor of New Jersey)

Thomas Walker Esquire (Commissioner from Colony of Virginia)

The Honourable Frederick Smith (Chief Justice of New Jersey)

Richard Peters and James Highman Esquire (Commissioners from the Province of Pennsylvania)

George Croghan and Daniel Claus Esquire (Dep. Agents of Indian Affairs)

Guy Johnson Esquire (Deputy Agent as Secretary) with sundry other gentlemen from different colonies.

John Butler Esquire, Mr. Andrew Montour & Philip Philips (Interpreters).

Indian Chiefs Present:

MOHAWKS

Abraham

Kanadagaya

Hendrick

Aroghiadeeha

Tekarihoga

Onohario

with 232 others

ONONDAGAS

The Bunt

Teyawarunti

Deaguanda

Tewashughti

Adiushkanoran

Degohadori

with 326 others

SENECAS

Gaushtax

Odongot

Sayenguaraghta

Ausquisahawe

Osourda

Wanugsissa

with 470 others

ONEIDAS

Ganaghquieson

CAYUGAS

Tagaia

TUSCARORAS

Saquareesera

Nicolazera Senughsis Gayrigeta Tagawaron Tayehase with 480 others	Skandarady Attawawna Kaingseraragarat Tohutiendantea with 410 others	Kanigot Tyaghawehe with 350 others
The Pheasant with 16 others	Benevissica with 410 others	Killbuck & Turtleheart with 27 others
Nanticokes Jemmy Nanticock with 138 others	Oughwagoes Adam Peter with 270 others	Canoyes Last night with 96 others
Chugnuts Adarundungas with 65 others	Minisink Indians total 90	Cagnawageys total 29
Tuteloos 38		

Total Indians: 3102

The whole of them being seated Mr. Walker delivered his power as Commissioner of Virginia to Sir William Johnson which was in the words following:

John Blair Esquire President of His Majesty's Co. & Commissioner in Chief from the Colony and Dominion of Virginia to Thomas Walker Esquire:

By virtue of the power and authority to me committed as President of His Majesty's Council, and commissioner in Chief in and over this Colony and Dominion of Virginia, I do hereby appoint you the said Thomas Walker to be Commissioner of Virginia to settle a boundary line between this colony and the Colonies of Pennsylvania and Maryland, and the several nations of Indians concerned. You are required to attend at the Congress to be held for that purpose under the direction of Sir William Johnson agreeable to His Majesty's instructions as you shall receive from me. Given under my hand this 17th day of June and in the eighth year of His Majesty's reign Anno Dom. 1768.

The colonial commissioners to the council presented their authority in the same way that a Haudenosaunee delegation would return the invitation wampum to the people who had called for the council. Once the participants had been properly identified and acknowledged, Johnson could proceed to the formal opening of the council. Occasionally in the record the word

'congress' is used. It is not a mistake y the Fort Stanwix Treaty was only eight years before the U.S. Declaration of Independence, and the creation of the Congress of the United States was a reflection of the coming together of sovereigns in a peaceful congress like the 1768 treaty. Indeed, many of the commissioners to Haudenosaunee councils and treaties later became influential in the creation of the United States.

Messrs. Highman & Peters likewise being admitted as Commissioners from Pennsylvania, Sir William, then by Abraham Chief of the Mohawks, addressed the Indians as follows:

I take you by the hand, and bid you all welcome to this place, where I have kindled a council fire on affairs of importance.

These words reflect the welcome that takes place at the woods' edge and the care with which the visitors are brought to the fire. At Onondaga, a permanent council fire of the Confederacy existed. Albany had been the permanent meeting place for councils between the Haudenosaunee and the English, until Sir William made his house, Fort Johnson, another permanent council fire.

The Governor of New Jersey & the Commissioners of Virginia & Pennsylvania do likewise welcome you here. Lieut. Governor Penn came hither to meet you, and waited a considerable time, but was at length by business obliged to return home, leaving these gentlemen where as Commissioners on behalf of Pennsylvania.

The Governor, and gentlemen Commissioners as well as myself having waited here for a month began to be impatient, nevertheless you see, that their desire to meet you prevailed over all other considerations, and induced them to stay. I hope therefore that you are now come fully prepared, & with hearts well inclined to the great business for which we are convened, and in order to prepare you the better for these purposes, I do now agreeable to the ancient custom established by our Forefathers, proceed to the Ceremony of Condolence usual on these occasions.

With this string of wampum I do on behalf of His Majesty, and all his subjects, wipe away the tears from your eyes, which you are constantly shedding for your late dead chiefs, and I clear your sight so that you may look cheerfully at your brethren who come from several of the Provinces to attend this general Congress, ordered by His Majesty to be held by me, in order to settle some necessary points between him and you.

With this string I clear the passage to your hearts, that you may speak cheerfully, and candidly, on the several subjects, which during the Congress will be treated of, as well as to remove all sorrow, and uneasiness from your minds.

With this string I wipe the blood of your friends from off of your Berths, that you may on your return rest with peace, and comfort on them.

Gave three Strings.

Brethren

I am greatly concerned for the many losses you have sustained in your several nations, since our last meeting, sincerely condole with you for them all.

A belt.

Brethren

With this belt I light up anew your several Council fires, that the Chiefs still remaining may upon all occasions sit comfortably by them, and consult upon the several matters which may come before them.

A belt.

Brethren

As I have by the former belts kindled up your several council fires, I do now by this Belt desire that you the Counsellors will duly assemble when the affairs of your nations require it, and then zealously apply yourself to every means which may tend to your peace and interest.

A belt.

Brethren

With this belt I dispel the darkness which for some time past has overspread your several countries by reason of your many and great losses, and now heartily wish you may enjoy a serene clear sky, so that you may be able to see your Brethren from the sun rising to the sun setting.

A belt.

Brethren

As I would deal with all people in their own way, and that your ancestors have from the earliest times directed and recommend the observation of a set of rules which they laid down for you to follow, I do now agreeable to that custom take of the clearest water, and therewith cleanse you inside from all filth, and everything which has given you concern.

A belt.

Brethren

I must desire that you Sachems & Councillors will as occasions may require, consult with the Chieftains of your young men, as they are in general of sense and experience, and you Chieftains and Warriors pay a due regard to your Sachems and Councillors, whose sage advice will always tend to your interest.

A belt.

Brethren

In performing these ceremonies I cannot omit this necessary part, which is, that as there are but two council fires for your Confederacy, the one at my house, the other at Onondaga, I must desire that you will always be ready to attend either of them when called upon by which means business will I hope always be attended and properly carried on for our mutual interest, and this I earnestly recommend to you all.

A belt.

Brethren

I must also desire you to be unanimous amongst yourselves, to reside in your respective countries, and not to think of scattering amongst other nations, as has been too much the practice for some years past, to the great weakening of your Confederacy.

A belt.

Brethren

I give you a pouch with a string of Wampum in it, which you are to make use of when you hear of the loss of any of your Confederacy, and rise up on such occasions without delay in order to condole for the same, I remove the concern thereby occasioned.

Three strings of Wampum.

Brethren

I now supply you with a torch or candle which you are to travel with by night on any extraordinary emergency, such as the approach of an enemy, in order to communicate the news with the utmost dispatch.

Three Strings.

The nations gave the Yo Hah at the proper place and the ceremony of condolence ended. Adjourned till next day.

Sir William Johnson's condolence was not perfect y or perhaps Guy Johnson's recording of it was imperfect. Key elements are missing: the clearing of the ears, the removal of thorns from the feet, the covering of the graves. Yet the majority of the elements of a Haudenosaunee condolence are covered, in a manner consistent with the Confederacy's laws (even though Johnson could not resist mixing a little business advice into even this preliminary part of the Council).

The central British political entity in the Covenant Chain was the colony of New York, which had no direct representative at the treaty. It is clear from his later statements that Sir William Johnson was actually representing New York as well as the King.

Canaquieson Chief of Oneida stood up & addressing all present, observed that the several American Governors had Indian names whereby they were known to the Indians, the Governor of New Jersey excepted, that he therefore thought it necessary to compliment him with a name, which he did by bestowing his own name upon him by the hand, and returned him thanks. Canaquieson proceeded to answer the Ceremony of Condolence as follows.

Brother

We congratulate you the Governor and the rest of the gentlemen on your safe arrival at this place, where we are heartily glad to meet you.

This was something Johnson had omitted the day before: giving thanks to the Creator for having protected everyone on their difficult journey to the Council.

Then after repeating what Sir William had said on the first strings yesterday he said that he did on their part wipe away the tears which their brothers the English were shedding for their losses, as also the blood of their friends, clearing their hearts that they might be able to attend the important affairs which were to be transacted.

Gave Three Strings.

Then repeated all that Sir William had said on the six black belts given at the Condolence for all which he returned thanks, and said:

Brother

We are much concerned at the losses you have met with since our last congress. By this Belt we sincerely condole with you upon them all.

A belt of nine rows.

Brother

We thank you for rekindling our several council fires whereby we are enabled to proceed to business as formerly, and we shall endeavour to make our meetings useful to the public.

A belt.

Brother

We thank you for the advice you give us to assemble freely when the public affairs require it and we assure you that we will direct our thoughts to the maintenance of peace and good order.

A belt.

Brother

We are much obliged to you for dispelling the darkness that surrounds our general nation on account of our many losses. This we take very kindly of you, as we are in great heaving for some time past and all our nations join in thanking you and performing the same on their part.

A belt.

Brother

We all express our thanks to you for the remembrance of our ancient ceremonies. We consider them as the cement of our union, and as you have cleansed running stream, and wash you inside thoroughly therewith cleansing you from all impurities.

A belt.

Brother

We esteem the advice you have given our chiefs to consult the young men as occasion may require, and your directions that they may on their parts pay due regard to us, and we shall observe what you have recommended to us.

A belt.

Brother

We are sensible that we have but two great council fires, the one at your house, the other at Onondaga. We shall always be ready to attend either for the public good, and we hope that you will continue to be ready to meet us often, as ye general peace requires.

A belt.

Brother

We give you thanks for recommending unanimity to us. We know that our living together is to our happiness and that it gives us strength. We will follow your advice and we recommend it to the English to be unanimous in all good works.

A belt.

Brother

We are happy to find you so observant of our ancient customs in giving us a string in a pouch to make use of when we have occasion to communicate our losses, and condole for them. We request that you will be equally observant on these matters, that so, our grief may be timely & properly removed.

A belt.

Brother

We also give you many thanks for supplying us with a torch to travel with on emergencies. We assure you that we shall make proper use of it & communicate every necessary intelligence to you. All the Six Nations with the Shawanese, Delawares and all their dependants, as far as to the great plains of Scioto, give you thanks for your good words, which were a cordial to them, and they all request that you will continue in the same good sentiments.

The ceremony of condolence being over, Sir William gave them a short exhortation, after which the chiefs arose & shook hands with Gov. Franklin and Conquieson addressing him said that as he had given him his own name, he hoped he would endeavour to give as much reputation to it amongst his own people, as he had done. The Governor returned them many thanks, then they adjourned till the following day.

The condolence had been returned in exactly the sequence in which it had been delivered. Guy Johnson's records show that the speaker not only responded point by point, but also that he "repeated what Sir William had said" at several junctures. Some of the matters in the condolence were more political than ceremonial: the advice to attend swiftly at councils called at Johnson Hall; the advice to gather together the scattered people. Other matters show Johnson's depth of knowledge of Haudenosaunee procedure: the invitation string in the pouch, for example, is an indication that he, on behalf of the Crown, was ready to be called on short notice; the torch is both a part of the traditional condolence (since it brings back the light) and a safe passage. Sir William Johnson had used six black belts in performing the condolence ÿ black, the colour of sorrow and mourning.

Two threads can be seen running through the ceremonies: the theme of the good mind, and the theme of peace. The condolence ceremony cleared all the paths of communication, "to remove all sorrow and uneasiness from your minds". The speaker for the Haudenosaunee equated "the public good" and "ye general peace" and noted that it was necessary for both parties to the relationship to meet and reaffirm their commitments frequently. Just as Johnson had made demands of the Confederacy during his condolence (to be unanimous, to be ready to meet at all times on short notice, to condole quickly, to be of good mind), the Confederacy's speaker said that he expected the same of Johnson and the British; the other undercurrents of this condolence are reciprocity and respect.

The Six Nations returned thanks in their own name and that of the Delawares and Shawnees. These nations (together with the Geneseo Senecas) had been at the centre of much of the fighting in the early 1760s, and their landholdings in the Ohio Valley were being discussed in the drawing of the boundary. While the Six Nations maintained that they had "made women" of

the Delawares (one version is that this was done because the Delawares attacked another nation within the Confederacy), the fact was that these nations had carried on war separate from the Haudenosaunee, and were 'under' the Confederacy only tenuously.

Conquieson's naming of the governor of New Jersey is not unique, nor is it a violation of Haudenosaunee law. There would remain only one Conquieson among the Haudenosaunee ÿ the white man carrying the name would do so 'among his own people'. The naming created a new relationship, between the Confederacy and the governor of New Jersey on an institutional level, and between the two men carrying the same name on a personal level. The records are sketchy on the details, but the naming is consistent with modern naming ceremonies ÿ the taking by the hand, the announcement in the presence of the entire community, and the handshaking afterward are all aspects of modern naming and adoption.

The preliminary ceremonies had taken two days. On the third day the substance of the council began. Since he had called for the council, Johnson spoke first. He began by renewing the Covenant Chain, in order to foster a momentum of agreement and good will by building on the existing union. The political union between the British and the Haudenosaunee created by the Covenant Chain was described by Johnson in terms that are parallel to the union of the nations within the Confederacy itself.

Just as within the Confederacy the people must keep the Great Law in their minds, Johnson said the Confederacy must keep the Covenant Chain "always before you", as the English did. In renewing the Chain, Johnson also set the matter in Haudenosaunee terms of time; the condolence had been "proof of the regard that we have for the customs of our ancestors", while the maintaining of the Chain would benefit future generations "as long as grass shall grow or water run". European transactions had no such long perspective.

Brothers

We have now mutually performed the ceremony of condolence, as a proof of the regard that we have for the customs of our ancestors, and of the concern we have for each others losses. I think it highly necessary in the next place, that we further strengthen the union between us and with that view, I do therefore by this belt, in the name of our father, the great king of England, and in behalf of all his American subjects, renew and confirm the Covenant Chain subsisting between us, strengthening and rubbing off any rust which it may have contracted, that it may appear bright to all nations, as a proof of our love and friendship, and I hope that all of you, sensible of the advantage of this union, will after the example of the English, have it always before you and keep it fast, that it may remain firm and unshaken so long as grass shall grow or water run.

Belt of the Covenant Chain
15 Rows with human figures at each end.

Brethren

I persuade myself that you are all sensible of the benefits which result from our strict union, and that having it always before your eyes, you will be careful in preserving it. This will protect you from all dangers, and secure to you the blessings of peace and the advantages of commerce with a people able to supply all your wants; and as this is a consideration of much importance which depends upon the friendship subsisting between us, and a free, open and safe communication for all our people too, I do now by this belt clear the rivers and paths throughout our respective countries, of all obstructions, removing trees out of the way so canoes can pass without danger, and that our people may travel securely by night or day without any risk or impediment. And I recommend it to you all to contribute to this good work and to assist in keeping it lasting and firm to the last posterity.

A large Belt.

This new belt opened trade and the free passage of people of both kinds to the country of the other. Johnson had put it in terms consistent with the opening of channels of communication in the condolence, removing all obstructions. The Haudenosaunee did not respond directly to this during the Fort Stanwix council, which became concentrated on the boundary questions instead.

Brethren

Harken to me who have now good words to speak to you, such as are for the benefit of your whole confederacy, and of your children unborn. You all remember that three years ago I signified to you His Majesty's desire to establish a boundary line between his people and yours, and that we then agreed together how some part of that line should run wherever the same came to be settled. You all, I am hopeful you recall the reasons I then gave you for making such a boundary, nevertheless I shall repeat them. You know Brethren, that the encroachment on your lands have always been one of the principal subjects of complaint, and that so far as it could be done, endeavours have not been wanting for your obtaining redress. It was a difficult task, generally unsuccessful, for although the provinces have bounds between each other there are no certain bounds between them and you and thereby not only several of our people, ignorant in Indian Affairs, have advanced too far into your country, but also many of your own people through the want of such a line, have been deceived in the sales they have made or in the limits they have set to our respective claims. This Brethren is a sad case, which has frequently given us much trouble and turned many of our heads, but it is likely to continue so until some bounds are agreed to & fixed upon & made public between us.

The great and the good King of England, my master, whose friendship and tender regard for your interests, I wish you may ever hold in remembrance, has amongst other instances of his goodness, after long deliberation on some means for your relief and for preventing further disputes concerning lands, at length resolved upon fixing a boundary line between his subjects and you, and that in such manner as shall be most agreeable to you. In consequence of which I have received his royal command to call you together for the establishment thereof, and after conferring with the Governments interested here upon you now see before you, the Governor of the Jerseys, the Commissioners on behalf of Asaregoa, the Governor of

Virginia, & Commissioners from Pennsylvania, in order to give you the strongest assurances on behalf of their respective governments of their resolutions to pay due regard to what shall now be entered into. The presence of so many great men will give a sanction to the transaction and cause the same to be known as far as the English name extends. His Majesty has directed me to give you a handsome proof of his generosity, proportioned to the nature and extent of what lands shall fall to him. Upon the whole I hope that your deliberations will be unanimous and your resolutions such as His Majesty may consider as proofs of your gratitude for all favours.

A fine new Belt.

The importance of this affair now before us requires the most serious attention. I will not burden you with any other subject till this is generally settled, and therefore we shall now adjourn that you may have time to think of it and come fully prepared to give an agreeable answer.

Johnson had not made a direct proposal as to the location of a boundary line ŷ he had only stated that a permanent boundary line was necessary and that the King was prepared to pay generous compensation for "what lands shall fall to him". He passed the burden of responding to this idea across the fire to the Haudenosaunee, expecting "an agreeable answer". Consensus on the location of the boundary would come slowly: first, the concept of a permanent boundary would have to be discussed and accepted; then it could be given more detail and form.

The relationship behind the council is frequently clarified: the parties have a "union", but the Haudenosaunee are on one side of the fire and the "King's subjects" are on the other, and a permanent line is to be drawn between the lands of each side. At no point is there a suggestion that the Haudenosaunee are to be obedient to the King of England.

Then Abraham, Chief of the Mohawks, after repeating what Sir William had said, addressed him.

Brother

We give you thanks for what you have said to us at this time. It is a weighty affair and we shall, agreeable to your desire, take it into our utmost serious consideration. We are glad that so many great men are assembled to bear witness of the transaction and we are now resolved to retire and consult upon a proper answer, given to all you have said, and as soon as we have agreed upon it we shall give you notice that we again assemble and make it known to you. We are all much obliged to you in having directed us to attend this great affair alone at this time, that our minds not be burdened or diverted from it, by attending to anything else.

Then Conquieson addressed the whole and desired that the several nations might look toward the Onondagas, who would appoint them a time and place for taking the matter into consideration. After they adjourned.

The *Kainerekowa* instructs the council to keep one matter before it at a time. In many instances, the Confederacy was unable to reach agreement on matters that had been proposed by the English because the people and the council had to be consulted in detail: at Fort Stanwix, with more than 3000 people in attendance, the problem was not geographical separation but rather the right of each person to speak his mind and be heard. The Onondagas, as firekeepers of the Haudenosaunee, were the ones who would direct the internal council that would take up the next two days.

On the afternoon of October 26, Sir William Johnson did do some specific business, though it was with the Nanticokes, an Algonkian people of the Chesapeake Bay area, who were not strictly a part of the Haudenosaunee and had no formal voice in the council. By 1768, the Nanticokes were living with the Haudenosaunee in New York and Pennsylvania, under the wing of the Wolf Clan of the Cayugas.

Sir William met the Nanticokes and explained to them the affair of the state of their lands which they approved, as also the price, which was 666 dollars and 2/3. Mr. Ogden then delivered an account of his expenses which amounted to £ 100, so that a balance of £ 166/2/3 curr. remained due by Ogden to the Indians which he is to pay [the Chief of the Nanticokes] as soon as may be and then they are to empower him to dispose of the remainder of their lands in Maryland.

It was the end of October, an unusual time for council. The harvest was done, and the hunting season was well under way. There was no snow yet, so travel was not difficult, but the cold presented an obstacle to a comfortable council.

October 27th.

Deiguande, Chieftain of the Onondagas, with 80 of them, arrived and came immediately to Sir William's quarters to pay him the usual compliment, which having returned, he ordered them paint, pipes, tobacco and rum and dismissed them. The weather being cold, Sir William clothed the old chiefs of every nation, for which they returned many thanks, and told them that he now enabled them to meet and consider about the great affair before them with pleasure, and they assured him that they endeavour to do everything for the best, and that with the utmost expedition. They told Sir William that they were yesterday employed in hearing the news brought by the Shawanese, and receiving their belts, that this day they would take into consideration the boundary line and seriously deliberate thereon, as they were determined that it should be binding.

The Delawares and Shawnees were an important factor in this deliberation: while they were not part of the Confederacy, they were linked to it, and their lands in the Ohio country were zones of friction that might be coveted by the colonies.

The private council of the Haudenosaunee continued until late in the afternoon of October 28, when the general council reconvened. The Haudenosaunee speaker told Johnson:
Brother

We have been some time deliberating on what you said concerning a boundary line between the English & us, and we are sensible that it could be for our mutual advantage, if it was not transgressed, but daily experience teaches us that we cannot have any great dependence on the white people and that they will forget their agreements for the sake of our lands, however, you have said so much upon it, that we are willing to believe more favourably in their cases.

Brother

You remember when we spoke last about this boundary, that we did not agree about the way it should run from Owegy. This is a point that must now be settled. For to what purpose would it be to draw a line between us and the country of Virginia and Pennsylvania while the way to towns lay open? We would therefore know what you intend to propose as a boundary to the Northward, that we must take it into consideration and we shall be glad that you explain it fully to us, that no mistake be made on either side.

The Confederacy had accepted the concept of a permanent boundary, though not without some scepticism about the trustworthiness of the white people. Now the burden of proposing a line was returned to Sir William Johnson. He answered:

Brother

I have attended to what you have said and I do admit that it is reasonable the line should be closed and I persuaded His Majesty will approve it. All these things I had in consideration before and I recommended the line to you generally at first, according to your own practice, and in order to render the whole clear and plain to you, I have prepared a map on which the country is drawn large and plain, which will enable us both to judge better of these matters. I therefor recommend it to you to send the chiefs of each nation to my quarters, where I shall lay the map before them and confer with them upon it.

Johnson was explicit: he had made a general proposal "according to your own practice" but was now prepared to be specific.

There are some who say that one aspect of the land frauds was that Indians could not read maps. The evidence does not support this. Rather, the historical record contains a number of maps produced by Indians ÿ showing lakes and rivers, portages and mountains ÿ and one document of the 1700s explains how some Senecas who had been show a map for the first time were at first surprised, but within half an hour were providing corrections and additional details.

The speaker then thanked Sir William for what he had said, which they all greatly approved of in consequence of which the chiefs of each nation came soon after to Sir William's quarters when he laid a map on the table, and after explaining to them the nature of his and the desires of the Government, he spoke as follows:

Brothers

Here is the map of which I spoke to you, where all that country which is the subject of our meeting, is faithfully laid down the line, here described between the Kanhawa River and Owegy, was what we spoke about three years ago, and as nothing further was then agreed upon, the King has not fixed a particular place to continue it to. It therefore remains for me to obtain a continuation of that line which will be secure to you, and advantageous to us, on which subject we now meet. I have likewise to observe to you that the piece of lands in the Susquehanna is very much desired by the Commissioners of Pennsylvania, and would be more advantageous to them than to you, besides as it is, or will be soon, partly surrounded by settlements, it will be a difficult land as it were behind them.

I would therefore propose that the bounds from Fort Pitt be continued up the Ohio to Moghulbughilum Creek thence up that creek and along the eight mile carrying place to the west branch of the Susquehanna, thence along that river to Allegany Ridge, thence along that ridge of mountains to the Cayuga branch and down the same to the great last branch of Susquehanna, from thence up that east branch to Owegy, from whence it can be run to the Delaware River which is very near it at that place, and for that part of this additional cession, which will fall to Mr. Penn, you will receive a large and handsome consideration over and besides His Majesty's royal bounty. And as to the continuation of that line from the Delaware, so as to close it, I must desire to hear what yourselves think and I expect to hear that your resolutions will be advantageous to us, and that you will make proper allowance for the increase of our people, whereby you will recommend yourselves to the King and become so pleasing to his subjects that it will greatly contribute to the due observance of the boundary line.

Johnson's instructions, including the desired boundary line, had come from Lord Shelburne, the secretary of state for the colonies. But the superintendent general of Indian affairs went beyond the King's orders in his demands. He saw the Wyoming Valley, northeast of the Allegheny Mountains, as a sore spot, and would insist on its surrender even though that was not part of his instructions.

The Susquehanna Valley, which had been coveted by Connecticut in 1763, was now sought by Pennsylvania, with more support from Sir William Johnson. His message to the Confederacy was: the more land you give up, the more secure you will be as a result and the less likely you are to offend us in council.

To which the speaker made the following answer:

Brother

We have hearkened to all that you have said and we thank you for your advice, which we believe to be well intended, but this is a great cession of land which will require much thought and attention and therefore we shall defer the consideration of it till tomorrow.

If the council had begun at four in the afternoon, it was likely dusk as the chiefs met Johnson in his quarters. An important council would not continue past sundown.

Brother

Before we answer you about the continuation of the line, we must say something to you concerning the extent of it to the Northward, which we find is no further than the Kanhawa River. Now, Brother, you, who know all our affairs, must be sensible that our rights go much further to the southward, and that we have a very good and clear title to the lands as far as the Cherokee River, which we cannot allow to be the right of any other Indians without doing wrong to our posterity, and acting unworthy of those warriors who fought for and conquered it. We therefore expect that this, our right, will be considered.

Brother

We are now to speak about continuing the line as you said from Delaware so as to close it, and you recommended to us to give you plenty of land for the people.

Brother

We were formerly generous and gave the whites land in many places when they were too poor to buy them. We have often had bad returns, nevertheless we would still act generously and mean to do so as much as we can without ruining our children.

Brother

You know that the country from Owegy quite to Oswego is full of towns and villages, and that it is very dear to us, so that we cannot be expected to part with what lies at our doors, besides, your people have already come too close to us. We therefore think that the line should run up the Delaware to the swamp, and from that run across to the Governor's (Crosby's) land and then go away to lake George, which we cannot but think a fair offer.

It has been suggested that the southern lands the speaker mentioned, down to the Cherokee River, were in fact not Haudenosaunee lands ÿ that the Confederacy was offering to give up its claim to these lands to inflate the impression that its concessions were generous. Johnson, in his reply, made tentative reference to this: it is worth remembering that he was the

imperial superintendent general of Indian affairs for the *northern* part of British North America and that the Cherokees and other 'southern' Indians came under another superintendency.

Brothers

I have heard what you have said and shall answer it. In the first place I acknowledge to have heard of your claim to the Southward before this time. The King does not deny your claim. He is not thoroughly acquainted with the extent of them, and finding that they may be liable to some dispute with the Southern Indians, he, being an enemy to strife, directed the line be run in the manner he thought least liable to it, but of this shall take further notice to you, having now to speak to you in answer to the course you have proposed for continuing the line from Delaware.

Brothers

I know very well how you are situated and it is not His Majesty's inclination to disturb you therein. At the same time you should consider what is reasonable on your parts, and that the lands are even patented further than you propose the line, and that the more people are confined, the more readily they will transgress the bounds, so that I must desire you to think of it and speak more favourably at our next meeting, till when I shall propose nothing farther, as I could not consistently propose any other line such as would bring us to Lake Ontario.

They then withdrew, taking with them a map in order to consider the affair in private. At night Sir William had a conference with the chiefs of the most influence, with whom he made use of every argument to bring matters to an agreeable issue.

Just as Sir William Johnson was twisting the arms of the chiefs in nighttime meetings, other forces were also at work: the New England colonies were not represented at the congress, but the Reverend Eleazar Wheelock sent an agent to block major land acquisitions by Pennsylvania. Wheelock had established a school that trained young Indian men (including several Haudenosaunee teachers and Thayendenegea, as well as one of Sir William Johnson's Mohawk sons), and he had established a significant following among the Oneidas.

Wheelock wanted Wyoming for the Congregationalist Church and feared the establishment of an Anglican bishopric in North America, funded by an Indian land cession. The agent was the Reverend Jacob W. Johnson, who

...had never conversed with Indians but held daily conversations with angels...Jacob's voices told him the persons who purported to be Seneca delegates were really painted 'Popish priests' come to murder all Protestant divines.¹⁶⁰

Eventually, Sir William had Jacob Johnson (no relative) removed, and Wheelock later sent exculpatory letters saying the man's behaviour was not authorized and that Jacob Johnson was a madman for whom Wheelock was not responsible.

Naturally, the Haudenosaunee wished to keep as much of their land as possible. All day long on October 29, the Confederacy's private council continued, and Sir William Johnson tried to influence the course of the deliberations through his own small meetings and conferences.

The Indians continued in council all the forenoon. The chiefs having given the belts to the warriors for their opinion concerning the boundary. Several of the Indians particularly the Oneidas, gave great obstruction to the business, and Sir William heard that the clergyman sent by W. Whalock from New England who had delivered a memorial on the 14th instant, praying that the line might not be extended far north or west, but reserved for the purposes of religion. I was very busy amongst the Indians for that purpose. Information was likewise given to Sir William this morning, that his clergyman had a conversation with Colonel Fitch, Mr. Peters, Fun and others told them that he had done what he could to oppose the cession of the territory, and he would continue to obstruct it to the utmost of his power, and that he had showed the Indians the folly of giving up their land, cautioned them against it before he left Oneida.

Sir William this day clothed several of the chiefs with whom he had conferences. The majority of them continued in council together to consider farther on the speeches made to them. For the afternoon the Onondaga & Mohawk chiefs, with several others, waited on Sir William with a message from the whole importing that as it was a very weighty and interesting affair, it required some further consideration. They therefore requested that he and the gentlemen with him, would wait with patience until Monday morning, when they hoped to be able to give an answer.

Sir William told them that he was becoming very impatient through the delays which were given to business, that the security of their lands depended on their dispatch and the freedom of the cession. He would, however, wait till Monday, when he hoped to hear from them something that might make amends for their delay.

At night several of the chiefs came to Sir William's quarters to let him know the purport of the intelligence, and belts received from the Shawanese, which was that according to the old agreement subsisting between the several Indian nations, they were all to unite and attack the English, as the latter became formidable too alarmed at the power and increase of the English, irritated at the ill treatment they had received, had expressed a desire to meet the rest to deliberate on what was to be done. The Spaniards and the French had for a long time urged them to take up arms and given them repeated assurances of a powerful assistance.

They had now called them to a meeting at the Mississippi near the mouth of Ohio for that purpose. They had sent many belts amongst the Indians, a greater part of whom were almost ready to set out, when Sir William's message came to them, and that they waited the event of the treaty at Fort Stanwix before they would come to any further resolution. With a variety of other particulars all tending to corroborate the former intelligence received by Sir William.

The French were not gone from North America; they were still in Louisiana and in communication with their indigenous allies via the Mississippi River. The Delawares and Shawnees were perhaps the people most alienated from the English, since they had been forced from their homelands and were under pressure once again. The message the Confederacy was giving Sir William Johnson was not simply "intelligence". It was a warning that he should not press too hard, that stiff demands at Fort Stanwix could lead to stiff and dangerous resistance. What happened at Fort Stanwix would determine what happened in the councils on the Mississippi.

The Haudenosaunee were prepared to blame the Shawnees for the war belts, though the war of five years earlier had involved the Senecas as well, and it would be surprising if the Senecas were not once again leaning toward military action. The Haudenosaunee had spent a century maintaining a balance between the French and the English, playing each European power against the other. Now that the English were dominant in the territory, it might take the united forces of the Indian nations to restore a new balance.

The nations that were to meet at the Mississippi were the indigenous side of the Covenant Chain – a union that was to come together again in the resistance to the United States invasion of the Ohio Country in the 1790s and in the alliance with the British in the War of 1812.

On October 30, Guy Johnson noted that there were 3000 Indians present at Fort Stanwix. In the morning the Indians met again in council, when the warriors came and laid before their sachems, the result of their deliberations the day before concerning the north part of the line, who directed four of their chiefs viz. Tyocarunte, Ganaghquieson, Tyarhansera and Sagawaron, to wait on Sir William and communicate the same, which was that the line should run from Oriskany to Tianaderah and down that river to the Susquehanna thence in a straight line to the hills and so to the Delaware branch and down the same to Owegy, thence down the Susquehanna to Shamokin, and along the west branch of that river to Killaning, declaring, that they would not part with any lands to the westward of Oriskany or down towards Wyoming, or the great islands, as they reserved that part of the country for their dependants.

But Sir William finding that some busy persons had been alarming those nations most immediately affected by the line, and that many others could be induced to settle it more advantageously, he, in a long and warm speech to the chiefs, showed them that the line was not proposed to injure them, but that for a handsome consideration it was intended to obtain a cession of as much land as would give the people more room on the frontiers, at the same time ascertaining the boundary line between them, that with the help of proper laws it would interfere with granted above sixty years ago to some gent. at New York, the Indian deed for which he had before shown them.

These gentlemen and others concerned would have reason to blame him for agreeing to lines so injurious to their rights, and that the continuance of a line

from thence in a manner that they proposed, would in many places approach so near to our settlements, as to render its duration very uncertain from the great increase of our people whereas by giving them more room the boundary would be well known and secured by laws before there would be occasion to invade it.

Was this true? The Haudenosaunee had received similar assurances from Sir William in 1763, when the King issued the Royal Proclamation, and again when they made a preliminary boundary in 1765, and they had trusted his words then. Up and down the Appalachian watershed, settlers poured through the gaps, into land that had never been purchased by the Crown. The proclamation line was porous and temporary; would a permanent line be any more secure?

Johnson continued to struggle to persuade the Haudenosaunee:

People would act with extreme caution and rather go to other unsettled parts than attempt to transgress an agreement so well defended.

It had been long in agitation and was now, according to their own defines, ordered by His Majesty to be settled, as the surest means of putting an end to land disputes, and that if they rejected this opportunity now offered to them, or the line so as to interfere with grants, or approach almost to our settlements, he could not see that anything more effectual could thereafter proposed for preventing encroachments, and the Crown after being already at a heavy expense on this occasion, must find its good intentions and reasonable proposals totally defeated.

He therefore recommended it to them to consider the point further, and as His Majesty's country and that of the colonies would be proportioned to the extent of their cession, a rule which he should observe upon this occasion, he hoped for a more favourable answer, as it would be more for their immediate advantage and would tend to the better observance of the line hereafter.

Johnson was following strict but stern council etiquette: he was not rejecting their proposals outright, but was asking once again that they be reconsidered. Unlike the United States representatives in the 1784 Treaty of Fort Stanwix, 16 years later, he did not escalate his demands; he held firm to what he had stated in his original proposal. This, too, was permissible in council ÿ though it was not the slow movement toward consensus that the Haudenosaunee wanted and were expecting.

After these several courses laid down on the draft they agreed to take the map back to council for further consideration, promising to use their interests with the rest for a more favourable line, then withdrew. Sir William then assuring them that they should be particularly rewarded for their services and endeavours to show the Indians the reasonableness of the requisition.

Was this an offer of a bribe? Yes, probably it was.

At night Tagawion returned with the map to Sir William, informed him that they were debating on the subject but much divided in opinion, and added that he

thought his nation disagreeably circumstanced, the rest having thrown so much of the transaction to the northward on their hands, nevertheless he would do all he could to obtain a more favourable settlement.

After which Sir William had many other private conferences which occupied a great part of the night, in particular six chiefs of the Oneidas came to him at 9 o'clock at night and said that they very much doubted the validity of the purchase above Oriscany but through Sir William's solicitations, and to show their good dispositions towards completing the work in hand, they would agree that the line should run from Susquehanna across at Fort Newport near Fort Stanwix where the boats are launched, and from thence to the northwest corner of the late purchase of Lord Holland and others.

Sir William thanked them for the amendment but told them that he could not think it would answer, that it did not even include the carrying place and therefore desired them again to consider the matter, and that as they would extend it much further to the westward without any sensible inconvenience he expected they would do so for which their nation over and besides the rest should have 500 dollars and a handsome present for each of the chiefs. They promised to use their endeavours for that purpose and withdrew.

Another bribe offered, and perhaps a new tactic: to deal with each nation in a separate manner, with separate special promises and rewards. The Oneidas had been the most opposed to any cession; now they were acting as brokers and carriers of messages to Johnson.

The last day of October 1768 was the fifth day of internal councils for the Haudenosaunee. The superintendent general and the "gentlemen of the colonies" could only wait at the periphery, hold private councils to influence the chiefs, and express their impatience.

10 a.m.

The Oneidas again returned to Sir William's quarters and told him that their people positively refused to agree to any other line than they had proposed the last night and, that as game began to grow scarce in that neighbourhood, they had come to a resolution to keep the carrying place to Canada Creek in their hands as by keeping horses and carriages there, as they proposed to do for the future to carry over traders' goods, they might earn somewhat for the support of their families.

Sir William answered that he thought it somewhat extraordinary that they should enter into such a resolution on the sudden, having totally neglected carrying goods for so many years, that if they give it up they might still reap benefits from a high road, open to all, provided they had horses and carriages, as reasonable as other people, but that their keeping it to themselves would occasion many disputes between them and the white people, which His Majesty was desirous of preventing, and had fallen on the boundary as the means of doing so.

They should not stop at what was but a trifle to them, though so advantageous and necessary to the English, and that he wished they would act so as to show their love and respect for the King and their friendship for his subjects.

The Governor and the people of New York had reason to expect much more from them and they had left it to him to urge these matters to them, as thinking Commissioners unnecessary when he was to conduct the congress, he hoped that they would be a farther consideration and desired them to act a part proper on the occasion.

They thereupon withdrew to consult further upon it. They shortly after returned and said that Sir William was too desirous to have the bounds further extended. The last and only thing they would say was that, provided they were allowed an equal use of the carrying place with the English and six hundred dollars paid to the three tribes over and besides the several fees to be given in private, they would extend the line to Canada Creek.

Sir William was urging that he personally not be placed in a difficult position in his dealings with New York, which had trusted him to speak for it. In fact, the Haudenosaunee had no reason to trust New York, which had always been covetous of their land, and Johnson was in a much better position than New York to persuade the Confederacy to cede more.

By now he had rejected four proposals from the Confederacy, each one cutting deeper into the Haudenosaunee heartland. Johnson sensed that the situation was coming close to a breaking point.

Sir William, finding it best not to urge this matter farther, told them that he acquiesced for the present, leaving it to be confirmed or rejected by His Majesty. They answered that they considered and unanimously resolved that whatever boundary line was now agreed to should be forever binding and conclusive on both sides. No province might thereafter be necessary, should be with the King or those directed by him to treat with them. A messenger then arrived to call them to attend the consultation about the rest of the line.

At night Canaghquieson came to inform Sir William that they had further considered the general subject of the line and would send a chief and a warrior from each nation with their final resolves, which they would deliver in public the next day. They accordingly came to Sir William's quarters when Sir William told them that he hoped they had come with such an answer as would be pleasing to all parties.

The map being laid before them, they observed that what they had to say was the final resolves of all the nations, then said at the same time tracing it on the map that they would, agreeable to their several claims, begin the line at the mouth of the Cherokee River, then go along the south side of the Ohio to Kittaning, thence down the same to Bald Eagle Creek, thence across the river to Tiadaghta Creek below the Great Island, thence by a straight line to Burnetts Hills and along the same to the mouth of Awandon Creek on the west side of the east branch of the Susquehanna, then up the stream thereof to Owegy, thence eastward to the Delaware River, thence up the stream thereof till they come opposite the mouth of Tianaderah Creek emptying into Susquehanna, thence up the west side of the Tianaderah, to the head of its westerly branch, and from thence to the mouth of Canada Creek on Wood Creek.

This they delivered as their final determination, subject to several conditions, for the security of their possessions and engagements entered into and for that part which would fall within Mr. Penn's government, they insisted on having 10,000 dollars. Sir William told them he would take the matter into consideration and would assemble them all tomorrow and, after parting, conferred with the commissioners of Pennsylvania, concerning on behalf of the proprietors.

On the following morning, the formal reply was given:

Being all seated they desired to know whether Sir William was prepared to hear them, and on being answered in the affirmative, the speaker stood up and spoke as follows:

Brother

We are hopeful that you will not take it amiss that we have delayed till now our public answer upon the subjects you recommended to us. This was a great and weighty matter requiring long deliberation, and should not be undertaken lightly. We have accordingly considered it, and are now come to give you our final resolutions, thereon to which we beg your attention.

Brother

We remember that on our first meeting with you, when you came with your ships, we kindly received you, entertained you, entered into an alliance with you, though we were then great and numerous, and your people inconsiderable and weak. We know that we entered into a covenant chain of bark with you, and fastened your ship therewith, but being apprehensive the bark might break and your ship be lost, we made one of iron and held it fast, that it should not slip from us; perceiving that the former chain was liable to rust, we made one of silver to guard against it.

Then, Brother, you arose and renewed that chain which began to look dull, and have for many years taken care of our affairs, by the command of the great King, and you by our labours, have polished that chain so that it has looked bright, and is become known to all nations, for all which we shall ever regard you and we are thankful to you in having taken such care of these great affairs, of which we are always mindful, and we do now on our parts, renew and strengthen the Covenant Chain, by which we will abide, so long as you shall preserve it strong and bright on your part.

A belt.

Brother

We are glad that you have opened the rivers and cleared the roads, as it is so necessary to us both. We were promised when the war was over, that we should have trade in plenty, goods cheap, and honest men to deal with us, and that we should have proper persons to manage our affairs. We hope that these promises will never be forgot, but that they will be fully performed, so as that we shall feel the benefits of an intercourse between us, yet the roads and waters may be free and open to us all to go to the southward, and to our friends there with whom we are now at peace, to visit us.

We hope that we may have proper persons to manage all our affairs, and finally amongst us to mend our arms and implements, and in the expectation of all

this, we do now on our part, open the roads and waters and promise to assist in keeping them so.

A belt.

These were the first two issues that Sir William Johnson had mentioned in council. The speaker was extending them as well as answering them.

Then after repeating all that had been said to them concerning the line they proceeded.

Brother

We have long considered this proposal for a boundary line between us and we think it will be of good consequence if you, on your parts, pay due regards to it and we, in consequence thereof, have had sundry meetings amongst ourselves and with you, and from all that you have said to us thereon, we have at length come to a final resolution concerning it and we hope that what is now agreed upon shall be inviolably observed on your parts, as we are determined it shall be on ours, and that no further attempts will be made on our lands, but that this line be considered as final. We do now agree to the line we have marked up on your map now laid before you on certain conditions on which we have spoken and will say more. We desire that one article of this our agreement, to be that none of the provinces or their people shall attempt to invade it under colour of any old deeds or other pretences whatsoever, for in many of these things, we have been imposed upon and therefore disclaim them all.

Which bounds now agreed to, we begin on the Ohio on the mouth of the Cherokee River which is our just right and from thence we give up the south side of the Ohio to Kittaning, above Fort Pitt, from thence a direct line to the nearest fort of the west branch of Susquehanna, thence through the Allegany Mountains along the south side of the said west branch till we come opposite the mouth of a creek called Tiadaghton, thence across the west branch and along the east side of that creek and along the ridge of Burnetts Hills to a creek called Awandon, thence down the same to the east branch of Susquehanna and across the same and up the east side of that river to Owegy, from thence eastward to Delaware River and up that river to opposite where Tianaderha falls into Susquehanna, thence to Tianaderha and up the west side thereof and its west branch to the head thereof, thence by a straight line to the mouth of Canada Creek where it empties itself into Wood Creek at the end of the long carrying place beyond Fort Stanwix. And this we declare to be our final resolve, and we expect that the conditions of this our grant will be observed.

A belt.

Brother

Now as we have made so large a cession to the King of such a valuable and extensive country, we do expect it as the terms of our agreements, that strict regard be paid to all our reasonable desires. We do now, in this case, on behalf and in the name of all the warriors of every nation, condition that our warriors shall have the liberty of hunting throughout the country as they have no other means of subsistence, and as your people have not the same occasions or

inclinations, that they be restricted from hunting on our side of the line to prevent contention between us.

A belt.

Brother

By this belt we address ourselves to the great King of England, through you, our superintendent, in the names and on behalf of all the Six Nations, Shawanese, Delawares, and all others, our friends, allies and dependants.

We now tell the King that we have given him a great and valuable country, and we know that what we shall now get for it must be far short of its value. We make it a condition of this our agreement concerning the line, that His Majesty will not forget or neglect to show us his favour, or suffer the chain to contract rust, but that he will direct those who have the management of our affairs to be punctual in renewing our ancient agreement.

As the Mohawks are now within the line, and that as these people are the true old heads of the whole Confederacy, their several villages and all the lands they occupy unpatented, about them as also the residency of any others of our Confederacy affected by this cession, shall be considered as their sole property and at their disposal both now, and so long as the sun shines, and that all grants or engagements they have now or lately entered into, shall be considered as independent of this boundary so that they who have so little left, may not lose the benefit of the sale of it, but that the people with whom they agreed, may have the land.

We likewise farther condition on behalf of all the Six Nations and of all our friends and nephews, our dependants, that as we have experienced how difficult it is to get justice, or to make our complaints known, and that it is not in the power of our superintendent to take care of our affairs in a proper manner. We all know the want of this and make it a point of great consequence on which this, our present agreement, is to depend, and without which affairs will go wrong and our heads be turned.

Brother

We likewise desire that as we have now given up a great deal of lands within the bound that Mr. Penn claimed a right of buying, he may, in consequence of the agreements now entered into between us, enjoy what we have given him within the limits and as we know that Lydius of Albany did, in the name of several persons, lay claim to lands in Pennsylvania which we know to be unjust, and that the deeds he pretends a right to, we invalid, we expect that no regards will be paid to them or any such claims now or hereafter, as we have fairly sold them to the proprietors of Pennsylvania, to whom alone we shall sell lands within that province we shall now give them a deed for that and other lands there. In order to show that we love justice, we expect that the traders that have suffered by some of our dependents in the war five years ago, may have a grant for the lands we now give them down the Ohio, as a satisfaction for their losses. As our friend Mr. Croghan long ago got a deed for lands from us, which may now be taken into Mr. Penn's land; should it so happen we request that he may be considered and get as much from the King somewhere else as he fairly bought them. And as we have given enough to show our love for the King, and make his people easy, in the next

place we expect that no old claims which we disavow or new encroachments may be allowed.

Brother

We have now gone through this matter and we have shown ourselves ready to give the King whatever we could reasonably spare. We on our parts express our regards for him and we hope for his favour in return. Our words are strong and our resolutions firm and we expect that our requests will be complied with, in as much as we have so generously complied with all that has been desired of us, as far as was consistent with our existence.

A belt.

Sir William then thanked them for what they had said and assured them that it should all be considered and that he would meet them tomorrow on these and other subjects.

The Haudenosaunee position was a careful balance, but far from a final agreement. Some of the conditions remain relevant today as elements of a treaty between the Crown and the Confederacy ÿ since both the Crown and the Haudenosaunee have continued to exist. The tone of the conditions was that of respect in council ÿ not "we demand", but rather "we hope", "we expect". Nevertheless, these were clear conditions, and if they were not rejected they would be understood as having been accepted by the Crown.

The roads were opened on the condition that the Haudenosaunee would also have free trade and free passage, especially to the south through the colonies ÿ and that the people to the south, probably the Cherokees, would also have free passage.

Another condition was "proper persons to manage all our affairs", as well as blacksmiths and gunsmiths.

Another condition was "the liberty of hunting throughout the country" ÿ presumably on both sides of the line ÿ and also that the English would be restricted from hunting on "our side of the line". This was a departure from the dish with one spoon and a variation of the understandings achieved in the 1701 Nanfan Treaty. It meant exclusive Haudenosaunee hunting rights in the remaining territory of the Confederacy and shared hunting rights in the ceded areas.

The King was expected to direct the punctual renewal of the Covenant Chain, as well as to be generous. It is clear that the Confederacy's priority in this agreement was not the compensation in money, but the protection of the land in a strong and final way.

The Mohawks were now east of the permanent line; a condition was that they would be confirmed in their possession of their villages and cultivated lands and that any compensation owing to them from previous agreements would still be paid.

They asked, also, that the powers of the superintendent general be increased, to make it less difficult "to get justice".

It appears that the other "gentlemen" who were present also did their share of lobbying and meeting with the chiefs, since the Haudenosaunee insisted that Pennsylvania and not private New York interests should get a significant part of the land. George Croghan, one of the interpreters, ended up with a confirmed grant of 100,000 acres between Lake Otsego and the Unadilla River.

The key issue was finality in respect of land. The territory west of the line would be confirmed as Haudenosaunee land in a way that it would never be taken or even asked for again, and the Crown would strongly enforce the treaty against any encroachments and would strike down any claims west of the line.

The council adjourned so Sir William could prepare the formal documents. The day being very rainy, the Indians did not meet in council. Sir William clothed a number of the chiefs and chieftains of the several nations and was this day busy in preparing the necessary papers for the next meeting.

P.M.

Sir William met the Mohawks and other chiefs and endeavoured to persuade them to extend the line more favourably to the west of New York, observing that as they could not agree to extend it further down the Wood Creek on the south side he expected that they would let it run below the Canada Creek on the north side of Wood Creek, but finding them determined and that they were for closing it at the point of the last purchase, near the Mohawk River, he told them that he would stop at the mouth of the Canada Creek and refer the remainder to His Majesty's determination. Sir William then acquainted the chiefs that His Excellency the Commander in Chief purposed to evacuate Fort Ontario or put it on the same footing with Fort Stanwix, as a measure that would be agreeable to them and that as for any forts which it was necessary still to keep up, they could be no inconvenience to them.

They answered that they had nothing to complain of against the keeping up of Fort Ontario on the footing it was for sometime past, nor would they make any difficulty about the others, whilst they were civilly treated at them, and no encroachments were made on their lands, which Sir William promised they should be duly attended to.

November 3rd

This day was employed partly in preparing the several speeches and deed of cession.

November 3rd P.M.

A deputation from the Aughquissasne Indians came to Sir William's quarters, accompanied by the Oneida chiefs, whose interposition with him had been requested to accommodate the unhappy difference which had gone such a length in their village, that their priest and many of their people would likely be murdered.

A belt.

Sir William answered them that he had been extremely concerned to hear of that difference amongst themselves, that in consequence thereof, he had directed Col. Claus the Deputy Agent for that quarter, to enquire into the particulars and to put a stop to it, and that he now had the pleasure to acquaint them, that agreeable to his orders the whole was happily terminated before Col. Claus had left Montreal, which account gave them all great satisfaction.

A belt.

The formal Congress resumed on November 4:

The Onondaga speaker performed the ceremony of condolence for a loss sustained by the Oneidas, after which Sir William addressed the several nations as follows.

Brothers

After having duly weighed your speech and the agreement you have at length come to, I am pleased to find that you have so far dispatched business, notwithstanding the severity of the approaching season and the distance which many of us are from our dwellings, I gave you all the time necessary for bringing this weighty affair to a deliberate conclusion.

Brothers

I am glad to find that you remember your old agreement so particularly and I wish you may always observe them, and with that view I should have been glad to have heard you confine your answer to my belt for keeping the roads open as being a matter so highly essential to yourselves in keeping a free and safe intercourse between us.

The promises formerly made you of the happy change which would be produced to you by the reduction of Canada, you have in many respects experienced as far as it was in the power of His Majesty's servants. You likewise have had a considerable number of traders amongst you, which has so far lowered the prices of goods, that several of them have become bankrupt and at many of the posts, they are to be bought at as low rates, as at our towns notwithstanding the distance and expense of transportation.

I am now to advise you that it has been judged advisable by the government to commit that part of business regarding the management of the Indian trade, to the care and charge of the several colonies, who I make no doubt will endeavour to do everything they can for your interests.

A belt.

Brothers

You have of late made several complaints of the ill behaviour of some people on the frontiers, those that regarded Pennsylvania. I have reason to think I have finally settled and gave a handsome portion of the country of that province to you, upon the occasion and, in consequence of, the information I gave the Governor of

Virginia, thereon his assembly passed several votes in your favour, which are now before you whilst the Governor has sent his assurance of their good faith and friendship for you, and of their intentions to prevent you from being ill treated.

[Here showed and explained the resolves of the House of Burgesses, likewise a paper under the Great Seal of the province of Virginia authorizing Sir William to give them these favourable assurances, and then proceeded].

Brothers

I hope all this will convince you that they are your friends, and as further proof of it the gentlemen Commissioners from these provinces will, at their return, take proper measure for your future good treatments, and for the due observance of the boundary line by proper laws for these purposes, according to His Majesty's desire which shall recommend to their remembrance.

A belt.

Brothers

I am glad that the boundary line is at length agreed upon, and as I have great reason to think that it will be duly observed by the English, I recommend it to you to preserve it carefully in remembrance, and to explain it fully to those who are absent, and to teach it to your children.

This boundary is intended to be lasting, but should it be found necessary by His Majesty or yourselves, to make any future additions or alterations, he will treat you by those who have the management of your affairs and never permit any private application. This I have received in command to tell you.

As to the several reservations you make in your cession to the King, and the other points you recommend, you may be assured that His Majesty shall be made acquainted with them, as I shall transmit a copy of our transactions at this place and I may venture to assure you that they will meet with all possible regard from a Prince of his clemency and justice. I now give you this belt to strengthen, ratify and confirm the boundary and all transactions necessary thereto.

A belt.

Brother

The speech which you particularly addressed to his Majesty, shall be faithfully transmitted to him with the rest of your proceedings. I have attended to the whole of it and I persuade myself that every reasonable article will be taken proper notice of, and that he will take such measures as to him shall seem best for your benefit and for the rendering you justice. I likewise consider your good intentions towards the traders who sustained the losses, and your desire to fulfil all other engagements, as instances of your integrity. I wish that you may, on your parts, carefully remember and faithfully observe the engagements which you have now, as well as formerly, entered into with the English, and that you may every day grow more sensible how much it is your interest to do so. And I once more exhort you all to be strong and steadfast, to keep a firm hold of the Covenant Chain and never to give attention or credit to people who, under the mask of friendship, should come amongst you with stories, which may tend to weaken your attachment to us, but to keep your eyes steadfastly on those whose business and inclination it is to tell you truth and make your minds easy.

A belt.

Brother the Shawanese and Delawares

I now particularly address you as you live far to the southward and may at some times be disturbed by bad men who, by taking advantage of your distance from us, the heads of the Confederacy, may by belts, messages or stories, invented to create mischief, impose on many of your people and through their means, mislead other nations.

I am not ignorant that this has happened, and I have good intelligence that there are those who have been lately deceiving some of you with stories of revolutions in American affairs, and of French fleets and armies with which you have been so often deceived that I wonder any of your people should credit them.

Be assured, Brothers, that those who were able to conquer Canada and drive their enemies out of this country, will always have it in their power to defeat their future projects should they be weak enough to make any future attempts to regain what they have lost. I do therefore exhort you by this belt to pay no regard to such deceivers for the future, but to continue to live peaceably and let me know who they be, and from whence who attempts to impose on you. I likewise desire you to remember all your engagements with the English. To observe the treaty of peace with the Cherokees. To avoid any irregularities on the frontiers. To pay due regard to the boundary line now made, and to make all your people acquainted with it and to keep the roads and waters open and free, whereby you will enjoy the benefits of peace and commerce, the esteem of the King of Great Britain and the friendship of all his subjects, and I desire that you will remember and often repeat my words.

A belt.

Though Sir William Johnson was indirectly threatening the Shawnees and Delawares (since he believed the stories about the planned meeting at the Mississippi), his words were oddly prophetic. The American Revolution, a few years later, saw French armies and fleets arrive, not as allies of the Indian nations, but as allies of the revolutionaries. Sir William himself did not live to see this; he died in council in 1775, urging the Haudenosaunee to adhere firmly to the British as the high winds of war were rising.

Brothers, the Indians of Canada,

With this belt I recommend it to you to remember what has been done at this, and all former treaties, and to make the same public amongst all your people on your return to Canada, recommending it to them to continue to promote peace and to discountenance all evil reports and idle stories which may be propagated by ignorant or bad men, and to communicate all useful intelligence to me from time to time, as proof of your regard for your engagements and as a means of recommending yourselves to the esteem of the King and people of England.

Brothers of the Several nations here assembled

The Governor of New Jersey, being called home by some urgent business, has desired me to inform you that he cannot think of taking leave of his good Brethren, the Six United Nations, without once more expressing the happiness he

has received from finding that they entertain such right sentiments of his justice and that, of the good people under his Government, he has himself, the highest sense of the value and importance of the name conferred upon him, and he doubts not but future Governors and the chief men and inhabitants of New Jersey will ever be careful to deserve so distinguished a title among the Indian nations, as that of Sagorihwhioughstha or The Great Arbiter or Doer of Justice.

The Governor has likewise requested me to remind you that a treaty held at Easton in the year 1758, the Delawares and other Indians who had any pretensions of land in New Jersey, did for a valuable consideration, give a general release for all the lands in that province except such parts as were reserved by law for the use of those Indians who chose to live under the protection of the Government. This was done in public council in the presence of many of the Six Nations and the Governor would therefore be glad that at this congress (where are present so many chiefs of the different nations belonging to the Confederacy, and when a general boundary line between the subjects of His Brittanic Majesty in America and their brethren, the Indians is to be settled, you would do the Province of New Jersey the justice to confirm the said release, by acknowledging in public that the province is entirely free from Indian claims, except as before mentioned. His reason for this request is that the matter may be held in remembrance by all the nations present, and by that means be more certainly handed down to posterity.

A belt.

Governor Franklin had not come to reaffirm and repolish the Covenant Chain; his request to be granted a release from all Indian claims in New Jersey came as a postscript to the drawing of the permanent boundary line, and the nations that had formerly lived in New Jersey were present only as dependents of the Haudenosaunee.

Brothers

In consequence of a belt I just received from the Senecas, which I formerly gave them to bind them together, I do now think it highly necessary with this belt to bind you all together, recommending it to you all to avoid wandering and to continue at your several dwellings, after the manner of your ancestors.

I do this principally for your own advantage, convinced that you will be weakened by rambling, and that your council & opinions not suffer yourselves to be led away with any imaginary prospects of advantage by scattering, but continue by this belt in your several places of abode following your commerce and all peaceable pursuits.

A large black belt.

Brothers

The business of the treaty being so far happily brought to a conclusion, it only remains that you execute the deeds of cession to His Majesty, and whatever else is necessary on this occasion, after which I shall deliver over to your people the large present, together with the sum of money, the amounts and value of which I have already explained to you. The Governor and Gentlemen Commissioners from the several Governments, are sensible of your good conduct during the

treaty, and I shall recommend what is necessary for them in your presence for its future security.

On the part of New York, I take it upon myself to promise you that everything necessary thereto shall be recommended, and I make no doubt agreed to by the legislature of that province, heartily wishing you the same, may on your parts be carefully observed and that no dispute may hereafter arise concerning any parts of the cession you have made, or the engagements you have entered into at this time.

The land aspects of the agreement ÿ the cession ÿ were to be placed in a written document. The promises made by Sir William Johnson to the Haudenosaunee were not in writing. They were part of the record of the council, and they were part of the memory of the council, corroborated on wampum belts. Trust, based on the "ancient" Covenant Chain relationship, led the Haudenosaunee to believe that their demands would be met. While Johnson indicated that the legislature had to consent to those provisions, he was clear that this was expected. The niceties of British contract law were not part of the history of the relationship or of this agreement.

He then addressed the Governor of New Jersey and the Commissioners:

Gentlemen

Agreeable to His Majesty's intentions signified to me by the Secretary of State and for the satisfaction of the several provinces to enact the most effectual laws for the due observance of this line and the preventing all future encroachments, as the expectation thereof, and the reliance the Indians have on your justice from the assurances I gave them on that head, have proved great inducements to the settlement of the line now established between the colonies and them.

To this the Governor and Commissioners answered that nothing should be wanting on their parts to the obtaining such security for the boundary, as was deemed necessary on their return to their respective colonies.

Then Sir William, at the desire of the gentlemen Commissioners from Pennsylvania, acquainted the Indians that they, the Commissioners, had a present ready to the amount of five hundred dollars, to give in full satisfaction of the Conostoga lands which, by the death of that people, became vested in the proprietaries. That they freely gave this sum as a further proof of the regard of that province for them, and of their concern for their unhappy fate.

Then Sir William told the Indians that as the proprietaries did not know whether they would choose money or goods for the addition of land to Pennsylvania, they were then unprovided, but that Sir William would be answerable for the speedy payment of the purchase and would propose to them either to receive it in money to be sent up on the Commissioners' return home, or in goods, as speedy as possible, or to wait until next spring by which time they could have goods better and more for the same money from England, which matter was submitted for their determination.

As it grew late they dismissed the Indians till the next day, when they were to subscribe to the deed of cession and receive the consideration.

At night the chiefs came to Sir William's quarters and told him that they had considered the proposal made by the Commissioners of Pennsylvania, and that they preferred the receiving of the purchase money in cash, as the speediest payment was agreed to, and security was given by Sir William Johnson that the same should be paid within six weeks.

November 5th

The present being placed in public view around the public buildings within the fort early this morning, the whole body of Indians assembled in the area to subscribe to the deed and receive the consideration.

...The speaker, after repeating what Sir William had said to them on the first belts at the last congress, said:

Brother

we thank you for what you have said and we are hopeful that you will observe your engagements, as we mean to do so on our parts, but as this will, on a great part, depend on the colonies, we do now desire their representatives here present to do everything necessary to preserving these and keeping your people in good order.

A belt.

The Haudenosaunee had struggled to maintain relations with the imperial and not the colonial authorities. The imperial government wanted them as military allies; the colonies were very interested in acquiring their lands. Johnson was an imperial superintendent, but he had, in this council, announced the delegation of trade regulation to the colonies. The Haudenosaunee knew that the imperial government was relatively weak and was being challenged by the various colonies. This last statement was another request to ensure colonial adherence to the treaty.

Then repeating what was said on the second belt he said:

Brother

We thank you for the advice you have given us, not to listen to evil reports or lies. Brother, we approve of your caution and shall observe it, and we shall from time to time, give you the earliest intelligence of any such reports and from where they come.

A belt.

Were the Haudenosaunee going to ignore the invitation to the Mississippi meeting? Probably not; the Senecas at least, as guardians of the Western Door, would likely attend. Just as it had strained to keep the French and the English apart, now the Confederacy would strain for the next 30 years to avoid being caught in conflicts between the Europeans and the western Indian nations.

Then in answer to Governor Franklin's speech:

Brother

We are glad to see that Governor Franklin is so well pleased with a name bestowed upon him, and are well pleased that he will be always ready to do us justice. We hope that all future Governors will act the same parts. We acknowledge that several of our nations now present were witnesses to the transaction at Easton and therefore acquit that province of any demand, and we have only to desire of him to follow your example in his conduct towards us, which will sufficiently recommend him and his people to our esteem.

A belt.

Brother

The advice you gave us yesterday to continue firm and united and to live together as formerly, we think very salutary and intended for our good. We are therefore determined to follow your advice and shall lodge your belt at our fire place at Onondaga to the end that all our confederacy may have recourse to it and act accordingly.

The deed to His Majesty, that the proprietors of Pennsylvania, with that to the traders being then laid upon the table, were executed in the presence of the Governor, Commissioners and the rest of the gentlemen.

After which the Chiefs of each nation received the cash which was piled on a table for that purpose, and then proceeded to divide the goods amongst their people, which occupied the remainder of that day.

The Governor and Commissioners took leave and returned to their respective provinces, and that night Sir William took leave of the chiefs, recommending it to them to remember what had been transacted, and cautioning them against committing any disorders at their departure, but to pack up their goods and return home in peace and good order.

Sunday November 6th.

The Indians began to decamp and Sir William set off on his return to Johnson Hall, where he arrived on the ninth of that month.

At a ceremony of condolence Sir William gave six new black belts to cover the graves of the six following chiefs:

One for Kanadiorah, a Mohawk	One for Onaghkariwadi, a Seneca
One for Kadirohoakta, an Oneida	One for Misquibeahihe, a Shawanese
One for Tianaghroongo, a Cayuga	One for Tepiskahawang, a Delaware.

The Impact of the Treaty of Fort Stanwix

The *Royal Proclamation of 1763* and the preliminary line drawn in 1765 provided temporary boundary lines between the colonies and the Haudenosaunee. This treaty created what was intended by both parties to be a permanent line.

And so Sir William did exactly what he had intended to do before the English Government had tried to intervene: he sent the Colonial boundary driving down the Ohio to the Tennessee. In the name of George III he bought from the Iroquois

a vast expanse of the American West which the Crown had specifically ordered him not to buy.... Sir William had defeated His Majesty's Secretary of State for America and singlehanded added to the territory open for settlement what is today a corner of northern Alabama, most of West Virginia, much of Tennessee, and all of Kentucky.¹⁶¹

The Haudenosaunee had agreed to this generous cession (though much of the land was the territory of their dependents and allies, who resented the sale in a lasting manner) on the understanding that it would be the last one expected of them.

They could not have predicted that eight years later the colonies would break away from England; that at the end of the Revolutionary War the United States would maintain that they had conquered all the lands of the Haudenosaunee (except for the territory of their Oneida and Tuscarora allies); that Britain would meekly and unilaterally make a peace with the United States that would give up the lands of the Confederacy.

For years after this treaty, long after some of the people of the Confederacy had moved to the 'Canadian' side, there were demands to confirm the line drawn at Fort Stanwix. Instead of a stable and permanent boundary, as envisaged by Sir William Johnson, the legacy of the Treaty of Fort Stanwix of 1768 became one of bitter disappointment and deceit.

As for the allies of the Confederacy,

Angry at the Iroquois-British Treaty of Fort Stanwix in 1768, which ceded Shawnee hunting ground south of the Ohio to Britain, Red Hawk and others sought to raise an anti-British Indian confederacy. Although Shawnees directed much of their anger at the Six Nations "for giving up so much of the Country to the English without asking their consent", they had the support of many Iroquoian Mingos [Ohio Valley people], who had also long hunted in the Kentucky country.¹⁶²

The confederacy that the Shawnees and Delawares were seeking had come from their resistance to the British in the early 1760s and was a forerunner of a broader confederacy, which included the Six Nations, that was to resist the United States in the Ohio country in the 1790s. The ashes of that confederacy were stirred to a fire again in the War of 1812 (when Tecumseh did not create it, but more properly revived an existing union).

The Haldimand Grant of 1784

The American Revolutionary War was seen by many Haudenosaunee as a conflict they should avoid. The British were constantly reminding them that they had an obligation to support the King, through the Covenant Chain. The United States sought at least the neutrality of the Confederacy, pointing out that it was a war between brothers, internal to the British, in which the

Haudenosaunee had no obligation to support one side or the other. Sir Guy Carleton, Lord Dorchester, as governor of Quebec, made numerous promises over two decades, promising the Aboriginal nations protection of their land rights in exchange for their alliance in times of war.

In 1779, Frederick Haldimand, who bore the Mohawk war chief's name Asharekowa, or Big Knife, was the commander in chief of the province of Quebec. His military role brought him into constant contact with the Haudenosaunee during the American Revolutionary War. He was informed of Carleton's promises and ratified them:

Some of the Mohawks of the Villages of Conajoharie, Tujondarago, and Aughwago, whose settlements there, had been upon account of their steady attachment to the King's Service and the Interests of Government Ruined by the Rebels; having informed me, that my Predecessor Sir Guy Carleton, was pleased to promise, as soon as the present Troubles were at an end, the same should be restored at the Expence of Government, and the said Promise appearing to me Just, I do hereby ratify the same, and assure them the said Promise, as far as in me lies, shall be faithfully executed, as soon as that happy Time come.¹⁶³

In 1783, with the Treaty of Paris, the British made peace with the United States of America. Thayendenegea, or Joseph Brant, was concerned that the British had failed to make provision for their Haudenosaunee allies in that peace.

By 1783 and 1784, as a result of campaigns by the armies of the United States, many of the Haudenosaunee found themselves refugees at Niagara and Lachine, in a state of misery and starvation. They felt betrayed and neglected, after having done everything the British had asked. Neither they nor the British had expected the war to end as it had ÿ but the Haudenosaunee were doubly struck at having been excluded from the peace.

On 18 May 1783, the commander of the British post at Niagara, Allan Maclean, wrote to Sir Frederick Haldimand:

The Indians from the surmises they have heard of the Boundaries, look upon our Conduct to them as treacherous and Cruel; they told me they never could believe that our King could pretend to cede to America what was not his own to give, or that the Americans would accept from him, What he had no right to grant. That upon a representation from the Six Nations, in the year 1768, The King had appointed Sir William Johnson as Commissioner to Settle the Boundaries between the Indians & the Colonies, That a line had been drawn from the head of Canada Creek (near Fort Stanwix) to the Ohio, that the Boundaries then settled were agreeable to the Indians & the Colonies, & never had been doubted or disputed since ÿ That the Indians were a free People Subject to no Power upon Earth, that they were the faithful Allies of the King of England, but not his subjects ÿ that he had no right Whatever to grant away to the United States of America, their Rights or Properties without a manifest breach of all justice and Equity, and they would not Submit to it.

...I should wish that Captain Brant Might be detained in Canada for some time, he is much better informed & instructed than any other Indians, he is Strongly attached to the Interest of his Country men, for which I do honour him, but he would be so much more sensible of the Miserable Situation in which we have left these unfortunate People, that I do believe he would do a great deal of Mischief here at this time, I do from my Soull Pity these People...¹⁶⁴

On 21 May 1783, Thayendenegea was speaking to Haldimand at Quebec. He, too, was pressing for an answer to whether the British had purported to cede the Six Nations' lands to the United States. His speech is a recitation of the relations between the Crown and the Haudenosaunee:

Brother Asharekowa and Representatives of the King,
The sachems and War Chieftains of the Six United Nations of Indians and their Allies have heard that the King, their Father, has made peace with his children the Bostonians...wherefore they have now sent me to inform themselves before you of the real truth, whether it is so or not, that they are not partakers of that Peace with the King and the Bostonians...

Brother,
We, the Mohawks, were the first Indian Nation that took you by the hand like friends and brothers, and invited you to live amongst us, treating you with kindness upon your debarkation in small parties. The Oneidas, our neighbours, were equally well disposed towards you we fastened your ship to a great mountain at Onondaga, the Center of our Confederacy, the rest of the Five Nations approving of it. We were then a great people, conquering all Indian nations round about us, and you in a manner but a handfull, after which you increased by degrees and we continued your friends and allies, joining you from time to time against your enemies, sacrificing numbers of our people and leaving their bones scattered in your enemies country. At last we assisted you in conquering all Canada, and then again, for joining you so firmly and faithfully, you renewed your assurances of protecting and defending ourselves, lands and possessions against any encroachment whatsoever, procuring for us the enjoyment of fair and plentiful trade of your people, and sat contented under the shade of the Tree of Peace, tasting the favour and friendship of a great Nation bound to us by Treaty, and able to protect us against all the world.

Brother,
You have books and records of our mutual Treaties and Engagements, which will confirm the truth of what I have been telling, and as we are unacquainted with the art of writing, we keep it fresh in our memory by Belts of Wampum deposited in our Council House at Onondaga. We also have received an ornament for the

Head, i.e. a crown, from her late Majesty, Queen Ann, as a token of her mutual and unalterable friendship and alliance with us and our Confederacy.

Wherefore, we on our side have maintained an uninterrupted attachment towards you, in confidence and expectation of a Reciprocity, and to establish a Perpetual Friendship and Alliance between us, of which we can give you several instances, to wit, a few years after the Conquest of Canada, your people in this country thought themselves confined on account of their numbers with regard to a Scarcity of Land, we were applied to for giving up some of ours, and fix a Line or Mark between them & us. We considered upon it, and relinquished a great Territory to the King for the use of his Subjects, for a trifling Consideration, merely as a Confirmation of said Act, and as a proof of our sincere regard towards them. This happened so late as the year 1768 at Fort Stanwix, and was gratefully accepted and ratified by the different Governors and great men of the respective Colonies of the Sea Side, in presence of our late Worthy Friend and Superintendent, Sir William Johnson, when we expected a Permanent, Brotherly Love and Amity, would be the Consequence, but in vain...

Wherefore Brother, I am now sent in behalf of all the King's Indian Allies to receive a decisive answer from you, and to know whether they are included in the Treaty with the Americans, as faithful Allies should be, or not, and whether those Lands which the Great Being above has pointed out for our Ancestors, and their descendants, and Placed them there from the beginning, and where the bones of our forefathers are laid, is secure to them, or whether the Blood of their Grand Children is to be mingled with their Bones, thro' the means of our Allies for whom we have often so freely Bled.¹⁶⁵

The British had indeed given up the lands of the Six Nations and other nations in their peacemaking with the United States. During the years that followed, there were numerous rationalizations and denials of this. In the meantime, though, the British policy was to accommodate their allies as much as possible. In August 1783, Lord North, the Crown's first minister in Britain, wrote to Haldimand:

...These People are justly entitled to Our peculiar Attention, and it would be far from either generous or just in us, after Our Cession of their Territories and Hunting Grounds, to forsake them. I am, therefore, authorized to Acquaint you, that the King allows you to make those Offers to them, or to any other Nations of the friendly Indians, who may be desirous of withdrawing themselves from the United States, and occupying any lands which you may allot to them within the Province of Quebec...¹⁶⁶

During the rest of 1783, Haldimand had numerous conversations with Thayendenegea, and they concluded that a tract on the Grand River would be the most suitable. The Grand River Territory was chosen because it was close to the country retained by the Senecas, who would

thus be able to call upon their brother nations for help against the United States. In March 1783, there is a record that Thayendenegea made a specific request for "a tract of land consisting of about six miles on each side of the Grand River, called Oswego running from the River LaTranche into Lake Erie, for the use of the Mohawks and such of the Six Nations are inclined to join them in that settlement".

Capt. Brant in this Application does not by any means wish that Partiality should be shown to the Mohawks, he speaks in the Behalf of the Six Nations in General...

Haldimand answered:

Sir John Johnson [the superintendent general of Indian affairs] will be instructed to purchase a Tract of Country between the three lakes, Ontario, Erie and Huron, of which the Tract required by the Mohawks for the Six Nations will be granted to them by a Deed.¹⁶⁷

The territory was the Beaver Hunting Grounds of the Haudenosaunee, but the Mississaugas had moved into that area from the north and west nearly a hundred years earlier, when the Confederacy was having difficulty on all sides. The Six Nations met with the Mississaugas on 22 May 1784. Colonel John Butler spoke to the Mississaugas, saying:

Children

I have received the Commander in Chief's Order thro' Sir John Johnson, to purchase some land, the property of you the Mississaugas laying between the Lakes Ontario, Huron & Erie for the use of such of your Brethren of the Six Nations, as may wish to plant and Hunt thereon, as well as for an intended Settlement of such of His Majesty's faithful Subjects who have assisted him during the late War, as wish to settle and improve the same; it would be needless for me to add more at present as I have already explained every circumstance as clear as light, to you the Chiefs, as in my power to do, Therefore expect your immediate answer.

A Belt.

Pokquan Mississaga Speaker

Father & Brethren Six Nations: We have considered your request.

Father

We the Mississagas are not the owners of all that Land laying between the three Lakes, but we have agreed and are willing to transfer our right of soil & property to the King our Father, for the use of his people, and to our Brethren the Six Nations from the head of the Lake Ontario or the Creek Waghquata, to the River La Tranche [Thames River], then down that River until a south course will strike the Mouth of Catfish Creek on lake Erie, this tract of land we imagine will be quite sufficient both for the King's people, and our Brethren the Six Nations, who may wish to settle and Hunt thereon; Your request or proposal, does not give us that trouble or concern, that you might imagine from the answer you received from some of our people the other day, that difficulty is entirely removed, we are Indians, and consider ourselves and the Six Nations to be one and the same

people, and agreeable to a former and mutual agreement, we are bound to help each other.

Brother Captain Brant, we are happy to hear that you intend to settle at the River Oswego with your people, we hope you will keep your young men in good Order, as we shall be in one Neighbourhood, and to live in friendship with each other as Brethren ought to do.¹⁶⁸

The formal purchase from the Mississaugas was dated 22 May 1784 (see Provincial Archives of Ontario, Crown Land Papers, Surveyors' Letters, 1788-91).

On 25 October 1784, Governor Haldimand issued the following proclamation: Whereas His Majesty having been pleased to direct that in Consideration of the early Attachment to his Cause manifested by the Mohawk Indians, & of the loss of their Settlement they thereby sustained that a convenient Tract of Land under His Protection should be chosen as a Safe & Comfortable Retreat for them & others of the Six Nations who have either lost their Settlements within the Territory of the American States, or wish to retire from them to the British ÿ I have, at the earnest Desire of many of these His Majesty's Faithfull Allies purchased a Tract of Land, from the Indians situated between the Lakes Ontario, Erie and Huron, and I do hereby in His Majesty's name authorize and permit the said Mohawk Nation, and such other of the Six Nations Indians as wish to settle in that Quarter to take Possession of, & Settle upon the banks of the River commonly called Ours [Ouse] or Grand River, running into Lake Erie, allotting to them for that purpose Six Miles Deep from each Side of the River beginning at Lake Erie, & extending in that Proportion to the Head of the said River, which them & their Posterity are to enjoy for ever.¹⁶⁹

The boundaries of the Grand River Territory had not been surveyed, and within a few years this uncertainty had begun to cause concern. By January 1791, a committee of the executive council had noted that:

His Lordship pointed out the expediency of ascertaining the nature & extent of these claims to give full effect to any promises, and to gratify any reasonable expectations in which the faith of the government might be concerned, in such a way as would best answer the end of making a permanent provision for the persons interested & their descendants.¹⁷⁰

The lack of a clear deed also led Thayendenega to write to Lord Dorchester on 24 March 1791:

The Deed or Grant for the lands here which you are going to give us, we hope you will make the Deed or grant near the same sort which General Haldimand first

promised to us, we hope the Council will not restrict us too much y otherways we shall look upon it not much better than a Yankee deed or grant to their Indian friends...¹⁷¹

In July 1797, Peter Russell, the administrator of Upper Canada, wrote to the Duke of Portland concerning the feelings of Thayendenega about the Grand River Territory:

...had the Five Nations conceived the lands on the Grand River were given to them upon any other footing than that on which they formerly possessed those on the Mohawk River, they would never have come to settle in this Province; That they were a free & independent Nation; y That their affection for their Father the King of Great Britain had induced them to leave a most fertile Country every way competent to their Support, in order to live under His Majesty's Protection, as they disliked the people who inhabited the Country they had forsaken;

That Sir Frederick Haldimand had received them with open arms, and promised to buy for them the land they had made choice of on the Grand River; That he afterwards told them he had bought it from the original Proprietors, & given it to them and their posterity forever. That they then considered this Gift as a free unequivocal Grant of Country, with every Power over the disposal of it, which they had over their lands on the Mohawk River. These they could sell or give away at their pleasure, and they conceived that their power over the Grand River land was the same. When White Men had informed them that they were mistaken, they applied to Lord Dorchester and to Governor Simcoe for a new Grant. This was promised them; and a Grant had been offered to them by Governor Simcoe which they rejected, because it did not convey this Power. They were then promised that their Requests should be laid before their Father the King.

Two issues had become intertwined. One was the right to dispose of the land. The other was the fundamental issue of the extent of the land. The first issue consumed much of Thayendenegea's time. The second was what Lieutenant Governor Simcoe had done in making his deed: he had cut off a third of the territory.

On 10 December 1797, Thayendenegea wrote to Captain Green: I presume you are well acquainted with the long difficulties we had concerning the land here. These difficulties we had not the least idea of when we first settled here, looking on them as granted to us to be indisputably our own; otherwise we would never have accepted the lands. Yet afterwards, it seemed a little odd to us, that the writings Governor Haldimand gave us, after our settling on the lands, were not so complete as the strong assurances and promises he had made us at first. But this made no great impression on our minds, confiding in the goodness of His Majesty's intentions, and in the weight we expected our former services would have with him. Had it not been for this confidence and affection we bore

the king, we still had opportunities left, after the war, of providing for ourselves, in the free and independent manner natural to Indians. Unhappily for us, we have been made acquainted, too late, with the real intentions of the Ministry; that is, that they never intended us to have it in our power to alienate any part of the lands. And here we have even been prohibited from taking tenants on them, it having been represented as inconsistent for us, being but king's allies, to have king's subjects as tenants; consequently, I suppose their real meaning was, we should, in a manner, be but tenants ourselves. As for me, I see no difference in it, and further than that we are, as yet, rent free, they seemingly intending to forbid us any other use of the lands than that of sitting down or walking on them...

The movements of Governor Simcoe in attempting to curtail our lands to one-half of the river, and recollecting our deed from Governor Haldimand to be unequal to his first promises, caused us to make such a large sale at once that the matter might come to a point, and we might know whether the land was ours or not.¹⁷²

Thayendenegea was partly defending his own plans. He had concluded that there were going to be non-Aboriginal people settling near or among the Six Nations in any event, so that it was to the advantage of the Six Nations to choose neighbours who were industrious Loyalists. Thayendenegea had, with the power of attorney granted him by the chiefs, issued long-term leases of parts of the territory so that his 'friends' could settle there. Another aspect of the plans was that the leases would produce income that would assist the Six Nations in their transition from an economy that involved communal farming and hunting and fishing, to an economy based on virtually no hunting and on family farms. The third aspect of the plans was that the leases would expire as the Six Nations population grew, so that there would be cleared farm land ready for occupation by Six Nations people, gradually filling the entire valley.

The matter of the upper part of the Grand River Valley was discussed in detail by William Claus, the deputy superintendent general of Indian affairs, and the Haudenosaunee at Hamilton, near Burlington Heights, on 4 July 1818. Claus ("after the customary ceremonies") communicated answers to the *rotiianeson* from the superintendent general, Sir John Johnson, and from the lieutenant governor, Sir Peregrine Maitland.

On examining documents at York respecting the Grand River lands, it appears that in the year 1790 a survey was made by Mr. Jones, and at a Land Board at Niagara in 1791, of which Lieutenant Colonel Butler, Mr. Hamilton and Colonel Lew Brook were members, it was agreed on by them and Captain Brant, Ojagethe, Coughsemyoute, Atmovoute, Aghsett, and Kayoudodethou, that certain lines that had been run by Mr. Jones were to be the Indian boundary, and it appearing to the Government that the Six Nations had misconceived the extent of their land, I am commanded to undeceive them by informing them that the

Government from these documents conceives that the grounds above Block Nichol, known as Block No. 4 is now in the Crown by a recent purchase from the Mississaugas, for beyond that the King had not purchased from those Indians, at the time of Sir Frederick Haldimand's gift, consequently, Sir Frederick, in behalf of the Crown, had no land to grant.

Tekarihoga, the Mohawk Turtle Clan *royaner*, replied:

...we will not go back to our first troubles, we will only recur to what happened in General Haldimand's time. Brother, after the American war, we were at Niagara and did not know where to go. In our distress the Senecas offered us lands on the Genesee River, but we did not wish to be near the Americans, as they might again distress us, and some of our people got land on the Bay of Quinte. Captain Brant then went to Quebec to see General Haldimand, who told him that he would give us lands on the Grand River, from its mouth to its spring. During the administration of General Simcoe he wished to obtain from us three miles on each side of Dundas Street, on both sides of the river. We replied that we would let him have the quantity required, but that it should be for our benefit, he declined the offer and the matter dropt. Sir John Johnson also wished us to surrender six miles on each side of the river at the mouth, we complied with his request, provided it was for our benefit, but that also dropt without anything being done. I remember very well before the lands were purchased by Colonel Butler, that the Mississaguas said: "We do not wish to sell the lands from the Grand River to the River Thames down to Lake Erie". The Government lessened the gift to six miles on each side of the Grand River, from its mouth to its spring, yet we replied to the Mississaguas: "Since you have been so kind to us, we each divide our presents with you". We are surprised to find that Government says, that we own the lands to the falls only, as we have writings to prove otherwise, we have them here and are ready to produce them.

The original deed from General Haldimand produced by John Brant.

The Haudenosaunee representatives at the council then addressed the issue of how little land they had left, and how non-Indians had settled all around them. Several issues were mixed together in this council, but the Haudenosaunee speakers kept returning to the issue of the original grant.

Then addressing himself to the Deputy Superintendent General and the officers [Little Peter of the Lower Mohawks] said:

I am very sorry to observe that you are now claiming a great part of our land. What are we to expect? Are we to be driven off our land? Shall I point back to my ancestors when they first took you by the hand, did they deceive you? Or have any of us? When we agree to anything in Council we expect it to be confirmed, because it is in the presence of all. The Council Fire is the place to establish the truth.

Brothers with the red coats and Colonel Claus, this I wish to have continued when we meet again in Council. It is customary with us to talk with

temper and do nothing rash. Whenever you call another Council, I will continue my subject.

Little Peter was speaking at two levels here. On one level, he was saying that he was so angry that his mind was no longer in a state in which he should properly take part in council ŷ that as a *royaner* he could not allow anger to affect the clarity of his thinking. On another level, he was expressing, as clearly as he could without allowing the anger to control him, the deep disagreement the Haudenosaunee felt with the British position. Other people then spoke on the same subject:

Oneida Joseph next spoke: Brother, I remember very well what passed from the beginning of the settlement on the Grand River. I have gone through two wars and must therefore have a recollection of what happened first about our settlement. It was granted to us from the mouth to the spring, six miles on each side of the Grand River. It may be supposed that we did not claim it, because it was neither surveyed nor sold, but we claim that, as well as the rest.

Brother, we were told by our chiefs that whenever the land was purchased from the Mississaugas, the line would run to the spring.

If the commander of the forces will permit us to see him when he comes up, he will let us know how far we have a right to claim, agreeably to the paper which we hold as our title. I recollect that when the chiefs of the Six Nations requested of Colonel Butler to pay for the land which Mississaugas had given them, they afterwards regretted having done so, because the Government, by paying for it, might hereafter claim and take it from us.

The deputy superintendent general felt compelled to reply in terms that did not detract from the honour of the Crown:

...Had the King conceived that the land he claims above the falls did not belong to him, he never would have directed me to communicate to you what I have on that subject.¹⁷³

Claus promised to lay the proceedings of the council before the highest officials at York.

On 28 September 1821, Lord Bathurst replied directly to John Brant and Robert Kerr of the Six Nations, who had gone to England to put the case for the entire territory before the King: As the Indian nations rest their claim entirely upon the terms used by General Haldimand in his proclamation of the 25th October 1784, I shall confine myself to a statement of the reasons which convince me that it was never the intention of that officer to grant them the extent of territory to which they now lay claim, of six miles on each side of the Ouse or Grand River, from its mouth to its source, and that the proclamation does not warrant such a claim.

It is evident, from the proclamation annexed to your note, that the land which General Haldimand intended to assign to the Indian nations was that which the Colonial Government had a few months before purchased from other Indian nations resident within the Province of Canada, and that whatever disposition he

may be presumed to have had to confer advantages on the Five Nations by giving them lands belonging to His Majesty, he could not intend (for he had not the power) to make over any Indian lands to which His Majesty had not then acquired a title. The description, therefore, of the land which is given in the close of the proclamation must be taken with reference to what the king had at the time a power to grant. It must be considered with reference to the general inaccuracy and contradictions of all geographical descriptions of America at that time, when the country was unsurveyed and unknown, and when information as to the course of rivers was derived either from reports of individuals or from the sources which afterwards proved altogether incorrect.

As the course of the Ouse or Grand River became known, it was found that the head of the river was not within the purchase made from the Chippewas in 1784, and that the purchase, therefore, did not comprise the lands to which the Five Nations now lay claim...

Under these circumstances His Majesty cannot but consider the Colonial Government justified in allotting to settlers, instead of reserving for your use, such part of the land now claimed by you as was not purchased in 1784 from the Chippewas.¹⁷⁴

Canadian courts concluded that the Haldimand Deed was ineffective. The cases arose first as a result of the Brant leases, transactions in which Joseph Brant, under his power of attorney from the chiefs, had leased parts of the Grand River Territory to his non-Aboriginal friends. Chief Justice John Beverley Robinson, who had dismissed treaties between the Crown and the Mohawks as a ridiculous concept, rendered the first judgment in the case of *Doe dem. Sheldon v. Ramsay et al.*

In the first place, the Six Nations Indians took no legal estate under the instrument given by General Sir Frederick Haldimand. He did not own any of the land in question, and could convey no legal interest under his seal at arms. Being Governor of Canada, he could have made a grant of Crown lands by letters patent under the great seal of the province, which would have been matter of record; but he could no more grant this large tract on the Grand River, by an instrument under his seal at arms, than he could have alienated the whole of Upper Canada by such an instrument. Such an instrument could pass nothing.

But secondly, if such an instrument had been made under the great seal, in the ordinary and proper manner, it could pass no legal interest for want of a grantee or grantees, properly described and capable of holding. It grants nothing to any person or persons by name, and in their natural capacity. General Haldimand could not have incorporated the Six Nations of Indians, if he had attempted to do so expressly, by an instrument under his seal at arms, and still less could he do it in a manner incidentally and indirectly by implication. A grant "to the Mohawk Indians, and such others of the Six Nations as might wish to settle on the Grand River, a tract of land, to be enjoyed by them and their posterity

forever", could not have the effect upon any principle of the law of England of vesting a legal estate in anybody. It could amount to nothing more than what it was well understood and intended to be, a declaration by the government that it would abstain from granting those lands to others, and would reserve them to be occupied by the Indians of the Six Nations. It gave no estate in fee, or for life, or for a term of years, which the Indians could individually or collectively transmit.¹⁷⁵

For collectors of irony, the case was a rich new storehouse. Robinson's younger brother William had in September 1852, less than two years before, concluded two treaties with the Ojibwa chiefs of Lake Huron and Lake Superior.

A statute that became law in August 1850 declared that no surrender of lands taken from Indians would be valid unless it had the great seal of the province attached. The Robinson Treaties have never had the great seal attached to them. The absence of the seal became an issue in the case of *Attorney General of Ontario v. Bear Island Foundation* in the 1970s. In dismissing the argument, the trial court said that the lack of the seal was a mere technicality and that since the governor general was aware of the treaties, his failure to affix the seal could not affect their validity. The issue was not argued on appeal.

This leads to the second ground on which the Haldimand Deed was attacked by Chief Justice Robinson: the lack of parties with power to accept the grant. From the 1680s to 1763, the Crown did not seem to have any doubt that the Six Nations had the power to grant land to individuals.

The *Royal Proclamation of 1763* was intended to put an end to the frauds that resulted from those practices, but at no time did the Crown say that the Six Nations lacked the legal personality to sell their lands.

There is a double standard here: the idea that a grant under the wrong seal doesn't deliver land to Indians, but a taking without the same seal required by law is still all right if the land is being taken from Indians; the idea that Indians lack the personality to receive legal title but have enough to sell it.

In 1882, the Grand River Council sent deputations to Ottawa to urge the government of Canada to act on the claim to the upper Grand River Territory. The deputy superintendent general of Indian affairs "warned all against coming to Ottawa without permission, and if any did so, their expenses would not be paid, but would have to foot it every inch of the road". The local Indian agent, J.T. Gilkison, informed the superintendent general that he had conversed with "old Chief John Smoke Johnson", who told him that the chief had accepted the falls line as the head waters of the river and that he had never heard of any complaint against the said line until recently. Meanwhile, the chiefs sent a petition to the governor general, the Marquis of Lorne, and

a letter to the prime minister, Sir John A. Macdonald. The letter to Macdonald, in response to his request to state the business in writing, is clearest:

Firstly: According to the deed in our possession, issued by Sir Frederick Haldimand, dated at the Castle of St. Louis, Quebec, the 25th day of October, 1784, and which was registered in Lib. A, fol. 8th, on the 20th day of March, 1795, in the secretary's office, Upper Canada, we claim that we are the only proper and rightful owners of a tract of land lying from the north boundary of the township of Nichol to the head or source of the Grand River, a distance of forty miles, inasmuch as it has never been ceded to the Crown by us.

And according to the Royal Proclamation by his late Majesty King George the Third, dated the 24th Day of December 1763, no one other than the Six Nation Indians shall have a right to settle upon such lands on any pretence whatever.

Secondly: That whereas it may be argued that the people now occupying the said lands have established their right to the said lands by lapse of time.

We would say that the Six Nations had established their pre-emption right to the said lands long before any white man settled on the said lands by occupation. Our forefathers have occupied the lands in question as their hunting grounds, and have always lived within the limits of the deed referred to, and therefore they have been in occupation before and ever since the deed was issued.

Thirdly. It may be asked why the Six Nations did not make a strong protest against the fact of people taking their lands and settling thereon. The answer to that is, that it was the opinion entertained by the chiefs, that it was the duty of the Indian Department as our guardians to protect our rights in that respect.¹⁷⁶

The position of the Haudenosaunee was actually years before its time in legal terms. Their second point is likely a reference to the territory being part of the hunting grounds reserved by the Nanfan Treaty of 1701. Their reference to the *Royal Proclamation of 1763* is interesting because of the date they used. The King made the proclamation in England on 7 October 1763. The December 24 proclamation was made by Sir William Johnson, publishing the King's proclamation and declaring it in effect on the territories of the Six Nations. The third point is relatively weak by the 1880s, neither the Six Nations nor the government of Canada seemed to recall the protests of the 1790s and 1818. The idea that treaty and Aboriginal rights are not tarnished by lack of use or lack of claim did not find its way into Canadian courts until the case of *Sioui v. The Queen* in the Supreme Court of Canada in 1990.

Several searches of Indian department documents in 1882 did not reveal an explanation of the discrepancy between the Haldimand Deed and the Simcoe Deed. The commissioner of Crown lands of Ontario produced a report denying the validity of the claim on 27 June 1883, and this was passed on to the Six Nations the following month. The report suggested that the

intention of all parties was to limit the grant to the Nichol Line, since all subsequent surveys and surrenders were consistent with that view.

In 1886 Earl Granville suggested to the governor general that the matter should be submitted to the judicial committee of the privy council, or to a board of arbitrators. While the government of Canada was considering that idea, the council at the Grand River Territory resolved to send a delegation of three men to England and voted \$300 for their expenses.

The [local Indian department] Superintendent expressed his regret they should give such an opinion of the Dominion Government, when they so well know the interest and care of that Government in their behalf, while they also know that the present Minister of Indian Affairs, Sir John Macdonald, will do all in his power for them; but with regard to this land question, the matter has been long since settled, and he feels quite certain a deputation to England would not be attended with any other result, other than again referring them to the Dominion Government.¹⁷⁷

When Sir John Macdonald returned from a trip to the Northwest Territories, he did consider the claims of the Six Nations. He wrote:

It is extremely inexpedient to deal with the Indian bands in the Dominion...as being in any way separate nations. They are governed by Canadian statutes, and for any wrongs or grievances have the right of recourse to the legal tribunals of the country as fully and readily as their white fellow-subjects, which right they do not hesitate to exercise.

As Indians are inveterate grumblers, if it were once known that this application had been granted there would be no end of similar demands by other bands, a refusal of which would cause much discontent. It would be difficult, if not impossible to make another tribe understand why it should not receive the same consideration as the Six Nations, and great consequent jealousies and heart-burnings ensue.

...The introduction of a new practice of submitting Indian claims in the first instance to the Judicial Committee would operate as a complete change in the manner in which the Indian races have hitherto been dealt with, and would establish a distinction between them and the other inhabitants of Canada. This is very objectionable, as the great aim of our legislation has been to do away with the tribal system and assimilate the Indian people in all respects with the other inhabitants of the Dominion, as speedily as they are fit for the change.

The present claim of the Six Nations has no merits, and does not deserve any exceptional consideration.¹⁷⁸

The privy council agreed with Macdonald's assessment and reported in the same terms to the governor general.

The documents surrounding the Haldimand Proclamation indicate that the Haudenosaunee maintained throughout that "they were the faithful Allies of the King of England, but not his Subjects".

Thayendenega's speech to Haldimand in 1783 contains clear and consistent references to the making of the original Covenant Chain ("We fastened your ship to a great mountain at Onondaga"), the Crown's promises in the *Royal Proclamation of 1763* ("Your assurances of protecting ourselves, lands and possessions against any encroachment whatsoever"), and the Fort Stanwix Treaty in 1768 ("We were applied to for giving up some of our [land], and fix a Line or Mark between them & us. We considered on it, and relinquished a great Territory to the King for the use of his subjects, for a trifling consideration...[in] the year 1768 at Fort Stanwix").

The Mississauga land surrender of 1784 makes reference to earlier treaties between the Mississaugas and the Haudenosaunee. ("We are Indians, and consider ourselves and the Six Nations to be one and the same people, and agreeable to a former and mutual agreement, we are bound to help each other.")

The Crown's failure to deliver the territory promised in the 1784 deed has been a consistent source of grievance concerning the Grand River Territory. The decision by Lieutenant Governor Simcoe to cut off the territory at the Nichol Line became a recurring matter of debate within the Six Nations territory, and the government of Canada has failed to address it to the satisfaction of the Six Nations. Indeed, Canada's attitudes in the 1880s led eventually to further confrontations between the Confederacy and Canada and to Canada's direct attacks on the Confederacy's form of government in 1924.

Significance of the Haldimand Deed

The Haldimand Proclamation was an executive act that established the Six Nations Grand River Territory. It was made pursuant to a promise from the Crown's highest representative in North America at the time.

Unlike other Indian lands in the Canadas at that time, the Grand River Territory (and the Bay of Quinte Mohawk Territory) were set apart by direct executive action.

In later years, the Crown attacked the validity of the Haldimand Proclamation on two grounds.

First, it said that the Mississauga surrender of 1784 did not convey to the Crown the entire Grand River Territory, so that the Crown was not in a position to convey that land to the Six Nations. In reply to that, the Six Nations say that there have been numerous Crown conveyances of unsurrendered Indian lands throughout Canada and that those conveyances should also be void. There have been patents, for example, of Mi'kmaq and Maliseet lands throughout Nova Scotia and New Brunswick; of Algonquin lands in Ontario and Quebec; of

Haida and Nisga'a and many other peoples' lands in British Columbia. Is it only when the recipients of the land are Aboriginal people that a defect in the surrender of Aboriginal title makes the patent invalid? The Six Nations also point out that the territory was already reserved to them under the 1701 Nanfan Treaty, and that the Crown had not recognized exclusive Mississauga or Ojibwa title to the territory before that, but had recognized Haudenosaunee title through the 1750s, a mere 30 years earlier.

Second, it said that the proclamation bore only Haldimand's personal seal at arms, not the great seal of the province, and was therefore insufficient to convey the land. In reply to that, the Six Nations point out that in 1850, there was a law that no surrender of lands by Indians was valid without it being attested to by the great seal of the province and that in September of that year, surrenders of the watersheds of Lake Huron and Lake Superior were taken that have never had the great seal associated with them. Is it only when the recipients of the land are Aboriginal people that a defect in the seal attached to the land grant invalidates the transfer and that a similar defect in a surrender is ignored by the courts and the law?

It remains the understanding of the Six Nations people that the Grand River Territory was granted directly by the Crown to the Six Nations, from the mouth of the river to its source, to be held in the same manner and with the same Crown guarantees and protections as the Confederacy held its lands after the *Royal Proclamation of 1763* and the Treaty of Fort Stanwix of 1768.

The Treaty of Fort Stanwix, 1784

Background

Britain and the United States signed a preliminary peace treaty in 1782. The Treaty of Paris, formally ending the American Revolutionary War, was made in 1783.

The United States of America was a new country, with a new federal system of government. Relations between the individual states and the federal government were not yet completely clear. Nor were relations between the United States and the various Indian nations.

The relationship between the United States and the Haudenosaunee was more confused than that with most other nations. As a confederacy, the Haudenosaunee had decided to remain neutral in a war that they saw as being between a father and a son. As individual nations, or even individual people, sides were chosen. The Oneidas and Tuscaroras had actively helped the Americans in the war. The Mohawks, Senecas, Cayugas and Onondagas had been either neutral or actively hostile.

Two crucial issues – the status of the Haudenosaunee as a nation, and the status of Haudenosaunee lands – remained unresolved when the war ended. The British had made their peace with the Americans, but the Six Nations had not established clear relationships.

Many of the Haudenosaunee had found themselves seeking refuge at the British fort at Niagara, which had been a military centre of operations during the war. The commander at that fort, Allan Maclean, wrote to the governor in chief of Canada, Sir Frederick Haldimand, on 18 May 1783, concerning the Haudenosaunee:

At present they are not sufficiently instructed with respect to the Boundaries, but with Regard to the Peace they seem to be glad of it, they say they lost many of their ablest Warriors and best Chiefs, and if England has secured to them their own Country, without involving them in fresh Disputes with their neighbours, they are pleased with the Peace, but they [appear] to be very anxious & uneasy, they have heard of certain pretended Boundaries, to which they never can agree if true, but they do not believe it...

The Indians from the Surmises they have heard of the Boundaries, look upon our Conduct to them as treacherous and Cruel; they told me they never could believe that our King could pretend to Cede to America what was not his own to give, or that the Americans would accept from Him, what he had no right to grant. That upon a representation from the Six Nations, in the year 1768, The King had appointed Sir William Johnson as Commissioner to settle the Boundaries between the Indians & the Colonies,

That a line had been drawn from the head of Canada Creek (near Fort Stanwix) to the Ohio, that the Boundaries then settled were agreeable to the Indians & the Colonies, & never had been doubted or disputed since.

That the Indians were a free People Subject to no Power upon Earth, that they were the faithful Allies of the King of England, but not his Subjects ÿ that He had no Right Whatever to grant away to the States of America, their Rights or properties without a manifest breach of all justice and Equity, and that they would not submit to it...

That if it was really true that the English had basely betrayed them by pretending to give up their Country to the Americans without their consent, or Consulting them, it was an act of Cruelty and injustice that Christians only were capable of doing, that the Indians were incapable of acting so; to friends & Allies; but that they did believe We had sold & betrayed them.¹⁷⁹

On 21 May 1783, the Pine Tree Chief Thayendenega (Joseph Brant) spoke in the same vein to Haldimand at Quebec:

...I am now sent in behalf of all the King's Indian Allies to receive a decisive answer from you, and to know whether they are included in the Treaty with the Americans, as faithful Allies should be or not, and whether those lands which the Great Being above has pointed out for Our Ancestors, and their descendants, and placed them there from the beginning and where the Bones of our forefathers are laid, is secure to them, or whether the Blood of their Grand Children is to be mingled with their Bones, thro' the means of our Allies for whom we have so often freely Bled.¹⁸⁰

In fact, the British had made no provision at all for their allies in their treaties with the United States.

Neither was the issue of the Indian title to lands a settled issue in the United States. In the case of the dispute between the Mohegan Indians and Connecticut, the interference of the imperial government had caused deep resentment in the colony. Colonial governments felt that dealing with Indians and Indian lands was an internal matter. The Indian nations generally felt that they were better off having their relations with the imperial government, which sought their alliance, not their lands.

The territory of the Haudenosaunee was claimed by several states. New York, since the 1750s, had claimed it by relying on the Nanfan Treaty of 1701 – though this claim had been rebutted several times by imperial officers who understood that the 1701 treaty had been an act intended by the Haudenosaunee to protect their land, not to sell it. Massachusetts claimed the territory by virtue of vague colonial boundaries under its original colonial charter from the King.

The theory under which the states – and the Continental Congress, the new federal government of the United States – claimed the territory of the indigenous nations was a combination of two legal theories. The first was the 'right of discovery' – a right enunciated in a papal bull that suggested that European powers that 'discovered' lands inhabited by pagans would have the exclusive right to that territory. The second was the 'right of pre-emption' – the concept that the discovering power had the right, as against all other European powers, to deal with the Aboriginal people for their lands. The two theories were intertwined: in North America, eventually, the right of pre-emption was explained to the Haudenosaunee by the British and Americans, but the right of discovery, with its attendant ideas of extinguishment of title, was not.

The United States was also very much aware that the land the states were arguing over was also claimed by various indigenous nations, many of whom were still in a state of war with the United States. Haudenosaunee leaders, who had been dealing with colonial governments before the Revolutionary War, were familiar with intercolonial politics, which carried over into interstate relations. Many of the influential or crucial figures of the United States – Benjamin Franklin and Thomas Jefferson, for example – had been commissioners dealing with Indian affairs for the colonial governments.

In October 1783, the United States Committee on Indian Affairs issued a report addressing the two major issues of peace and land and recommending that
...lines of property should be ascertained and established between the United States and them, which will be convenient to the respective tribes, and commensurate to the public wants, because the faith of the United States stands pledged to grant portions of the uncultivated lands as a bounty to their army....

The committee recommended that a series of treaties be made

...to receive them into the favour and protection of the United States...to adjust the boundaries... separating and dividing the settlements of the citizens from the Indian villages and hunting grounds, and thereby extinguishing as far as possible all occasion for future animosities, disquiet and contention.¹⁸¹

Once peace was in view between Britain and the United States, the Americans began to treat the Haudenosaunee as a conquered people whose lands had been assumed by the United States.

The moral value of their culture was persistently attacked. In 1784, for instance, in order to press the diplomatic attack more effectively, the federal representatives adopted a conscious policy of destroying Iroquois self-esteem, corrupting their leaders, and subverting their political system. James Duane, who had lately been a delegate to the Continental Congress and a member of its Committee on Indian Affairs, in advance of the treaty advised the Governor of New York to break down Iroquois morale by every device of psychological warfare available to his commissioners. "They assume a perfect equality", he wrote; this attitude was to be broken by constantly treating them as inferiors, as a dependent minority group. It had been the custom of New York, Pennsylvania and Crown commissioners for a hundred years to follow Indian usage in councils. Now these rituals were to be abandoned. "Instead of conforming to Indian political behaviour We should force them to adopt ours ÿ dispense with belts, etc.". Their very existence as a political unit was to be denied: "I would never suffer the word "Nation" or "Six Nations" or "Confederates" or "Council Fire at Onondago" or any other form which would revive or seem to confirm their former ideas of independence, to escape...they are used to being called Brethren, Sachems & Warriors of the Six Nations. I hope it will never be repeated. It is sufficient to make them sensible that they are spoken to without complimenting twenty or thirty Mohawks as a nation, and a few more Tuscaroras & Onondagas as distinct nations...they should rather be taught...that the public opinion of their importance has long since ceased". Spies and provocateurs were sent among them to bribe compliance and sow dissension...¹⁸²

In 1784, Congress appointed three commissioners to make the recommended treaties. In early summer, the commissioners notified the Mohawks, Onondagas, Cayugas and Senecas that they intended to make a treaty at Fort Stanwix that fall. They also notified Governor Clinton of New York and the Haudenosaunee that any treaty made with New York would be considered void. New York reacted strongly ÿ perhaps because of the relative weakness of its claim to the land west of the 1768 Fort Stanwix Treaty line, as against both the Continental Congress and Massachusetts.

To affix the tribes to the state, and strengthen its land claims, New York embarked on a policy to make the tribes "Members of the State". Governor Clinton moved quickly to secure the state's interests. In April 1784 he sent a message to the Mohawks, Onondagas, Cayugas and Senecas inviting them to a meeting to adjust all differences between them and the state and the Oneidas and Tuscaroras. After an exchange of letters, a meeting was set for late August at Fort Stanwix.¹⁸³

The state intended to propose that the Oneidas should sell their lands and move to Seneca country. (Most of the Mohawks, the easternmost nation of the Longhouse, had already left their territory and were living in Canada or in Seneca country ÿ with the exception of the people of Akwesasne, who were on the St. Lawrence.) The proposal was so unwelcome that on 4 September 1784, Governor Clinton told the Oneidas that "we have no claim on your lands, its just extent will ever remain secured to you". Neither did Clinton have any more success in meetings with Thayendenega. Instead, on September 10, New York's formal councils ended.

The record of the Treaty of Fort Stanwix is in the National Archives of Canada, Record Group 10 (Indian Affairs), Volume 1826.

Just as Albany had been, Fort Stanwix lay on the boundary between European and Haudenosaunee lands and was therefore a logical place to conduct treaty negotiations. The negotiations began on 3 October 1784.

Commissioners met. Present as before the Honorable Oliver Wolcott; Richard Butler and Arthur Lee, Esqs.

Several of the Indians from the different nations having convened. The Commissioners called them together in the council place, where, being assembled, the following speech was delivered.

Sachems and Warriors of the Six Nations present:

It is with pleasure we announce to you that we are Commissioners sent by Congress, who is the Great Council of the United States of America, to kindle a Council Fire at this place, where we may smoke the calumet together undisturbed by evil thoughts, and renew the friendship, and brighten the chain of alliance with you our faithful brothers and give peace and good counsel to those who have been unfortunately led astray by evil advisors.

We therefore wish you to put away all evil thoughts, and cleanse your hearts, and minds, that we may begin the good work with sincerity, in which we invoke the great God to assist us.

We expect the head men and warriors of the western tribes of the Six Nations, will attend in a few days, then we shall speak more fully, and go into the business.

Generally we know from experience that ill winds blow from every quarter, and birds fly about with evil chirpings, in order to distract the minds and understandings of people when convened on such occasions.

We therefore warn you against them that you may not hearken to them, or be led into the evils which they intend; we also tell you that we have full authority to transact all business between the United States, and you, and that without the authority of Congress no business can be valid that may be attempted by particular people or states.

We shall say no more at present, but desire you to hearken to the voice of Kayenlaa, the Marquis de la Fayette, a great man among the French, one of the head warriors of the great Onondio, and as you all know a General in the American army, and a head man among us, who comes with his friends to pay you a visit and give you the advice of a 'father'.

A white string.

To which, Kayentoghke, a Chief of the Senecas, replied

Brothers, Commissioners of the United States:

You have this day assembled us at the place, appointed for holding a treaty between us and the United States, and have informed us that you are Commissioners appointed by Congress, who, you tell us is the Great Council of the United States of America, to give peace to all the Indian Nations.

Brothers

We congratulate you on your safe arrival here, and are truly glad to see you. Peace, which you mention to be the object of your coming, is what we have long and fervently wished for.

Brothers

We thank you for your good counsel. We know as you observed that birds often fly about with evil chirpings, and that ill winds blow from every quarter, to trouble and disturb the minds of persons, when engaged in affairs of so important a nature as the present, but we trust that our ears will be shut so as to reject all their evil words, and that nothing will hinder us from happily ending the good work which we have come upon.

Brothers,

You inform us that you expected the Chiefs of the Six Nations would be here in a few days, and that you would enter fully upon the business.

These, brothers, were your words and we wish that every thing may turn out to the advantage of the present treaty, for truly we are for peace.

Let the ears of the Commissioners of the United States be opened to receive the words which we have said. It is our wish that all past offenses may be forgotten, and that there may be a general peace between us, and our brothers, the Americans.

A String.

The council broke up, and the commissioners adjourned.

It is likely that "Kayenthoghke", the Seneca chief, is the man whose Seneca name has been spelled 'Koientwahka', 'Gyant Wais', 'Ki-On-Twog-Ky' or 'Kiantwahke' ý also known as Cornplanter, or by his English name, John O'Bail.

On 5 October 1784, the commissioners ordered Lieutenant John Mercer, of the New Jersey troops sent by Congress on the treaty business, to detain "all strong liquors" in the hands of white settlers around Fort Stanwix, since some of the Indians were "daily intoxicated, and the negotiation is thereby impeded".

The same day, the commissioners reported to the president of Congress:
...Some only of the Chiefs from different tribes, and some from Canada are now here, and we have information that many more are on their way and expected daily, and therefore delay opening our business, 'till the whole shall be assembled; having announced to those present our arrival in these we find a very pacific disposition, and an acknowledgment of past errors.

Though we gave due information to the Governor of New York of the time and place of holding the treaty, that if he had any business to transact with the Indians, he might do it under the patronage of the United States, yet he chose to hold a treaty with the Six Nations before us, and we are told endeavored to make peace with them in the name of this state.

We cannot learn that he succeeded in purchasing territory from them, and we thought proper to inform the Indians in our conference, that a treaty with an individual state, without the sanction of Congress, could be of no validity.

N.B.ý The Commissioners met those of Pennsylvania, who laid before them the Commission, and instructions received from the Supreme Executive of that State, which were entirely satisfactory to the Continental Commissioners.

On October 6, the commissioners notified Peter Schuyler to leave Fort Stanwix. Schuyler, they wrote, was interfering with the Indians, giving them liquor, having an interpreter with him "as if you was a Commissioner, and by various direct and indirect means counteracting our negotiations with them". They made him an order they suggested he could not refuse. In fact, Schuyler was an agent of the state of New York, and his activities were consistent, as it later appeared, with his instructions from the state.

On 8 October 1784, the commissioners met with Kanonranon (Captain Aaron Hill), a Mohawk chief and friend of Thayendenega, who had arrived with other Mohawks and some Delawares and Shawnees. The commissioners welcomed them to the council place and performed a short condolence:

Sachems and warriors of the party lately arrived ý These are the words which we spoke at our first meeting with the tribes that were assembled at this council fire ý (the speech of the 3d ultimo was read to which was subjoined the following):

We also bid you welcome, and desire that your ears and understandings may be clear, that the dirt and sweat be wiped from your bodies, and the thorns be extracted from your limbs, that good thoughts prevail, and your hearts be

sincerely disposed to that which is right in forwarding the good work which we are met upon.

We shall endeavor to render you happy while here, and expect you will conduct yourselves like men of sense.

(A White String)

To which one of the Chiefs replied That as they expected more of their head men in a few days, they would be glad to defer answering the address of the commissioners 'till their arrival.

The council broke up, and the commissioners adjourned.

By October 10, the situation had become more complicated. Lieutenant Mercer had seized "considerable quantities of strong liquor", to be returned to its owners after the treaty was concluded. Then Mercer was arrested by the sheriff of Montgomery County, who demanded bail or prison for the officer. The commissioners wrote the judges of the county:

We would not, and will not, suffer him to do either ÿ conceiving the dignity and rights of the United States would be violated by inferior jurisdiction over us, or over our Officers, acting by our orders in execution of the high and important powers vested in us by the United States, for the peace and security of all the citizens of these States.

These things gentlemen we have represented to you in full confidence that you must immediately see the insulting and dangerous nature, and consequently the heinousness of the conduct of those persons concerned in the obtaining and issuing the writ aforesaid, and that you will treat them accordingly.

Their abuse of your authority to insult and embarrass us in the person of our officer, for restraining practices essentially necessary to be restrained and always restrained at such treaties, we are persuaded you will think with us, demands from you an exemplary animadversion against all who have been concerned in it, for such indignity and injuries offered to the authority of the United States, to the Commissioners vested with their powers, and to the officer acting by their orders, if encouraged by passing unpunished must necessarily involve this country, and this state in the most serious consequences.

If our officer acting under our orders, is liable to be carried to prison by your sheriff, so are we, and the consequences would be that a few insignificant and mercenary individuals might not only frustrate any treaty with the Indians, but do it in the most insulting and opprobrious manner to the United States and their Officers.

It is an aggravation too of the conduct of these people, if anything can aggravate their conduct, that they are trading with a people who have been at war with the United States, with whom Congress have not yet made peace; and with whom therefore it is criminal in the citizens of any of the United States to carry on trade.

On October 11, the United States commissioners finally confronted the issue of Peter Schuyler's presence and activities. Their secretary reported that he had seen a letter in Schuyler's possession, unsealed and unsigned, that

...directed the said Peter Schuyler together with one Peter Rightman, as an interpreter to attend at Fort Stanwix during the time of the Commissioners of the United States holding their treaty with the Indians, to observe the conduct of the said Commissioners, and to oppose, and frustrate any of their proceedings which might eventually effect the interests of the State of New York. This paper tho' so delivered to me for the Commissioners was not authenticated by Mr. Schuyler, therefore I called on him next day, and desired he would authenticate it; he took the paper out of my hand read it, and tore it, saying he would answer the Commissioners in another manner.

The letter Schuyler gave the Commissioners stated:

Gentlemen ÿ in vindication of my character as an officer of the State and to support that authority, by which I am ordered to remain on this ground during the present Treaty, will justify my conduct in not answering your request.

The commissioners read the paper and the secretary's report "repeatedly" and concluded that "it contains directions to him to remain at the place appointed for holding a treaty, to watch our conduct, and to oppose and frustrate our measures". They also resolved to deliver the following speech the next day:

When we last met, we informed you that we were Commissioners appointed by Congress, the Great Council of the United States, and authorized to transact all business to be done with the Indian Nations, and that the Commissioners of the United States, and they alone, or such as Congress should authorize, and appoint, were competent to perform this service, and that you ought not therefore to listen to any overtures made to you by any person, or body of men, or by any particular state not authorized by Congress.

That you may be assured of the authority under which we act, we will now publish to you our Commission, which we have received from the Congress of the United States.

(Commission read. A Belt no. 2)

We have it in charge from Congress to inform the tribes of the Six Nations, who were so unfortunate as to be seduced by ill advisers to join the British army during the late war, that the United States having made peace with the King of Great Britain in a manner entirely agreeable to themselves, and correspondent to their utmost wishes, and having settled all differences with all people except the Indian Nations, are ready on their part, if desired, to give peace to those Nations also, upon just and reasonable terms, and to receive them into the friendship, favor, and protection of the United States.

That the tribes here present may know upon what terms the United States have made peace with the King of Great Britain, we will communicate to you the definitive Treaty of Peace entered into between the United States, and him.

(Publications made, and strings no. 3 given)

That you may be satisfied that the United States are the sole sovereigns within the limits just now described to you in the treaty with the King of Great Britain, and therefore the sole power to whom the nations living within those limits are hereafter to look up for protection; we shall read to you part of the Treaty of Alliance between the United States, and His Most Christian Majesty, by which he renounces all claim to the said country.

(Sixth Article read, and a String no. 1 given)

By the Treaty which has been read between the United States and the King of Great Britain, the Indian Nations will perceive that the King of Great Britain renounces, and yields to the United States all pretensions, and claims, whatsoever, of all the country south, and west of the great northern rivers, and lakes, as far as the Mississippi.

They will also perceive and consider that in this Treaty, no mention is made by the King of Great Britain of any Indian Nation or Tribe whatever, but that he has left those tribes to seek for peace with the United States upon such terms as the United States shall think just and reasonable.

Brothers of the Oneida, Tuscarora, and Cooknewagha tribes, listen to what we say to those who took up the hatchet against us.

(strings no 4)

Sachems and warriors.

We informed you in our message that we should expect you to bring in, and deliver up, all the prisoners, white and black, which you took from us during the war. You have told us that it is your determination to deliver them up, that you have sent to collect them, and expect they will arrive here daily. We must inform you that delivering up all the prisoners is essential to your obtaining peace, and in reliance on what you have promised, and in expectation of their soon arriving here, we shall now proceed to other matters, but there are John Scanando, Peter Auguslomtrongas, and Hans Krine, some of our friendly Indians, whom we desire may be immediately released from their paroles.

(Belt No. 5 given.)

The United States, in making peace with the tribes here present will expect, in order to prevent future difficulties, or disputes, that you will propose such a boundary line between the United States and you, as will be just for you to offer, and honorable for the United States to agree to.

This salutary measure will entitle such tribes to a participation of that liberality and protection of the United States, which we perfectly well know to be their interest to embrace.

(Black and White String No. 6 given)

As we do not wish to burthen your memory with too great a variety of objects at one time, we will say no more at present, but only observe that as the matters which we have mentioned are of the last importance to your peace and happiness. We expect you will take them into your immediate and most serious consideration, and return us a satisfactory answer.

Thayendenegea (Joseph Brant) also produced a written account of what took place at Fort Stanwix. He noted that "very few of the Five Nations was there". As for the commissioners' introductory remarks, Thayendenegea's version was as follows:

Butler, one of the Commissioners, spoke and said:

Brothers

We meet you this day at the Council fire place Kindled by us, we are glad to see you Safe Arrived here in a good state of health. You the Mohawks, Onondagas, Cayugas and Senecas, we now Clear your Eyes and Ears that you may see and understand perfectly of what we are going to Say to you. When we understood that there was a Council to be held here by the Governor of New York, we thought it was a good opportunity for us to come here also, to meet you whilst you assembled yourselves together, and we did this to save you the trouble of coming here the second time for the journey is long for you, though our first intention was to have had the Council at Niagara or Detroit, but as we say, since you was at this place we took the opportunity to come here to talk with you, as our intentions are good.

Then produced a large paper printed and large seal to it and said this writing you see here contains the words of the peace which was settled between the King and the Americans, and likewise mentioned the boundary lines therein fixt, which takes in most all the Indian Country and moreover said, the King did not chuse to say a word about the Indians when he was settling this peace with the Americans; the King did as it were tread upon the Indians, and did not see where they were, so it was left intirely to the management of Congress to settle all the Affairs within the limits which the King had given to them.

For this reason it becomes necessary for us to meet you and settle matters and to remove all Differences which now lies between you and us, by reason of the late War with the King. He also said we are the proper people to treat with you, because we are appointed by Congress to transact business with all the Indian Nations and power was given us for that purpose. If any one State should be Calling Councils with the Indians it is highly improper to do so. Then the Speaker turned about towards the Oneidas, Tuscaroras and Caughnawagas, who was setting together and said:

Brothers

You Oneidas, Tuscaroras and Caughnawagas, you are our friends, therefore we have nothing particular to say to you on this occasion, only to bid you welcome to this Council Fire, and desire you to sit still and look on, when we shall be speaking to these Nations who was fighting against us. Again he turned about to the Five Nations and said; we the Commissioners wishes [to treat] with you just and equitable terms, both parties should be satisfied and boundary lines should be fixt between you and us, which will also prevent further disputes. All the Country which lies now within the limits of Congress formerly yours, is still yours, for we do not claim any part of your lands (except the posts). If we should have any of your lands we mean to pay you for it. As we have mentioned to you before that we wish to remove all the Differences which lies between you and us and to lay

them aside our intentions of coming here is to be friends with you again, but do what you think best for yourselves; if in case you have the same minds that we have, we shall then go on well and settle everything Agreeably.

Again the speaker said we have two principal things to tell you, that is we wanted you should give up all the prisoners of our people and let them have their Liberty, which still remains among you, and also the four Indians of ours who were taken by you the year '79 let them have their freedom, and likewise some Negroes are among you. The second thing we wanted to have a part of your lands to pay our troops with, which we owe to them and mean to pay you for it, if you let us have it we don't mean to point out any particular spot or the quantity, we would leave that to yourselves, when you will please to give it to us and the Quantity of it. Now if you will agree with these two things we require Every thing difficult and Difference that now lies between us will then be removed and buried and we will be as great friends as we have ever been this is all what we have to say to you at present. However when you give us an answer to this we shall say a little more to you, which still remains in our minds.

Virtually every point that was in the commissioners' written record is reflected in Thayendenega's account. He continues:

My friends came off about this time, before the Five Nations had time to give an answer, though everything was fixt how to speak to the Commissioners on the different Subjects, they intend to agree and give part of their lands near the Susquehanna river from there to the east side of the Ohio River, the old boundary line; the Five Nations thinks the next the Commissioners will ask them will be to become their Allies, which thing is not very easy agreed upon.

It appears that Thayendenega's 'friends' left the council early, believing that all would be settled easily. They were involved in planning the Haudenosaunee response to the commissioners but did not stay around to discover what "little more" the commissioners would say. It may be that the commissioners had decided to wait until the number of delegates had thinned out before stating the hard line they had planned. Thayendenega's account also contains the speech by the Marquis de la Fayette, in which he rejoices that peace is being made and chastises the Haudenosaunee for taking part in a war that "did not concern you...all the trouble you have met with...is your own faults". The Haudenosaunee replied that "we could not help joining the King at the beginning of the war, owing intirely to the old Friendship we had with him...it was natural enough for us to join the King".

On 11 October 1784, the commissioners ordered Lieutenant Mercer to seize all liquor within a mile of the treaty place ŷ and not to exempt Schuyler and Rightman from the order. On

the following day, they issued written orders to Mercer to post sentinels "round the Booth where we will hold Council with the Indians", so that

you will give strict orders not to admit in, or near the said place of holding the Council, Mr. Peter Schuyler, or Peter Rightman, but if they see them, or either of them listening to or observing what passes in the Council, they direct them to move off.

Having dealt adequately with meddling by New York and with the problem of the liquor sellers, the commissioners resumed the treaty process:

At the hour appointed, (the Indians having been previously ordered to assemble) the Commissioners, attended by the gentlemen Representatives of Pennsylvania, met in the council place, where being present, the speech as prepared on yesterday, was delivered, previous to which Capt. Aaron Hill, a chief of the Mohawk tribe, delivered the following speech acknowledging the Commissioners the receipt of their message and informing them of their arrival.

After repeating the invitation of the Commissioners of the United States to come to their council fire, he mentioned that the reasons why they had not before attended were that they had been frequently invited by the Governor of the State of New York to come to a Treaty with that State.

That they enquired of the messenger, whether the treaty was in behalf of the United States, or of the State of New York only, to which he replied that it was not a Continental treaty, but a particular one of that State. That they had written to the Governor of New York, requesting that it might be a Continental treaty, but that he had never answered their letter, which kept them in a state of doubt until they received a message from the Commissioners of the United States, when it was so late in the day that it was difficult for such numbers to come as otherwise would have attended. Also that the sickness which universally pervaded their country was another cause of so small a number, being present.

It was October ŷ harvest time. Furthermore, the people were scattered by the war, and it had become difficult to maintain the kind of communications and preliminary discussions that had been part of the Confederacy's preparations for treaty making. Kanonranon's response reflects his own awareness of the United States' internal politics.

That, with respect to the prisoners which they were directed to bring with them it was so late in the day when they received the message of the Commissioners of the United States, that it was impossible for them to be collected in time, but that Capt. Brant, whom he had met on his way hither had promised to have them instantly collected, and sent down assuring the Commissioners that it was a matter absolutely determined upon, that all of them should be delivered up.

The exchange or delivery of prisoners had been an aspect of all Haudenosaunee peace treaties for many years: recall, for example, the elaborate return of prisoners in the 1701 Treaty in Montreal.

It was also not unusual to promise to deliver up the prisoners later, for whatever reason.

That numbers of their brothers to the westward, the Wyandots in particular had returned home, by reason of the advanced season of the year after having come as far as to Niagara, so that there were only present themselves, and their brothers, the Shawanese.

(The message belt sent by the Commissioners was delivered).

It is usual, in answering an invitation to a council or treaty, to return the belt or strings sent as the invitation. This provides both acknowledgement that the message has been received and an indication of the authority of the delegates. These preliminary proceedings continued to address the issue of authority, turning to Kiantwahke (Cornplanter):

The Commissioners then informed Capt. O'Bail one of the chiefs of the Seneca tribe, of the receipt of a letter, from the headmen of Six Towns, whereby they were informed that he was fully authorized to transact all business between the United States, and the inhabitants of those towns, and that to whatever he should say on their behalf, full credit might be given.

The Commissioners also informed Capt. O'Bail that they would be happy in transacting business with a person of his wisdom and good name, to which Capt. O'Bail replied:

Let the commissioners, Representatives of the United States now listen. You have this day assembled us at the place appointed for holding a council fire, and certainly the day was fixed upon by the Great Spirit for the purpose. You have opened fully your minds to us, and we see the business to be done at this treaty. We shall take it into our immediate and most serious consideration, and whenever we shall be prepared, you shall hear our voice.

The usual ceremonies being over, the council broke up, and the Commissioners adjourned till to-morrow at 10 o'clock.

The "usual ceremonies" had been the welcome and condolence, the return of the invitation belts and strings, and the confirmation (on both sides) of the appropriateness of the delegates and commissioners. Though the commissioners had adjourned until the following day, no business was done on the 13th. It is likely that the Haudenosaunee were engaged in the internal councils that they had been unable to hold because of the short notice of the treaty. There were further delays: news arrived from Niagara the following day that three white men had been killed by four Mohicans, but that the British and Mohawks were going to find "and deliver up" the murderers. The Haudenosaunee delegates decided to interrupt their councils to ensure that the United States commissioners would not be swayed from the treaty by these events:

In consequence of the arrival of the foregoing intelligence, the chiefs assembled in the Council House, and requested the attendance of the Commissioners, who accordingly met, when they were addressed in the following manner.

Brothers, Commissioners of the United States attend:

By the appointment of the great spirit above, this is the day in which we have received information of the blow, which has been struck upon you in your rear, during our mutual attention to business of the first importance in this treaty.

Brothers, we beg you possess your minds in peace, and that you will not suffer this affair to interrupt the business of the treaty, as we mean to proceed to give you an answer to-morrow, to which the Commissioners replied:

Brothers of the Six Nations attend.

We have heard of the unhappy affair which you have mentioned, we have enquired into it, and suppose it to have been only the act of a few bad people, and not authorized by the voice of any particular tribe: we therefore shall take your advice, compose our minds, and not suffer this, affair to interrupt the important business; and shall be happy to receive your answer to our speech to-morrow as you propose. Upon which the council broke up.

This interchange confirms that the Haudenosaunee were continuing their internal councils. It is almost certain that the Oneidas and Tuscaroras were part of them: although the commissioners called these two nations "Brothers" in their opening address and pointedly refrained from claiming any relationship with the Mohawks, Onondagas, Cayugas and Senecas, on October 14 it was "Brothers of the Six Nations". In keeping with Haudenosaunee treaty procedure, the concern was that these bad events should not interfere with the good minds of the people who were engaged in the business of peace.

There was sickness in the country of the Haudenosaunee. On October 15, nine Senecas came with news of the death of Cornplanter's daughter. In times of less urgency, it is likely that there would have been a decent interval before the resumption of business. Still, the shadow of death had to be removed from the council, and the commissioners and the Pennsylvania representatives met in the council house with the Haudenosaunee "to condole with him on his misfortune".

In doing so, the representatives of the United States were fulfilling the purposes of the ceremony of condolence. They were the 'clear-minded ones', whose minds were not clouded with grief. Just as within the Confederacy it would have been one 'side' that condoled with the other, in this international setting, it was one nation that did so, in the interests of peace, as well as out of respect for the living and the dead.

Then they moved to the business of the council:

...the usual ceremonies being over, and belts delivered on both sides, Capt Aaron Hill, a Chief of the Mohawk tribe, informed the Commissioners that they were ready to answer to the speech of the Commissioners, proposing certain matters for their consideration, and accordingly addressed them in the following manner.

BROTHERS, COMMISSIONERS OF THE UNITED STATES ATTEND.

The great spirit has once more brought us together upon the important business which you proposed to us some days ago, and we shall endeavor to give it as full and satisfactory an answer as may be in our power, tho' should we not be precise enough, we must not be blamed, as we had not a copy of your speech agreeable to our desire.

By the 1780s, there were enough literate Haudenosaunee that paper documents were mixed with wampum for council purposes. Kiantwahke (Cornplanter, John O'Bail) and Brant, among others, sent letters accompanied by wampum as a gage of truth and power. Kanonranon's letters are also on record. The New York commissioners did not record that the Haudenosaunee had previously asked for copies of the documents. Kanonranon's introductory statement chides the commissioners gently for that but is in keeping with the speaker's practice of apologizing for his inadequacies before turning to matters of substance.

You acquainted us that this great Council Fire was kindled for the purpose of settling all differences, and disputes between the United States and us to conclude a peace, and to cause to grow that specific disposition which at present appears mutually to subsist between us. This you informed us was your intention. You also acquainted us, that it remained entirely with us, whether there should be peace, or not, and that it was your desire to establish a lasting peace between the United States and us. I see clearly the subject of your speech, and beg your attention to the words of the Warriors, for there are no Sachems amongst us.

This should have stood as a warning to the United States commissioners: the laws of the Haudenosaunee apparently left the conduct of war to the young men, the warriors, but once the intention of peace was agreed, it was the sachems, the *rotiianeson*, who would conduct the proper business of the nation. The 1815 Treaty at Burlington Heights provides one clear example of this process.

There is some historical evidence of divisions or differences between the warriors and the *rotiianeson*, and in this case Kanonranon (Aaron Hill) tried to say that the United States should overlook the absence of the legal and proper leaders of the Confederacy:

The words of the warriors are strong, they are persons who have travelled through the world, and borne all the difficulties of the war, that it is in their power to make a lasting peace. You told us that it was solely on us to make peace, but we apprehend that it is mutually dependant upon both parties. I speak in the name of the Six Nations, and not only in their name, but also in the name of all other tribes

ÿ my voice therefore is strong ÿ our minds are deep and persevering, and our wish to make peace is great.

Kanonranon's next words both reaffirmed the independence of the Haudenosaunee and explained how the Confederacy had been drawn into the war. From his words, it is clear what a deep hurt the King's abandonment of his allies had been ÿ "he having broke the chain, and left us to ourselves".

We are neither haughty, nor proud, nor is it our disposition ever of ourselves, to commence hostilities. Our adherence to our Covenant with the Great King, drew us into the late war, which is a great proof to the Commissioners of our strict observance of our ancient covenant with the white people, and you will find the same attachment to the Covenant now to be made, as that which signalized our conduct during the late war.

We are free, and independent, and at present under no influence. We have hitherto been bound by the Great King, but he having broke the chain, and left us to ourselves, we are again free and independent. Upon this principle we wish that the Commissioners would consider what we say as of ourselves, and not as being under the influence of any; that as free and independent people, we have a right to treat for peace, which we wish to be settled that if either party should in future go to war, the other may give their assistance, or refuse it, as it may please them

(A string, no 0)

When taking up the belt of the commissioners that was delivered on the reading of their commission he said,

Brothers, by this belt you informed us that you were authorized by Congress to settle a peace with us, and to prove that your powers were adequate, you produced your Commission from the Congress of the United States. We rely upon the truth of your being sufficiently adequate, and we, and our brothers, the Six Nations feel ourselves greatly obliged to you for being so kind as to produce them.

You directed us not to attend to what any particular state might say to us on public business, and that the Commissioners of Congress alone were adequate to that purpose.

We, of the Six Nations are fully sensible of the truth of this, and we think that no particular state can have any right to treat separately, but that it belongs only to the United States. In consequence of this, when the Governor of New York sent a message to us to assemble here in order to treat with that state, we requested that it might be a Continental Treaty, as we conceived that the United States formed one general system, or plan.

Kanonranon was sending a second message while reaffirming the words of the commissioners several days before. Just as it was wrong for individual states of the United States to deal with the Haudenosaunee, so it would be inappropriate for the United States to try to separate the nations of the Confederacy, who also formed "one general system, or plan". However, either the

message was too subtle or, more likely, the United States strategy was still intent on treating the 'friendly' Oneidas and Tuscaroras as somewhat separate from the other four nations.

Then taking up a string, he said:

By this string, Brothers, Commissioners, you acquainted us that peace was established between the United States and the King of Great Britain, which the great spirit was called to witness, and then you go on to acquaint us of the boundary line established between the Great King, and the United States, beginning near Halifax, and running thence, etc. (mentioning the boundary, as described in the definitive treaty read to them by the Commissioners,) y This you assured us is your boundary. That all the territory within it, is the property of the United States, and that all the Nations residing thereon must look up to them for protection.

You also assured us that, the King in settling this peace with the United States, made no mention of us, but left us to treat for ourselves. Certainly the great King did not look up to that Great Spirit, which he had called as a witness to that Treaty, otherwise common justice would not have suffered him to be so inattentive, as to neglect those who had been so just, and faithful to him; and we think that our Brothers, the United States did not think of the Great Spirit, otherwise they would have mentioned to the great King those persons who had been so faithful to him, when they found that he had entirely neglected them.

As the commissioners have informed us of their powers to treat, I shall now inform them that we are the only persons adequate to treat of and conclude a peace, not only on the part of the Six Nations, but also on that of the Ottawa, Chippewas, Hurons, Potowatomas, Messasagas, Miamis, Delawares, Shawanees, Cherokees, Chicacas, Choctas, and Creeks, and establish a peace in the name of them all.

Whatever conclusion is made at this treaty will be strong, and whatever passes will be communicated throughout all the various tribes.

The written historical record does not support Kanonranon's claim that he spoke for all the nations he named. The nations he named had met at the Miami River in the Ohio country and had stated their intention of forming a confederacy, though it was perhaps ten years before that became a strong reality. It is possible, though, that those nations had asked the Six Nations to explore the possibilities of peace with the United States on their behalf.

Then taking up the black, and white string, he said:

Brothers, commissioners of the thirteen United States, by this string you acquainted us that the King of France had ceded to the United States all claim, and title to any lands within their boundary. We have only to thank the Great Spirit for putting it into the mind of the King of France to make this cession, as it is well known that he is extremely saving of his lands, and that the United States are in great want of them.

(black and white string.)

Kanonranon, according to the rules of treaty protocol, had to respond to each of the strings and belts laid down by the commissioners. In replying to the question of the King of France, he did not fail to add a touch of sarcasm.

Then taking up the belt he laid it down, and taking another in his hand said:

Brothers, Commissioners 13 U.S.:

By the belt which I hold in my hand to which this is a reply you informed us that it was indispensably essential to the making of peace, that all the prisoners should be delivered up, and that nothing could be finally done therein, until that should be the case.

We would propose to the Commissioners that for this purpose they should depute persons of their own nation to go and collect them, lest if it should rest with us the Commissioners might apprehend that they were not all brought, and for this purpose we will give them all the assistance in our power.

As the day is at present so far advanced, we will defer the other matter until to-morrow, when we will answer to your last requisition.

(A belt)

The commissioners then requested that they might assemble as early in the morning as possible, and having covered up the Council fire for the night, retired.

October 17 had been the first day of the Haudenosaunee reply to the United States.

Following treaty protocol, the council ended at dusk, since it was contrary to Haudenosaunee law to meet after dark. "Covering up the Council Fire for the night" probably meant giving thanks in a closing ceremony, which, being lengthy and 'usual', the commissioners' papers would not record.

The following morning, Kiantwahke (Cornplanter) spoke to the commissioners about their last request of the boundary line. The change in speakers was not unusual: it was consistent with the Haudenosaunee practice of assigning different issues to different speakers, depending on their expertise and knowledge of the issues. In this case, it also sent a message about the unity of the nations.

Brothers, Commissioners of the thirteen United States, and all present of the Six Nations attend.

Yesterday at your council fire, many things were replied to, but one principal matter was deferred till to-day when we informed you that we would answer to your last subject.

Brothers, Commissioners of the thirteen United States.

You addressed yourselves to us the Six Nations, and requested that we should propose a boundary line between you and us, which might be honorable and satisfactory to you, and which might afford peace to our own minds.

Brothers, we who are here present of one mind, thank you for your proposals. We conceive that the Great Spirit has prompted you to it, that our

minds may be quieted, with which we are well pleased, and for which we again return you our thanks.

Brothers, compose your minds, the day is almost too short for an answer to so an important a question, and we hope that it will not give you any uneasiness, that we have not yet answered to it, for we Indians love our lands.

We have deliberated long upon this subject because when we have once made a line of division between us, the lands which are granted will be no longer our property. One matter of great importance to the Seneca nation, should be brought to your view before we make any final determination. We have long been in the possession of our territory, there are many here who know it, who know that it extended far, and that we had great love to it.

We Senecas are not of difficult minds; we have possessed our territory a long time, and managed our own affairs while the United States, and the king of Great Britain were friends, and during the whole time of the wars to the southward, we never called upon any for assistance.

While the wars were carried on among the Indians, we heard the voice of the Great King speaking to the Mohawks, this was his language; "why do you of one blood fight thus, one against another".

We were then exhorted by the Mohawks to drop the hatchet, and to carry it no longer to the westward. We complied with their exhortations, and carried war no longer among those tribes. At this time the King's Superintendent removed the council fire that was kindled this way, and our brothers, the Mohawks followed it from one place to another. This person was Col. Guy Johnson, who continued to remove the council fire from place to place, till he at last kindled it at Oswego, and sowed the seeds of confusion into our minds.

The King's Superintendent then called us to his council fire, which he had kindled in Canada among the Seven Tribes, that were then present when he took out what distracted our minds, he gave us even the hatchet, which when given, the Seven Tribes of Canada received with great eagerness. When we Senecas received the hatchet, and returned to our country, and convened at the council fire of the Onondagas, that they might also deliberate with us upon the matter. At our deliberations at that council fire, we agreed to return the hatchet, and to deliver it up to Gen. Schuyler.

We have now related to you the manner in which the hatchet was taken up. It came from the Seven Nations in Canada, who prevailed upon us to take it up, so that we could not sufficiently attend to your voice when it called upon us to be neutrals, and we of the Seneca Nation must again say that the hatchet was put into our hands, by those Seven Nations, for we Indians love our own blood.

Brothers, Commissioners of the Thirteen United States:

As we proposed to relate to you, the truth respecting the manner of our entering into the war with the United States, we hope that the relation which we have given will not prove disagreeable to you. It is our wish, that we may never be again in the like situation, for we are sincerely disposed to peace, and friendship, the great business of the present treaty.

Brothers, Representatives of the Thirteen United States:

You have allotted to me the task of drawing a line between us to your satisfaction. I feel the weight of it; I feel for many of my brothers, who will be left destitute of any lands, and have therefore taken care in my deliberations to mark out that line which will give peace to both our minds.

I hope that in our present negotiations, nothing but friendship will prevail, and I am fully sensible that you will never conduct yourselves towards us, as the King of Great Britain has in throwing us away.

In setting out this preamble to his proposal, Kiantwahke was not simply seeking to convince the commissioners of the relative innocence of the Senecas in the war. His statements reflect the real anger felt by many Haudenosaunee at their abandonment by the King. The statements also reflect the Confederacy's teachings about peace.

The commissioners, in asking the Haudenosaunee to draw a line that would be satisfactory to the United States, were taking advantage of the rules of council: the Haudenosaunee would feel obliged to propose something that would not be rejected. The burden had been placed on them by the commissioners. Kiantwahke continued:

Brothers, Commissioners of the Thirteen United States, now hearken:
When we shall draw the line between us, whatever shall remain within the boundary allotted to us, shall be our own; it shall continue forever, as the sun which rolls over from day to day.

Brothers, Commissioners of the Thirteen United States:

Let us go in this business of peace with tenderness, and caution, as it is of the utmost importance, and should what I now say, not meet with a kind reception into your breasts, it will greatly distress me, for I who stand before you am a warrior, and should it not meet your approbation inform me whilst I am here.

Brothers:

I have several times repeated the words to proceed tenderly in this business, for I regard future generations, and to them I attend while engaged in making peace with you.

These ideas and words come directly from the Great Law of Peace. The tenderness, the concern for future generations, and the overriding goodness of peace built by people of good minds — all are fundamental concepts of Haudenosaunee law.

Our fires will be a considerable distance from each other, when I come to describe the boundary between us. This will tend to our mutual peace.

I think brothers that we warriors must have a large country to range in, as indeed our subsistence must depend on our having much hunting ground, and as it will also bring in money to you, will tend to our mutual advantage.

Now brothers I am about to draw the line — this we Senecas do of ourselves, as the land belongs solely to us, let it begin at Tioga, and run thence by

a straight line inclining a little to the north to Ohigee, and when it strikes the river Ohio, let it go down its stream to the old boundary, on the Cherokee river. As to the territory westward of that you must talk respecting it with the Western nations, towards the setting sun ÿ they must consult of what part they will cede to the United States.

The Oneidas and Tuscaroras had been told by the commissioners that none of their land was required. Most of the Mohawks' land had already been taken in the many dubious land dealings before the Revolutionary War, and much had been given up in the 1768 Treaty at Fort Stanwix. It is possible that Kiantwahke was the speaker because most of the land affected was Seneca land. It also became clear that Kanonranon's announcement that he spoke for all the western nations might have applied to peacemaking, but it certainly did not extend to authority to surrender land. Kiantwahke continued:

Brothers should you approve of this boundary you will direct your people not to trespass upon our territory, or pass over the line, and should any of our nation attempt to pass over, or intrude upon your lands ÿ let us know it ÿ we will take care to reprimand them, and prevent it.

These words are consistent with all earlier relations between the Haudenosaunee and the Europeans; they are consistent with the Two Row Wampum. Each nation was to assume responsibility for the conduct of its people, and complaints were to be handled on a nation-to-nation basis.

Brothers:

By this belt you now see my mind. If what I have mentioned be approved of by you, lay it along the Tioga, as I have said, if not I again request you inform me.

Brothers, Commissioners of the Thirteen United States.

I now introduce to you Thaghnoghtonhare, a chief man of our nation, who, should you approve of the boundary which I have described, will attend to your surveys.

The Commissioners then informed them that they had heard what they had proposed, and would take it into consideration, and should they not approve of it, when they were prepared to give them an answer, they would let them know. The council fire was then raked up and the commissioners retired.

On 20 October 1784, the commissioners of the United States delivered a harsh response to the proposals from the Haudenosaunee. They denied that the Six Nations spoke for any other nations; they insisted that the Six Nations had entered the war without justification. Mainly, they denied the statement that the Haudenosaunee were a free people, saying that in losing the war they were a subdued people, dependent on the mercy of the United States. Then the three commissioners dictated stiff terms for the Treaty:

Sachems and warriors.

We are now going to reply to the answer you made to our speech, therefore open your ears and hear.

You informed us that your words were not the words of the Six Nations only, but that you were empowered to speak for all the nations of Indians from north to south. This surprises us. We summoned the Six Nations only to this Treaty. That nations not called should send their voices hither is extraordinary. But you have not shown us any authority either in writing or by belts, for your speaking in their names; without showing such authority, your words will pass away like the winds of yesterday that are heard no more.

You have complained that we have refused you a copy of our speech, which might lead you into errors. When we refused it we gave our reason, which was this, that having explained our minds publicly and clearly to you all, and given belts and strings to remind you of every proposition, we did not choose you to be deceived, and our meaning to be misrepresented by the few persons among you who understood English, and might have explained our speech if we had gave a copy of it, as they pleased. We knew there were such persons among you who wished to deceive you, and under the direction of those who led you into war against us, were planning to mislead you again for their own purposes.

We did not wish to put you into the power of such persons, but to clear your eyes and your understandings.

We explained at your desire over and over again our speech to you, and the strings and the belts which accompanied every part of it.

You next excused your having taken up arms against us, by alleging you were drawn into it by your ancient covenant with the King of England.

Where was your sense of covenants, when after solemnly covenanting with us in 1775, and again as solemnly in 1776, receiving our presents to cover you, to comfort, and strengthen you ÿ immediately you took up the hatchet against us, and struck us with all your might? Could you have so soon forgotten your recent engagements with us, and yet be influenced by those long past with the King of England?

We asked you; we exhorted you for your own sakes to remain neuter, though as living on the same ground with us, we had a right to expect your assistance against all invaders. You twice solemnly covenanted not to join in the war against us ÿ and without the smallest provocation on our part ÿ you violated your covenants, and spilt our blood.

We should not have called to mind this conduct, had you not attempted to justify it. You must not deceive yourselves, nor hope to deceive us. To justify errors may lead to a recomission of them, and it will be more safe and honorable to repent of than to palliate, a conduct which though mischievous to us has been fatal to you, and has left you at our mercy.

Again you are mistaken in supposing that having been excluded from the United States and the King of Great Britain, you are become a free and independent nation, and may make what terms you please. It is not so.

You are a subdued people; you have been overcome in a war which you entered into with us, not only without provocation, but in violation of most sacred

obligations. The Great Spirit who is at the same time the judge and avenger of perfidy, has given us a victory over all our enemies.

We are at peace with all but you; you now stand out alone against our whole force.

When we offer you peace on moderate terms, we do it in magnanimity and mercy. If you do not accept it now, you are not to expect a repetition of such offers. Consider well, therefore, your situation and ours ÿ Do not suffer yourselves to be again deceived so as to raise our arm against you you feel the sad effects of having refused this counsel before ÿ beware how you do it again.

Compassionating your situation, we endeavored to make the terms on which you were admitted into peace, and protection of the United States, appear to spring from your own contrition for what you had done, rather than from a necessity imposed by us. We therefore proposed to you to deliver up the prisoners, and to propose a boundary line, such as it became the United States to agree to.

On neither of these points have you given us the smallest satisfaction. You propose we should depute people of our own nation to go and collect the prisoners. This you know from experience is impracticable, that it would only provoke insults, and perhaps the murder of such deputation, by the persons who hold our fellow citizens in bondage. You only can collect them, you only, ought to collect them, you must collect and deliver them up. Our words are strong, and we mean you should feel them. With regard to the boundary line you have proposed, the lands to the north west of it have almost all been sold already to Onas [the governor of Pennsylvania]; and all the lands southwest of it to the Cherokee river was sold by you in the year 1768, at this place, and is all granted and settled by the white people.

We shall now, therefore declare to you the conditions, on which alone you can be received into the peace and protection of the United States.

The commissioners then read out the terms of the written treaty of Fort Stanwix of 1784: The United States of America will give peace to the Senecas, Mohawks, Onondagas, and Cayugas, and receive them into their protection upon the following conditions are these:

Article 1st Six hostages shall be immediately delivered to the commissioners by the said Nations, to remain in possession of the United states, till all the prisoners white and black, which were taken by the said Senecas, Mohawks, Onondagas, and Cayugas, or by any of them in the late war from amongst the citizens of the United States shall be delivered up.

Article 2 The Oneida, and Tuscarora nations shall be secured in the possession of the lands on which they are settled.

Article 3 A line shall be drawn, beginning at the mouth of a creek about four miles east of Niagara, called Oyonwagea, or Johnston's Landing Place, on the lake named by the Indians Oswego, and by us Ontario, from thence southerly in a direction always four miles east of the carrying place between lakes Erie, and

Ontario, to the mouth of the Tehoseron, or Buffalo Creek, on Lake Erie, thence south to the north boundary of the state of Pennsylvania, thence west to the end of the said north boundary, thence south along the west boundary of the said state to the river Ohio.

The said line from the mouth of the Oyonwagea to Ohio, shall be the western boundary of the lands of the Six Nations, so that the Six Nations shall, and do yield to the United States all claim to the country west of said boundary, and then they shall be secured in the peaceful possession of the lands east and north of the same, reserving only six miles square round the Fort of Oswego to the United States for the support of the same.

Article 4 The Commissioners of the United States in consideration of the present circumstances of the Six Nations, and in execution of the humane and liberal views of the United States upon the signing of the above articles will order goods to be delivered to the Six Nations for their use and comfort.

The Commissioners then proceeded to explain these terms, in language as severe as the terms they had dictated:

We shall make a few remarks on these articles, tho' the moderation and equity of them are manifest.

1st It is more than six months since you were informed by General Schuyler, in the name of Congress, that you must deliver up all prisoners before peace could be granted you. Our message gave you the same information, yet you have not delivered them up.

As the delivery of them is indispensable, so you have rendered hostages necessary by your delay.

2d It does not become the United States to forget those Nations who preserved their faith to them, and adhered to their cause, those, therefore must be secured in the full and free enjoyment of those possessions.

3d The line proposed, leaves as extensive a country to the remaining four nations, as they can in reason desire, and more than, from their conduct in the war, they could expect.

The King of Great Britain ceded to the United States the whole, by the right of conquest they might claim the whole. Yet they have taken but a small part, compared with their numbers and their wants. Their warriors must be provided for. Compensation must be made for the blood and treasures which they have expended in the war. The great increase of their people, renders more lands essential to their subsistence. It is therefore necessary that such a boundary line should be settled, as will make effectual provisions for these demands, and prevent any future cause of difference and dispute.

4th It ought to be felt by you as a signal proof of the magnanimity of the United States, that tho' the present distresses of most of the Six Nations, have been

incurred by their own fault in fighting against them. Yet they have determined to minister such relief to them as is at present in their power.

These are the terms on which you may obtain perpetual peace with the United States, and enjoy their protection.

You must be sensible that these are blessings, which can not be purchased at too high a price. Be wise, and answer us accordingly.

To which Capt. O'Bail replied:

Brothers, commissioners of the thirteen united states:

You have this day declared your minds to us fully, and without disguise. We thank you for it; this is acting like men, for thus men speak. We will take what you have said into our most serious consideration, and when we shall have prepared ourselves to answer to what you have proposed, you shall hear our voice.

The Council had ended for the day. On the following morning, it was again Kanonranon (Aaron Hill) who spoke for the Haudenosaunee delegation:

Brothers, Commissioners of the Thirteen United States, attend:

You yesterday replied to the last speech which we made to you in answer to certain matters which you proposed for our consideration.

We are surprised that you misunderstood what we said, for the speech of our brothers, plainly shows that they did not understand our meaning. I will now therefore relate the eight principal articles, which were contained in our speech.

Brothers:

Upon your informing us that this council fire was kindled for the purpose of making peace, we replied that we loved peace, that our minds were thick, firm, and determined, that we were resolved that peace then to be made should be so strongly founded that no person should ever have it in their power to molest it.

We likewise assured you that we were not trifling, that we were relieved from our covenant with the Great King, and consequently could establish peace upon a firm basis. That we would not be wavering, that our minds were long and enduring, and that in case a war should break out between you, and the King of Great Britain, we should have it in our power to assist you, or not, if we were asked, and even if not called upon, we should still be able, for that as free and independent people we might act in that case as we might think proper, and further that if a war should break out between the United States, and the King of Great Britain, if you desired, we would sit still, and remain neuter, and likewise we informed you that the Treaty now to be made should be held up forever before us, and should conduct us in future.

You likewise informed us that as we did not produce any written proofs, or belts for our speaking in the name of those western tribes, our words would pass away without effect. We did not bring any proofs with us, but left them at the

council fire, which is now burning among our Brothers the Shawnees, on the River Miami.

The tone and manners adopted by the United States commissioners had shocked the remaining Haudenosaunee delegates:

...the initial Indian speakers were cut short in their delivery, informed that Great Britain had given their lands to the United States, and ordered peremptorily to sign articles of submission and cession. American spokesmen pointed their fingers at the Indians to emphasize each instruction. "It made the Indians stare...The speech was delivered in a language by no means accommodating or flattering; quite unlike what they were used to receive". And behind the whole proceeding lay a pose of withering contempt on the part of the white delegates, many of whom were slaveowners and only too ready to regard the Indians as lesser breeds.¹⁸⁴

On 23 October 1784, the treaty was signed on the terms demanded by the United States. Haudenosaunee title to lands beyond the Allegheny River was ceded. Most of the Seneca land in New York was affected. Hostages – including Kanonranon – stayed behind to guarantee the delivery of prisoners. The men who made this treaty returned home to a hostile reception from their own people. Within two years, the Haudenosaunee had formally repudiated the 1784 treaty.

The question must be asked: Besides peace, what did the United States desire from these negotiations, if indeed they may be called that? First, the United States had secured title, or more precisely the right or pre-emption, to the Ohio Valley by the Treaty of Paris. In order to sell the land and settle it, the Continental Congress needed to extinguish Indian title, including any claim held by the Iroquois tribes of New York. Second, the commissioners wanted to punish the hostile tribes, particularly the Senecas. Thus they forced the Senecas to surrender most of their land within New York to the United States. Third, as improbable as it may seem, the United States wanted to insure peace by confirming to the tribes their remaining lands. Fourth, the United States was anxious to protect its frontier from the British in Canada by securing land for forts and roads along lakes Erie and Ontario. Thus, national policy at the end of the war consisted, on the one hand, of treating the tribes as conquered enemies to whom terms could be dictated with impunity, while, on the other hand, assuring the tribes that the Continental Congress would control the avarice of the states.¹⁸⁵

The policy of the United States failed on several counts. First, it could not control the activities of the state of New York. In 1785, New York bought Oneida land, in defiance of

federal laws. In 1788 and 1789, New York took more than seven million acres of Haudenosaunee land:

...New York, under the leadership of George Clinton, had ignored the prohibition on land purchases, and by deceit, fraud and threat, forced large cessions from the Oneidas, Onondagas and Cayugas.¹⁸⁶

The Fort Stanwix Treaty of 1784 was only a stepping stone, a preamble to permanent relations between the Haudenosaunee and the United States. Its harshness left anger in the hearts of the Confederacy that needed to be addressed ÿ eventually, by the Treaty of Canandaigua of 1794.

Though the United States commissioners spoke of conquest rather than pre-emption, they still dealt with the Haudenosaunee as a separate people. The terms of the 1784 treaty purported to protect the remaining lands from encroachment and thus laid part of the legal groundwork for modern claims that New York treaties ÿ especially those that involved obvious fraud, duress and deceit ÿ are invalid by the laws of the United States. The 1784 treaty also established direct, nation-to-nation links between the United States and the Haudenosaunee and marked efforts by the federal government of that country to keep the individual states out of relations with Aboriginal nations ÿ just as the imperial government had sought to exclude the colonies a decade earlier.

Though the United States commissioners deliberately set out to humiliate and shock the Haudenosaunee delegates, it is significant that they followed every aspect of Haudenosaunee treaty procedure for more than a week. They were obviously familiar with that procedure and respectful of it.

The 1784 treaty has doubtful validity from the perspective of Haudenosaunee law. While the warriors and war chiefs had the power to seek and make peace, for its own sake, they had no power to deal with the land. There were no sachems, no *rotiianeson* present. It was intended to be a peace treaty, nothing more.

The Treaty of Canandaigua, 1794

Background

In 1786, the United Indian Nations formed a common front against the United States of America. They were not seeking war, but recognition of their rights as nations and of their rights to their lands.

The Haudenosaunee were among the nations that sent a message to Congress as a result of a council held near the mouth of the Detroit River on 28 November and 18 December 1786:
BRETHREN OF THE UNITED STATES OF AMERICA

It is now more than three years since peace was made between the King of Great Britain and you, but we, the Indians, were disappointed, finding ourselves not included in that peace, according to our expectations: for we thought that its conclusion would have promoted a friendship between the United States and Indians, that we might enjoy that happiness which formerly subsisted between us and our elder brethren. We have received two very agreeable messages from the thirteen United States. We also received a message from the King, whose war we were engaged in, desiring us to remain quiet, which we accordingly complied with. During the time of this tranquillity, we were deliberating the best method we could to form a lasting reconciliation and friendship with the thirteen United States. Pleased at the same time, we thought we were entering upon a reconciliation and friendship with a set of people born on the same continent with ourselves, certain that the quarrel between us was not of our own making. In the course of our councils, we imagined we hit upon an expedient that would promote a lasting peace between us.

BROTHERS:

We are still of the same opinion as to the means which may tend to reconcile us to each other; and we are sorry to find, although we had the best thoughts in our minds, during the beforementioned period, mischief has, nevertheless, happened between you and us. We are still anxious of putting our plan of accommodation into execution, and we shall briefly inform you of the means that seem most probable to us of effecting a firm and lasting peace and reconciliation: the first step towards which should, in our opinion, be, that all treaties carried on with the United States, on our parts, should be with the general voice of the whole confederacy, and carried on in the most open manner, without any restraint on either side; and especially as landed matters are often the subject of our councils with you, a matter of the greatest importance and of general concern to us, in this case we hold it indispensably necessary that any cession of lands should be made in the most public manner, and by the united voice of the confederacy; holding all partial treaties as void and of no effect.

We did everything in our power, at the treaty of Fort Stanwix, to induce you to follow this plan, as our real intentions were, at that very time, to promote peace and concord between us, and that we might look upon each other as friends, having given you no cause or provocation to be otherwise...

...Let us have a treaty with you early in the spring; let us pursue reasonable steps; let us meet half ways, for our mutual convenience; we shall then bring in oblivion the misfortunes that have happened, and meet each other on a footing of friendship.

The Confederacy including the Haudenosaunee, the Hurons, Ottawas, Miamis, Shawnees, Ojibwas, Cherokees, Delawares, Potowatomis and the Wabash Confederates asked the United States to prevent surveyors and United States citizens from crossing the Ohio River. The idea of the Ohio country as Indian territory was still bright in people's minds.

On 9 January 1789, a treaty was entered into between the United States and the Six Nations at Fort Harmar. It confirmed as "a more formal and regular conveyance to the United States of the Indian claims to the lands" yielded in the Fort Stanwix Treaty of 1784. The Mohawks were not part of the Treaty of Fort Harmar, in which the United States were represented by Arthur St. Clair, who got his two years later in the defeat that bears his name.

The actions of New York state, which continued to obtain Haudenosaunee lands through fraud and trickery, combined with the treaties forced on the confederate nations by the United States federal government, were increasing the chances of continued war. By 1794, it appeared that the Senecas, still the largest nation of the Confederacy, were about to join the war in the Ohio country.

The United States commissioner for Indian affairs was Timothy Pickering (Connisauti), a man with a reputation for integrity on all sides. When Pickering believed that Secretary of War Knox was misrepresenting the purpose of a meeting in Philadelphia to which he had invited the Six Nations, Pickering wrote to President Washington:

Indians have been so often deceived by white people that *white man* is, among many of them, but another name for *liar*. Really Sir, I am unwilling to be subjected to this infamy. I confess I am not indifferent to a good name even among Indians.¹⁸⁷

Pickering tried to repair the damage done at Fort Stanwix in much the same way as Sir William Johnson had prepared for treaties, meeting with individual nations first, and eventually feeling confident enough to call a general treaty for the fall of 1794 at Canandaigua.

Thayendenegea (Joseph Brant) had been meeting with Pickering, seeking a general peace for the Indian nations, while apparently at the same time urging the western nations to a spirited resistance. The Haudenosaunee, as part of the larger confederacy, had placed a Moon of Wampum in the Ohio country, making that territory a 'house with four doors' that could be a home for all those who wished to move there.

In 1791, that Confederacy inflicted a series of defeats on the United States, culminating in St. Clair's Defeat, in which nearly 700 Americans were killed and half the United States Army was broken. The tide had turned over the next three years, as General 'Mad Anthony' Wayne replaced St. Clair and changed tactics. War in North America was not like war in Europe: there were few permanent armies, few open battlefields, few soldiers willing to stand in open ranks and shoot at others standing in similar positions. The rifle, not the musket, was the infantry weapon. St. Clair's Defeat was the decisive lesson to the United States in the folly of classical military tactics. Wayne's approach, though, violated the rules of war between Aboriginal nations. He burned people's crops (as Washington had done a decade before, earning the president of the United States the permanent name of 'Destroyer of Villages'). He took women and old men

hostage. The crucial 'battle' of the Ohio wars, though, was not really a defeat for the Indians. The United States forces met and pursued a force of Indians near the British Fort Miami. The Indians retreated past the fort, within range of the cannons y and the British did not open fire on the Americans. This confirmed what many of the leaders had been saying: that the British had been providing the Indians with weapons and ammunition but were not willing to join the war directly. It was the same complaint against the British that the Haudenosaunee had made over the previous century in fighting the French.

Thayendenega realized that the Haudenosaunee were more exposed than the western nations and had both a greater interest in peace with the United States and a greater ability to secure it. Thayendenega had been meeting with Pickering in Philadelphia. On 2 September 1794, he wrote:

I cannot possibly attend the Treaty at Canandaigua being obliged to meet the Sake Indians according to promise, should the President of the United States agree to the line proposed and a meeting held at Buffalo Creek to complete this desirable object, my most cordial sanction shall not be wanting, and my most strenuous exertions shall be used to complete the good work of peace provided the proposed line formerly marked out be the basis of the treaty, and the boundary line between the United States and the Indian Nations.¹⁸⁸

On 27 September 1794, Pickering wrote:

...two runners arrived the day before from Buffalo Creek with a message urging me to hold the treaty there; that I had answered them that I had no authority to remove the Council Fire and that the Treaty must be held at Kanandaigua. That upon receiving this answer, the runners replied that they were directed by the chiefs to inform me that if I could not go to Buffalo Creek they would meet me at Kanandaigua.

Two runners arrived this afternoon with a message from Buffalo Creek to inform me that the former runners reached that place on the 22nd. that on the 23rd and 24 the Indians held councils and sent runners to the Grand River to inform the Mohawks where the treaty was to be held and invite them to attend; that in five days from now (which will be the 2nd of October) the Indians at Buffalo Creek would rise from their seats to come to Kanandaigua and that the Cornplanter has returned home to collect his people and bring them to the Treaty.

The time fixed for leaving Buffalo Creek as to have been calculated on the number of days necessary for the Mohawks to join them and for the Cornplanter to return and bring forward his people.

Considering that it will be about seven days for the main body to come from Buffalo Creek and that contingencies may occasion further delay I see very little chance of opening the treaty for business till the middle of October, Through what I have heard it will be a great assembly.

Pickering's next report came two days later:

The runners [sent back to Buffalo Creek] then took another bunch of Strings, *all white*, and said the Chiefs directed them to tell me, was not in my power to confer with them at Buffalo Creek they would meet me at Kanadaigua, for they were very anxious of conferring with me. I replied that I was pleased with their determination and equally desirous of conferring with them, because I hoped thereby all causes of uneasiness between them and the United States would be removed. I added a few words urging their coming forth immediately.

It will take the runners two days and a half and the Indians as they travel with their women and children are never in a hurry may be a week on their march.

The distance is about One hundred miles.

Though the United States sent invitations only to the leaders of the Senecas, the eventual treaty was attended by representatives of the entire Confederacy. What the Canandaigua Treaty did was restore lands to the Senecas and reaffirm the federal government's protection of the Indian nations from New York state's greed, but also secure the Ohio country for the United States.

While most of the delegates to the treaty were Senecas, the treaty was with the Haudenosaunee as a whole. The wounds and divisions within the Confederacy had not yet healed, and Pickering was fully aware of them, but the Haudenosaunee managed to present a united front and voice to the United States.

On 2 November 1794, the treaty council opened:

The Council was large, Red Jacket was the principal speaker ÿ but the business was opened by Clear Sky an Onondaga in the following manner. He expressed his hope that there would be no hard thoughts entertained on account of their having been several days deliberating an answer. The subject was of importance and he wishes his brethren to be preserved in unanimity. Red Jacket then spoke.

Brothers

We request that all nations present will attend to what we are about to deliver, we are now convened on one of the days of the Great Spirit.

Then addressing Col. Pickering:

Brother

You now represent the President of the United States and when you spoke to us, we considered it as the voice of the Fifteen Fires, you desired we would take the matter under our deliberate consideration, and consult each other well, that where the Chain was rusty it might be brightened. We took General Washington by the hand and desired this Council Fire that all the lines in dispute might be settled.

Brother

We told you before of the two rusty places on the Chain, which were also pointed out by the Sachems; instead of complying with our request where we told you the Chain was rusty, you offered to relinquish the land on Lake Erie eastward of the triangular piece sold by Congress to Pennsylvania, and to retain the four mile path between Cayuga and Buffalo Creeks, by which you expect to brighten the Chain.

Brother,

We thought you had a sharp file to take off the rust; but we believe it must have been dull, or else you let it slip out of your hands; with respect to the four mile path we are in want of it on account of the Fisheries. Altho' we are but Children we are sharp sighted, we see that you want the strip of land for a road, that when you have vessels on the lakes you may have harbors; but we wish that in this respect the Treaty of Fort Stanwix may be broken; you white people have increased very fast on this Island, which was given to us Indians by the Great Spirit, we are now become a small people and you are cutting off our lands piece after piece, you are very hard hearted people seeking your own advantages.

Brother,

We are tender hearted and desirous of peace, you told us what you would give us for our land to brighten your end of the Chain, if you will relinquish the piece of land we have mentioned our friendship will be strong, you say you are not proud, neither are we; Congress expects we are now settling the business with regularity; we wish that both parties may have something to say in settling a peace ȳ at the time we requested a conference we also requested our friends the Quakers should come forward, as they were promoters of peace, and we wanted them to be witnesses to what passed, we wish to do nothing in private, we have told you of the rusty part which the file past over and we wish you take up the file again and rub it very hard, you told us if it would not do without you apply oil.

Brother,

We the Sachems, Warriors and others all depend on you, we regard as final and permanent we wish you to take it under consideration and give us an answer.

Colonel Pickering replied at large, the purpose of his speech was that he understood they were easy, except about the path 4 miles wide between the lakes.

The third day of the council, 4 November 1794, Red Jacket continued:

Brother,

We the Sachems of the Six Nations will now tell you our minds, the business of this treaty is to brighten the Chain of Friendship between us and the 15 Fires, we told you the other day it was but a small piece that was the occasion of the remaining rust in the Chain of Friendship.

Brother,

Now we are conversing together to make the Chain bright, when we told you what would give us satisfaction you proposed reserving the piece of land between Cayuga and Buffalo Creeks for building houses, but we apprehend you would not

only build houses but towns, you told us the houses would be for the accommodation of travellers would want a staff, (an Indian phrase for baiting at a tavern) to help them along the road, we have taken these matters into serious consideration.

Brother

We conclude that we do not understand this as the white people do; if we consent we know it will injure us, if the houses should be built they would tend to scatter us and make us fall in the streets (meaning drinking to excess) instead of benefitting us. You want land to raise provisions, hay etc. but as soon as they settle there they would think the land theirs, for this is the way of the white people. You mention when you get possession of the garrison you will want hunting places, stores, fields to plant in, etc., but we wish to be sole owners of this land ourselves, and when you settle with the British the Great Spirit has made a road for you, you can pass and repass by water, what you want to reserve is entirely in your own favor.

Brother

You told us that when you left Philadelphia the President did not expect you release a foot of land, we thank him for having left you at liberty to give up what you please, you have waited with patience at this Council Fire kindled by Gen. Washington it is but a very small thing that keeps the Chain from being brightened if you will consent to give up this small piece and have no houses on it, the Chain will be made bright. As to harbors the waters are between you and the British, you must talk to them, you are the same color; I see there are many of your people now watching with their mouths open to take up this piece of land, if you are a friend to us then disappoint them, our patience is spent, comply with our request, dismiss us and we'll go home.

Co. Pickering replied (in substance) that he would give it up, only to have leave to pass & repass.

Red Jacket rejoined, Gen. Washington now listen, we are going to brighten the Chain of Friendship between the Six Nations and the Americans, we thank you for complying with our request in giving up the particular spot in dispute, you mentioned you wanted a Road though our Country, remember our old agreement that you were to pass along the lake by water, we have made up our minds respecting your request to open a road.

Col. Pickering being writing down what was said Red Jacket would not proceed till he looked him in the face.

Brother,

It costs the white people a great deal of money to make roads, we will not put you to that expense, we don't want you to spend your money for that purpose. We have a right understanding of your request and have agreed to grant you a road

from Ft. Schuyler to Buffalo Creek, but not from Buffalo Creek down this way at all, we have given you an answer if you have any reply to make we will hear you.

The Commissioner said that condescension was the best way of settling business and agreed.

The Council was adjourned. The following day about 40 of the sachems and chief warriors met at the Quaker lodgings. Farmer's Brother was the speaker:

Brothers,

The Quakers of Philadelphia I wish you would attend to what we who are now present are about to say, we speak as one.

Brothers

Yesterday after receiving your invitation to come and partake of your presents we agreed to meet here this morning to speak a few words which we will now do.

Brothers

We are very glad you have lengthened out your patience to see the end of the business, which is now brought to close. We thank the Great Spirit that he has preserved you in health from the time you left your Seats till you arrived here, and has continued to preserve you till this time, we put you under the protection of the same Great Spirit on your return, and would be very happy to hear that you got safe home and hope you may find your friends and families well on your return. It would be very acceptable to be informed of this by letter to the Chiefs now present.

Brothers

We give hearty thanks to the descendants of Onas that you so willingly rose from your seats to attend this council fire according to our request. Here are the Articles of the Treaty for you to look over in order to impress your minds that you may tell them to your Brothers who are sitting on their seats at home.

Brothers,

You have attended this Treaty a long time the Articles which we have signed we hope you fully understand now as we have shown them to you we would wish to know your opinion, whether we have made a good Treaty or not, as we cannot read we are liable to be deceived, you have no doubt considered them, we want to know your minds whether there is any flaw or catch in them which may hereafter occasion uneasiness.

Brothers,

If you think that peace is now established on a good foundation we wish you would come forward and sign the articles as you are a people who are desirous of promoting peace, and these writings are for that purpose, we hope you will have no objection but will come forward and put your names to them, and this would be a great satisfaction to us.

Friends replied that they believed there was no flaw or catch in the Articles and also gave satisfactory reasons why they declined signing them.

The Farmer's Brother then made the following conclusive speech:

Brothers,

We are very glad to see you when we sent for you our desire was that you might sit by our sides and afford your assistance to make a good peace. Last year we invited you to come to Sandusky, you willingly rose from your seats and came forward. You know how things turned out, it was not the will of the Great Spirit that a Treaty should take place; yet we thank you because you came so readily. We have many times heard the voice of Onas, it was always good to us, we have now heard it again, and what you have said is good.

You have seen the writings by which we are bound, you say you are not concerned in publick affairs and you do not think it best for you to sign them.

Brothers,

We have no hard thoughts concerning you on account of your not putting your names to them.

Brothers

The Great Spirit gave this Island to us. The white people have increased greatly, there is no difference between the red people and the whites they are all one and should be as Brothers and live in peace one with another.

The address of Colonel Pickering of the preceding day was answered by Fish-Carrier, who took occasion to glance retrospectively at the relations which had existed between the Six Nations and the white men, since the landing of the latter "on this island". When the white people first came, the Indians saw that they were men, and must have something to subsist upon. They, therefore, pitied them, and gave them some land; and when they complained that the land had become too small for them, the Indians still pitied them and from time to time gave them more. At length a great council fire was kindled at Albany, where a silver chain was made which was kept bright for many years, until the United States and the great King over the water differed. Then their brothers in Canada talked to the Indians, and they let the chain fall out of their hands. Yet it was not their fault, but the white people's...

But, notwithstanding their many causes of complaint, Fish-Carrier now that they had taken hold of the chain with the fifteen fires, pledged the Six Nations to hold on.¹⁸⁹

A heavily pro-American version of the Canandaigua council was written by Gawasowane (Arthur Parker) on the 125th anniversary of the treaty:

There were many lengthy discussions at the Great Council at Canandaigua and each party talked straight from the shoulder and from the heart. The good Quakers

were with the Senecas to guide them and to protect them from frauds. Pickering did not object to them, but welcomed their help. He even allowed the notorious Jemima Wilkinson to give an exhibition of her knowledge of "unknown tongues" and to assert that she was a sort of Messiah. The Indians were more amused at her antics than edified and when she called upon them to repent they flung back at Colonel Pickering a demand that the white people repent first and they would follow suit.

There were feastings and social gatherings and many exhibitions of repartee there at Canandaigua... And there, to feed themselves, the Senecas killed 100 deer each day, and other game in proportion. Though it was November they had erected comfortable cabins and with their wives and children were as happy in their external surroundings as the knowledge of their fading national life would admit. They were still a little haughty and there still remained the lingering hope of some future conquest.

The moral effect of Harmer and St. Clair's defeat by the western tribes had its impress. And then, at this very council came the disillusionment. A runner from the Tuscaroras came in from the fort at Niagara. He bore the news that Little Turtle and his Miamis had suffered a stinging defeat at the hands of General Anthony Wayne...¹⁹⁰

There are seven articles in the written version of the Treaty of Canandaigua: The President of the United States, having determined to hold a conference with the Six Nations of Indians for the purpose of removing from their minds all causes of complaint, and establishing a firm and permanent friendship with them; and Timothy Pickering being appointed sole agent for that purpose; and the agent having met and conferred with the sachems, chiefs and warriors of the Six Nations in a general council;

Now, in order to accomplish the good design of this conference, the parties have agreed on the following articles, which, when ratified by the President, with the advice and consent of the Senate of the United States, shall be binding on them and the Six Nations.

Article 1: Peace and friendship are hereby firmly established, and shall be perpetual between the United States and the Six Nations.

Article 2: The United States acknowledge the lands reserved to the Oneida, Onondaga and Cayuga Nations, in their respective treaties with the State of New York, and called their reservations, to be their property; and the United States will never claim the same, nor disturb them, either of the Six Nations, nor their Indian friends, residing thereon, and united with them in the free use and enjoyment thereof; but the said reservations shall remain theirs, until they choose to sell the same to the people of the United States, who have the right to purchase.

Article 3: The land of the Seneca Nation is bounded as follows: beginning on Lake Ontario, at the northwest corner of the land they sold to Oliver Phelps;

westerly along the lake, as far as Oyongwongyeh Creek, at Johnston's Landing Place, about four miles eastward, from the fort at Niagara; then, southerly, up that creek to its main fork; then straight to the main fork of Stedman's Creek, which empties into the River Niagara, above Fort Schlosser; and then onward, from that fork, continuing the same straight course, to that river; (this line, from the mouth of Oyongwongyeh creek, to the river Niagara, above Fort Schlosser, being the eastern boundary of a strip of land, extending from the same line to the Niagara River, which the Seneca ceded to the King of Great Britain, at a treaty held about thirty years ago, with Sir William Johnson); then the line runs along the Niagara River to Lake Erie, to the northwest corner of a triangular piece of land, which the United States conveyed to the State of Pennsylvania, as by the President's patent, dated the third day of March, 1792; then due south to the northern boundary of that state; then due east to the southwest corner of the land sold by the Seneca Nation to Oliver Phelps; and then north and northerly, along Phelps' line, to the place of beginning, on the Lake Ontario. Now, the United States acknowledge all the lands within the aforementioned boundaries to be the property of the Seneca Nation, and the United States will never claim the same, nor disturb the Seneca Nation, nor any of the Six Nations, or their Indian friends residing thereon, and united with them, in the free use and enjoyment thereof; but it shall remain theirs, until they choose to sell the same, to the people of the United States, who have the right to purchase.

This Article returned to the Senecas most of the land that had been given up at Fort Stanwix in 1784. For the United States, Fort Stanwix had been a lesson in how far the Haudenosaunee could be pushed in a single transaction. From that time on, the land takings were smaller, more incremental.

Article 4: The United States have thus described and acknowledged what lands belong to the Oneidas, Onondagas, Cayugas, and Senecas, and engaged never to claim the same, nor to disturb them, or any of the Six Nations, or their Indian friends residing thereon, in the free use and enjoyment thereof; now, the Six Nations, and each of them, hereby engage that they will never claim any other lands within the boundaries of the United States, nor ever disturb the people of the United States in the free use and enjoyment thereof.

The terms of Article 4 are deliberately opaque. Pickering, in his report to Secretary of War Alexander Knox, explained why:

...the chiefs...were desirous of a fresh confirmation of their lands; but were unwilling to relinquish, or give up or use any words of that import, respecting the

lands ceded by former treaties to the United States. When I pressed them for the reason for their objection, they would answer, that the lands having been ceded by former treaties, there was no need of saying anything about them. Do you then, said I, acknowledge yourself bound by those cessions, including those made by the Delawares and Wyandots (which they mentioned) as far as the Muskingum and Cayahoga? To this they gave no answer.

As you decline saying that you give them up, do you mean to claim them hereafter? No. Where is the difficulty? A war-chief of the Tuscaroras present, and who lives within seven or eight miles of Niagara, solved the difficulty. "They are afraid of offending the British". This was not denied. Cornplanter, Captain Billy, and two or three others were present last evening at this conversation. Afterwards, Captain Billy, who is a war-chief of the Senecas, acknowledged the fears of the Sachems of offending the British and said he had often reproached them with it, saying they pretended to be a free people. The Farmer's Brother also told Gen. Chapin last evening, that these fears made all the difficulty in the present negotiations. The War Chiefs above named, finally said they had no objection to engage that they would never claim any land out of their acknowledged boundaries; and of course no part of Pennsylvania or the triangle including presqu'Isle: and added: "If the Sachems also say Yes, we shall soon close the treaty".¹⁹¹

A legal controversy has grown around the words of Article 4. The United States claims that the Six Nations gave up any claim to any lands within the boundaries of the United States. The Haudenosaunee have stated that the clause means that they will not claim any lands owned by the government of the United States. Since the second and fourth articles of the treaty refer to land *owned* by the Six Nations, the corresponding terminology in Article 4 must refer to *ownership*, as distinct from jurisdiction, of the United States.

Article 5: The Seneca Nation, all others of the Six Nations concurring, cede to the United States the right of making a wagon road from Fort Schlosser to Lake Erie, as far south as Buffalo Creek; and the people of the United States shall have the free and undisturbed use of this road, for the purposes of travelling and transportation; And the Six Nations, and each of them, will forever allow to the people of the United States, a free passage through their lands, and the free use of the harbors and rivers adjoining and within their respective tracts of land, for the passing and securing of vessels and boats, and liberty to land their cargoes, where necessary, for their safety.

Article 6: In consideration of the peace and friendship hereby established, and of the engagements entered into by the Six Nations; and because the United States desire with humanity and kindness, to contribute to their comfortable support, and to render the peace and friendship hereby established strong and perpetual, the

United States now deliver to the Six Nations, and the Indians of the other Nations residing among, and united with them, a quantity of goods, of the value of ten thousand dollars. And for the same considerations, and with a view to promote the future welfare of the Six Nations, and of their Indian friends aforesaid, the United States will add the sum of three thousand dollars to the one thousand five hundred dollars heretofore allowed them by an Article ratified by the President, on the twenty-third day of April, 1792, making in the whole four thousand five hundred dollars; which shall be expended yearly, forever, in purchasing clothing, domestic animals, implements of husbandry, and other utensils, suited to their circumstances, and in compensating useful artificers, who shall reside with or near them, and be employed for their benefit. The immediate application of the whole annual allowance now stipulated, to be made by the superintendent, appointed by the President, for the affairs of the Six Nations, and their Indian friends aforesaid.

Article 7: Lest the firm peace and friendship now established should be interrupted by conduct of individuals, the United States and the Six Nations agree, that for injuries done by individuals, on either side, no private revenge or retaliation shall take place; but instead, complaint shall be made by the party injured, to the other, by the Six Nations or any of them, to the President of the United States, or the superintendent by him appointed; and by the superintendent, or other person appointed by the President, to the principal chiefs of the Six Nations, or of the nation to which the offender belongs; and such prudent measures shall then be pursued, as shall be necessary to preserve our peace and friendship unbroken, until the Legislature (or Great Council) of the United States shall make other equitable provision for the purpose.

The Haudenosaunee continue to avail themselves of this provision of the treaty, noting the executive-to-executive relationship it creates. The matters the grand council raises with the United States are still addressed to the president of the United States, as "Brother". (The United States does not seem to have maintained its side of the treaty as well: the president rarely corresponds with or responds to the Haudenosaunee, and both New York state and the United States claim degrees of jurisdiction over internal Haudenosaunee matters by virtue of the will of their governments.)

The words of this article are a direct echo of the provisions of the September 1664 treaty at Fort Albany. For the United States in 1794 and the British in 1664, they served the same purpose – they prevented revenge taking by the Haudenosaunee for injuries done by non-Aboriginal people; they made the *rotiianeson* accountable for the actions of individual people, and they promoted peace. On the Haudenosaunee side, these words confirmed their relationship with the executive branch of the United States, created a clear dispute resolution process, and

clarified jurisdiction; as well, and fundamentally, they promoted peace. In separating personal jurisdiction and in confirming how the two governments would resolve matters between them, the 1794 treaty at Canandaigua was consistent with the principles in the *Kaswentha*.

The text of the treaty continued:

Note: It is clearly understood by the parties to this treaty, that the annuity, stipulated in the sixth article, is to be applied to the benefit of such of the Six Nations, and of their Indian friends united with them, as aforesaid, as do or shall reside within the boundaries of the United States; for the United States do not interfere with nations, tribes or families of Indians, elsewhere resident.

As for the United States' understanding of the aftermath of the Treaty of Canandaigua, one might look to Timothy Pickering's letter to Israel Chapin on 6 April 1795. Israel Chapin was being informed that he was succeeding his late father as superintendent of United States relations with the Six Nations. Pickering instructed Chapin to follow the rules of conduct laid out in his father's papers.

The circumstances which vary the condition of the Oneidas Tuscaroras and Stockbridge Indians living in the Oneida country from the other tribes of the Six Nations combined with their distance from your place of residence may perhaps render it expedient to commit the care of them to some person in their neighbourhood. Should such arrangements take place it may possibly occasion some alteration in your pay.

The affairs of the 6 Nat. I expect will hence forward be managed with much less trouble than formerly. The Treaty made with them last fall must supercede all pre-existing causes of complaint.

The Treaty entered into by Mr. Jay with Great Britain will I trust rid you of all such embarrassment as heretofore have sprung from British influence, and peace with the Western Indians is now in fair prospect. The hostile Indians have all sent in their Chiefs to General Wayne to sue for peace and a general Treaty is agreed to be held at his Head Quarters about the middle of June next.

So your principal concern will be, to protect the tribes under your superintendence, from injury and imposition, which too many of our own people are disposed to practise upon them; diligently to employ all the means under your direction to promote their comfort and improvement and to apply the public and goods placed in your hands with inviolable integrity and prudent economy. It [is my] firm belief that you possessed these good dispositions was the ground for your appointment. And I persuade myself that in the execution of your office you will neither dishonour yourself nor disappoint the expectations of your friends.

The Jay Treaty: 1795

Background

The years that followed the 1783 Treaty of Paris were years of uncertainty for the Haudenosaunee. The United States continued to pursue a policy of dividing the Confederacy. New York pursued its policy, often at odds with the United States, of acquiring Haudenosaunee land by any means, honest or not. Upper Canada continued to use the Indian nations as its bulwark against the United States and to encourage those nations in their war against the United States in the Ohio Valley.

Late 1794 saw a number of developments that changed the political landscape. In the Ohio Valley, the British failure to join the fight at Fort Miami, coupled with some military defeats, caused the Indian nations to enter into a series of treaties with the United States. The Haudenosaunee themselves achieved the Treaty of Canandaigua, which brought significant improvements over the weak Treaty of Fort Stanwix of 1784. The British signed a Treaty of Amity, Commerce and Navigation with the United States, which provided for a clearer boundary and Britain's abandonment of the Ohio Valley posts.

For the Haudenosaunee, this last treaty – known as the Jay Treaty, after the U.S. secretary of state who negotiated it, John Jay – represented another instance in which the Crown had failed to protect their interests. The British had been trying to get the United States to accept an Indian buffer state between the United States and the Canadas. It also seems that the United States would have accepted that proposal had the British only pressed a little harder. Instead, preoccupied with military and revolutionary developments in France, Britain conciliated the United States and abandoned the idea of the Ohio Valley Indian territory.¹⁹²

The Treaty

One clause of the Jay Treaty – Article III – dealt with the rights of the Aboriginal nations. It is agreed that it shall at all times be free to His Majesty's subjects, and to citizens of the United States, and also to the Indians dwelling on either side of the boundary line, freely to pass and repass by land or inland navigation, into the respective territories and countries of the two parties, on the continent of America (the country within the limits of the Hudson's Bay Company excepted), and to navigate all the lakes, rivers and waters thereof, and freely to carry on commerce with each other...

No duty of entry shall ever be levied by either party on peltries brought by land or inland navigation into the said territories, nor shall the Indians passing or repassing with their own proper goods and effects of whatever nature, pay for the same any impost or duty whatever. But goods in bales, or other large packages, unusual among Indians, shall not be considered as goods belonging bona fide to Indians.

The Jay Treaty was concluded on 19 November 1794. It was ratified by the president of the United States on 28 October 1795. Since it was not a peace treaty (unlike the Treaty of Paris in 1783), it required ratification or legislation for its terms to become law in British territories as well.

On 28 August 1795, Lieutenant Governor Simcoe met with the Haudenosaunee at Fort Erie.

Brothers:

I have desired you to attend at this Fire-Place that I might communicate to you matters of great importance, and answer in general, the Speeches which I have received from the different Chiefs and Warriors of the Six Nations on my return to this part of the Province.

Brothers:

I assure you that I am perfectly acquainted with the Messages formerly transmitted to you by the Commander in Chief to remain at Peace, and to follow your several occupations, and that I rely on your Professions of friendship, and steady attachment to the King your Father, however remote you may reside from his Council Fire...

Brothers:

By the Treaty of 1783 Great Britain was to give up the posts of Oswegatchie, Oswego, Niagara, Fort Schlosser, Detroit, Michilimackinack &c. to the United States.

Brothers:

The United States were also to fulfil certain conditions on their part, in this they failed.

Brothers:

You know the King has retained the Posts ever since, and will retain them until the United States perform their promises...

Brothers:

The U. States have now agreed to fulfil the Treaty as required, and in that case, the Posts will be evacuated.

Brothers:

Contrary to all expectation after the Treaty of 1783, the Governors of the United States, did not respect your rights, pretending that the King ceded your whole Country, the Commissrs. of which Mr. Pickering was one, acknowledged this fact to the Western Indians, in a message from the mouth of the Detroit River.

Brothers:

By the present Treaty your rights are guarded, and specifically placed on their ancient footing.

Brothers:

I have the Treaty in my hands, as printed in the U. States, it establishes your rights upon the same basis that had been formerly agreed upon between the French and British Nations, and which I repeated in October last to the Western Indians in the following words, "Children. In the victory over the French Nation, the common enemy, the interests of your Forefathers, and of you, their Children were not forgotten, in the Treaty between the English the Conquerors, and the French, it was stipulated that your rights should be preserved, those rights which you enjoy as an Independent People. It was declared that you had a right to go to the English and French fires for the purpose of traffic, and that you had a right inseparable from an independent people to admit the traders of either Nation to your Fires as suited your Interest or Inclinations".

Brothers of the Six Nations:

Upon these principles the present treaty is established, you have a right to go to the British Settlements, or to those of the U. States, as shall suit your convenience, nor shall your passing or repassing with your own proper goods and effects of whatever nature, pay for the same any impost or duty whatever.

Brothers:

You see therefore that by the Treaty a perpetual and constant communication is secured between you and the King's subjects and our future Trade and intercourse, is guaranteed on the most unrestrained and General footing.

Brothers:

The unremitting kindness and friendship between you and the King's Subjects of this Province, your natural Friends, which has lasted so many years, will I trust be perpetuated to our remotest descendants.

Brothers:

The King's benevolence to you is so well known, that I scarcely need assure you under every circumstance it will always be continued to you and your descendants, and it will give me pleasure in any respect, to be the instrument of his kindness to his Indian Children.

On the following day, Thayendenegea (Joseph Brant) delivered the reply of the Haudenosaunee: these extracts cover the issue raised by Simcoe in relation to the Jay Treaty:

Brother;

We are happy to hear that the long friendship which has subsisted between our Father's subjects and us is now renewed, we doubt not but that it will continue as hitherto. It also gives us great satisfaction to hear that our Father's bounty will be continued to us...

Brother:

We are happy to hear that the late Treaty has preserved our rights as a free and Independent People entire, we hope we may find better and cheaper articles such as we may from time to time want among the British, as we would prefer dealing with them

8 Strings Blk. and White Wampum.¹⁹³

"Our Father's bounty" was the annual presents from the King, promised by Sir William Johnson at the Treaty of Niagara in 1764 and continued until the 1840s. The amount and quality of the presents rose and fell according to the extent to which Britain needed the Indian nations for their military help.

Thayendenega included, in his reply confirming the Haudenosaunee understanding of Simcoe's speech, a request for more reasonable trade prices (a request that occurs frequently in the course of treaty exchanges).

The Significance of the Treaty

The Jay Treaty refers to three peoples – the subjects of the King of Great Britain, the citizens of the United States, and the Indians living on either side of the boundary line. The clear implication is that the Indians were subjects of neither power, but that their independence had been maintained. The treaty is not explicit on this point, though.

The right to pass and repass freely was gradually curtailed by both the United States and Canada; the legislation implementing the terms of Article II of the Jay Treaty was allowed to lapse in the 1820s in Upper and Lower Canada. The right of the Haudenosaunee to enter, live in, and work in the United States was finally confirmed in that country's legislation in 1928. Canada has not implemented or ratified the article since the 1820s.

Lieutenant Governor Simcoe had made many assurances to the Haudenosaunee that their independence as a people had been respected and preserved by the King in his dealings with the United States. His assurances at Fort Erie in August 1795 were no different from his previous communications – except that they were not supported explicitly by the text of the treaty.

Canadian courts have said that the rights of the Haudenosaunee contained in the Jay Treaty are not part of Canadian law, because the treaty has not been implemented by Parliament.

The Supreme Court of Canada, in *Francis v. The Queen*, stated that

...appreciating fully the obligation of good faith towards these wards of the state, there can be no doubt that the conditions constituting the *raison d'etre* of the clause were and have been considered such as would in foreseeable time disappear...

...no clear political conception had been formulated of the relationship of the Indians either to the old or new government especially in respect of the lands over which the natives had formerly roamed at will.¹⁹⁴

For the Supreme Court of Canada, the commitments made by Britain in the Jay Treaty were to be interpreted as temporary. For the government of Canada, neither this treaty nor the Treaty of Ghent after the War of 1812 (see the Treaty of Burlington Heights, 1815) was binding or urgent enough to be respected.

Burlington Heights, 1815

Background

This conference took place at the end of the War of 1812. Burlington Heights, at the western end of Lake Ontario, was a major military base of the Aboriginal nations aligned with the British.

The deputy superintendent general of Indian affairs, William Claus, was the Crown's representative. He communicated the terms of the Treaty of Ghent to the assembled chiefs and warriors, who agreed to end hostilities with the United States and their allies, on those terms.

This treaty is relevant because it affects continuing issues involving the border created after the American Revolutionary War and reaffirmed after the War of 1812. The British had succeeded in preserving the freedom of the Aboriginal nations to pass and repass the border freely, and this remained an important aspect of the 1815 treaty.

The Treaty

Speech addressed by the Deputy Superintendent General of Indian Affairs to the following Indian Nations at Burlington Heights, 24th April 1815, vizt.

Hurons	Six Nations
Shawanoes	Delawares
Kickapoos	Chippewas
Otawaws	Saukies
Misquakies	Creeks
Munseys	Moravians
Nanticokes	

Present

Lieutenant Colonel James, Commander of the Garrison
Honble. William Claus, Dy. Supt. General Indian Affairs
The Officers of the Garrison
The Officers of the Indian Department

Lieut. John Brant, Interpreter

Chiefs and Warriors

In addressing you in behalf of your Great Father the King of England, I will observe the custom of our ancestors by uncovering the Council Fire, which I now do.

Strings of Wampum

Chiefs and Warriors

The customs of our forefathers have prescribed certain ceremonies which I would be sorry to omit upon the present occasion. The ceremony of condolence for the loss of our near and dearest relations and friends, now must be performed, which I now do very sincerely. The Great Giver of Life has been pleased to remove from this world many of our Friends and Relations. Your eyes are so full of tears that you cannot see clearly. Your Ears and Throat are stopped up, your Hearts have been in trouble and grief, your Limbs are still covered with mud, your feet are full of thorns, and your seats are still covered with blood. I now therefore dispel the cloud that hangs over you, and wipe the tears from your Eyes that the brightness of the sky may again appear to you. I open your ears that you may hear distinctly, and I free your throats from all obstructions, that you may speak freely and with care. Your Hearts I replace, and remove all grief and trouble from them, and I hope you will listen to nothing but what is good. I wash the mud from your legs, extract the thorns from your feet, and I cleanse from your Seats the blood which now covers them, that you may again sit on them with comfort.

Strings of White and Black Wampum

Chiefs and Warriors

I now gather together the bones of those dear Friends and relations whom it has pleased the Great Spirit to remove from this world. I place them all in one Grave, and to prevent all briars and rubbish from collecting thereon, I cover it with this Belt.

A Large Belt of Wampum

Chiefs and Warriors

Having now performed the Ceremony of Condolence, I earnestly recommend that you remove from your Hearts all griefs and that you resume your accustomed business with cheerfulness.

Strings of Wampum

Chiefs and Warriors

Not many days ago, your Father Lieut. Genl. Drummond informed you that Peace had just taken place between your Great Father the King and the Government of the United States of America, and that so soon as the same should be communicated to him by the King's Officers, you should be made acquainted with the particulars. I have now received his command to assemble you at this Council Fire, and to inform you that Peace has been concluded, and that all hostilities are to cease between your Great Father's children and the Americans, and it is his earnest wish for the sake of your Women and Children that you join sincerely in this Peace. It is therefore my duty to inform all the Nations here assembled, that the Hatchet which you so readily took up to assist your Great Father, should now be laid down and buried, that it may not be seen. This is the earnest wish of your Father the King, and I am confident you will comply with cheerfulness. You have fought and bled in the cause which you espoused and your Father is sensible of the value of your friendship and services. This Belt which I now hand to you I ask in compliance with your Customs be sent by you with these my words in his behalf to all the Nations in friendship with your Great Father the King of England.

Chiefs and Warriors

During the long and expensive wars the King of England was engaged in beyond the Great Lake and with the Big Knives, his attention to his Indian Children never ceased, and he will always be happy to ÿ you with all the kindness and generosity which good and obedient Children ought to expect. Nothing is required in return for your Father's benevolence towards you, but a renewal of the Engagements made by your Ancestors and yourselves. He has the utmost reliance on your attachment to him and the Officers who represent him in this Country. I am further instructed to inform you that in making Peace with the Government of the United States of America, your interests were not neglected, nor would Peace have been made with them had they not consented to include you in the Treaty, which they at first refused to listen to. I will now repeat to you one of the Articles of the Treaty of Peace which secures to you the Peaceable Possession of all the Country which you possessed before the late War, and the Road is now open for you to pass and repass without interruption.

"The United States to put an end immediately after the ratification of the Present Treaty to hostilities with all the Tribes and Nations of Indians with whom they may be at War at the time of such Ratification; and forthwith to restore to such tribes and nations respectively all the possessions, rights and privileges which they may have enjoyed, or been entitled to, in 1811, previous to such hostilities, provided always that such Tribes or Nations shall agree to desist from all hostilities against the U. States of America, their Citizens and subjects upon the ratification of the present Treaty being notified to such Tribes or Nations and shall so desist accordingly. And His Britannic Majesty engages on his part to put an end immediately after the ratification of the Present Treaty to hostilities with all the Tribes or Nations of Indians with whom he may be at war at the time of such ratification, and forthwith to restore to such Tribes or Nations of Indians respectively all the possessions, rights and privileges which they may have enjoyed or been entitled to in 1811 previous to such hostilities; provided always that such Tribes or Nations shall agree to desist from all hostilities against His Britannic Majesty and his subjects upon the ratification of the Present Treaty being notified to such Tribes or Nations and shall so desist accordingly".

Strings of Wampum

Having addressed the Chiefs, War Chiefs and Warriors, I now look towards the Sachems and principal Chiefs, who after the Hatchet is laid down by the War Chiefs and Warriors, will again take their Seats in front of the Warriors, and resume their duties whilst the others return to their hunting and other occupations. Your Great Father's Council Fire will again be kindled at the usual posts, the smoke from which will be seen by all the Nations around you. In course of the Summer Clothing and Provisions will be sent to the several Posts for your use, and when you shall be inclined to set out for your own Country, Provisions will be given to you to perform your Journey. In a few days you will have an

opportunity of Travelling in Company with your Father's Troops, who are going to Amherstburg.

Strings of White Wampum

To the Village Chiefs I now turn myself and remind them that they are to attend to their duty. It is unnecessary that I should point out what that duty is, I expect you to Pay every attention to your Women and Children. The Widows and Families of those faithfull men who fell in Battle and those disabled by wounds were promised each a certain sum by your Father which promise I am now ready to perform, having received money for that purpose.

Strings of Black and White Wampum

I now address myself to the Warriors and Young Men, and earnestly recommend obedience to your Sachems and Chiefs, and that you will on all occasions listen to their Voices in the custom of your Ancestors.

Strings of Black Wampum

I now conclude by sincerely wishing you Health, wisdom and prosperity and that you may on your return home find all your friends in perfect health and security. I recommend to the whole of you a steady adherence to your Ancient Customs and manners which cannot fail to make you respected by all the Nations surrounding you.

Burlington 26th April 1815

Officers of the Garrison and Indian Department Present as on the 24th.

Isedore, a Huron Chief, Speaker
Samuel Saunders, Interpreter

Father

The Great Spirit has appointed this day for all the Nations now present to meet our British Father's Children, and we are going to wipe away the tears that are running down your cheeks. One person will speak for all the Nations now here. We will wipe our British Father's ears and we hope he will hear us. We have settled the Ceremony of opening our father's ears that there may be no difficulty in his hearing all that we may have to say to him hereafter. Your Children, thinking that your Heart is on one side, now put it in the place where the Great Spirit had put it.

Two black and three white strings of wampum

Father

It is but a few days since you was wrestling with your Enemy. Your legs were very muddy and a great many Thorns stuck in your feet. You remember the other day in Fort Erie when your Officers and Soldiers were lying in mud and water. With these strings of wampum we wipe the mud from their legs and bodies and take the Thorns from their feet.

Seven strings of black wampum

Father

You remember that not long since, the Bones of a great many of your Children and relations were lying scattered on the ground. We now gather them together in one heap, and cover them with these strings of wampum.

Four strings of Black and two strings white wampum

Father

Your Indian Children here assembled now wrap up the bones of your Children in a white cloth and sink them in the ground that nothing may meddle with them hereafter.

Six Strings of White Wampum

Father

Your Indian Children have done their duty. We all know the rain comes down very heavy. We have therefore put a board over the Grave to keep off all bad weather that nothing may hurt the bones of your children.

A wampum Belt

Father

Take pity of your Indian Children. All our Old Chiefs are now under Ground or they might say a good deal about old times. We have now no Sensible men left to us. But Father, listen to one of the Great Chiefs of the Six Nations who has a great deal to say.

Six Strings of black and three strings of white wampum

Sir Johns, War Chief, an Onondaga, Speaker

Lieutenant John Brant, Interpreter

Brother

You heard from us, and the Ceremony of Salutation is past. We will now proceed to give our answer. You have performed the Ceremony of Saluting the Chiefs and Warriors whom it has pleased the Great Spirit to spare. At the commencement of the troubles, we who live at the Grand River, tho' a small People our doors were open to your news, and putting confidence in the Great Spirit we did not hesitate to take up the Tomahawk. You are perfectly well acquainted with our conduct during the war. We consider ourselves of one Heart with the King, and we joined him willingly.

Brother

When we received your Tomahawk, it appeared rather blunt and broken; it had so many gaps that it appeared like a saw, but still we took it up and it seemed to cut the better, as may have been seen at Detroit. Altho' it looked so bad, it gave us confidence as it did also to your own subjects and united us as one.

Brother

We heard what you said the other day in behalf of our Great Father the King. You told all the nations here assembled that Peace is made after our troubles, seeing the many heaps of bones, you condoled with us who are in grief and said you are now come to fulfill promises made to us. Our ancestors were always assured of our Father's love towards them. We never had a doubt of his promises being

performed. The promises made to us were heard to the Great Spirit as well as ourselves. We who have survived the War were promised to be rewarded. We are now much distressed. We have to grieve for the loss of our Friend and Brother General Brock.

Brother

We address you as the person appointed by our Father to attend to our Interests. You are not ignorant of the Promises made to us. We therefore look to you to see them fulfilled. You are perfectly well acquainted with our services.

Brother

We have many things to remind you of. You see the sufferings of our Shawawnoe Brothers who lost their Principal Chief Tekumtha, the red coated officers were always pressing them forward on service. Three of our red coated officers were relieved successively. All of them made the same promises. At the Forty Mile Creek we were told that if we should be successful we should be paid for whatever we should capture. At the Twelve Mile Creek we were promised five dollars for every prisoner. We were promised equal proportions with the troops for the capture of Detroit, where the Great Spirit was pleased to crown our arms with success without any loss on our parts. At Queenston we were able to defeat our enemy; and at the Beach Woods the Canawagos and ourselves were enabled by the Great Spirit to obtain a complete victory over the enemy under Colonel Bursslair. We captured two pieces of cannon there, and were promised payment in a few days ÿ as yet we have heard nothing more about the matter.

Brother

You told us that whenever Peace should take place, it would be permanent; that our Women and Children should have nothing farther to fear. You have performed the ceremony of taking the Tomahawk from us, and covering it that it may not be seen. Telling us of Peace and burying the Tomahawk is Joyful news to us. We thank you and hope that it will continue among us all, and that trifling birds or misunderstandings will not be allowed to interrupt it. We thankfully and readily receive your advice to attend to our Sachems and Village Chiefs, sit behind them and attend to their advice and oppinions. We are sorry that our Father General Drummond left us so suddenly as we wished to have spoken to himself, and to have explained ourselves more fully to him.

We now return the King's Tomahawk the same as we received it. The War Chiefs therefore have now done speaking, and the Village Chiefs will speak for themselves. We salute all the King's Officers that are here present.

A Belt of Wampum

Tekarihoga Principal Mohawk Chief, Speaker
Lieutenant John Brant, Interpreter

Brother

You have heard what the warriors have to say. You will now listen to what we have to say. When you uncovered the Council Fire in behalf of our Great Father the King we the Six Nations and the other Nations here assembled understood you perfectly.

Brother

You now hear what the Six Nations and the other Nations have said. We speak with one voice. We are not able to make Peace with the Indians with whom we have been at war. We look to you to uncover the Council Fire and do so. It is the sincere wish of the Six Nations and your Children the other Nations that you uncover the Council Fire and request the attendance of the Americans and the Indians attached to them. We will follow you and in your sight we wish to put an end to all the troubles while we are all together. We wish to say but a few words; after you have adjusted matters with the Indians here, we hope the same may be done at Amherstburg, the Six Nations wish to be there also.

Brother

At the commencement of the war, you told us that you would not consent to a renewal of Peace with the Big Knives until they would restore the ancient boundary line. Now we have Peace but you have not told us where the Line is fixed.

Brother

We thank you sincerely for recommending unity and harmony among ourselves and to keep up the customs and manners of our Ancestors. You also recommend to us firm reliance upon our Father the King which we shall always do. Last fall a year ago at your council fire at Dundas you presented to us the King's good wishes wherein he particularly recommended to his agents the care of the Indians who have suffered in his cause. We hope you will now comply with those wishes and attend to our wants. We request that you will not allow any whites to come among us as we wish to be free and independent.

Brother

Yesterday you paid the King's Bounty to the widows of those who fell in Battle. A number of others who lost their Friends in Battle got nothing. We have been deceived in our own minds, having believed that our Father wanted to extend his Bounty to the Friends of all the Indians that were killed. Many young men were killed in Battle who have left Mothers, brothers, sisters and other relations to lament their deaths. We in the name of all the Nations beg our Father to look upon these poor people with compassion and order them some payment, their eyes being still full of tears. We hope he will wipe the tears from their eyes and that he will also consider those who have been wounded, tho' not disabled, a trifle will ease their hearts. We ask it for them. It will be but a little for our Father who is so rich.

Another cause of grief is that our Western Brethren will in a few days set out for their own Country, and that their friends there will enquire what is become

of those who have been killed. They will no doubt be much grieved to lose their friends and receive no compensation.

Brother

When I was last in Montreal on a visit to Sir John Johnson and the Lower Canada Indians upon the subject of the Captures made at the Beach Woods. Sir John then told us that in ten days the L. Canada Indians would receive their prize money and desired us to apply to you who would immediately attend to the business on our return.

Brother

We are now to speak upon a different subject. During our difficulties many of the Farmers settled upon our lands left them and went over to the enemy, we now therefore consider these farms as our own property again.

Brother

You told us the Road is now open to the setting of the sun, and that whenever the Western Indians shall be inclined to set out homeward they shall be furnished with provisions, many who are sick and others who are lame will not be able to travel and carry their provisions. It is therefore the sincere wish of us the Six Nations that they may be assisted with transport as far as the River Thames, where they can build canoes to proceed in. When those people came down provisions were furnished them at the several stages. We hope the same indulgence will now be shown to them. This is all we have to say in behalf of ourselves, and our children who are now crying for want of provisions, and we confidently hope you will assist us with the means of living until we can reap our fields in autumn. We have neither hoes nor seed corn, and we hope you will supply us with articles so necessary to enable us to raise provisions for ourselves.

Brother

We have but one more subject to trouble you with. At Chippewawa several of our friends were made prisoners by the enemy. We have taken some of their men. We request therefore that you will interest yourself in their exchange.

27th April

Tekarihoga, Principal Mohawk Chief, Speaker
Lieutenant Brant Interpreter

Brother

We are now to begin where the darkness obliged us to quit last night, We hope that our Father will enable us to appear decently when we go to meet the Indians on the other side, by clothing the Chiefs, War Chiefs and Warriors, and giving them a little Money. After the conclusion of the former peace with the Americans our Father was pleased to order us a Compensation for losses sustained during the War, and we now trust he will again exercise the same generosity towards us by

ordering that we may receive some compensation for the cattle we have lost during the late War, thereby putting in our hands means of procuring others which will enable us to support ourselves without continuing to be a burthen upon him for provisions after the ensuing harvest.

Brother

We the Grand River Indians have been baptized and instructed to worship the Great Spirit in the same manner that you do. We have been so long without seeing a Minister among us that we are now like strayed sheep. We therefore trust that our Father will pity our situation, and send a Minister to take care of us.¹⁹⁵

The Aftermath of the Burlington Heights Treaty

At the end of August 1815, the Haudenosaunee communities that had been split by the war reconciled. They met at Niagara, and once again Deputy Superintendent General William Claus was present; in the April council, Tekarihoken had asked Claus to uncover the fire, saying that "we are not able to make peace with the Indians with whom we have been at war". It had taken nearly six months for Claus to arrange this council, though the historical record is not clear about the reasons for the delay. From the Canadian side came the people from the Grand River Territory; from the American side came representatives of the Senecas, Onondagas and Cayugas from Buffalo Creek, Tonawanda and Allegheny.

The Deputy Superintendent addressed all the nations present, performing the usual ceremonies of Condolence and uncovering the King's Council Fire by presenting a Belt of White Wampum.

The white wampum set the tone: it is a symbol of peace.

Tekarihoga, Principal Mohawk Chief, Speaker:

Brothers and relations,

Our Father has performed the Ceremonies which were customary with our Ancestors, and which we endeavour to continue. Our meeting is at our Father the King's Council Fire which has just been uncovered that we may proceed to deliberate upon the good work for which we are now assembled. We the several Nations residing at the Grand River salute you from the other side we are the same people with you, we are relations of the same colour, notwithstanding having been opposed to each other in the Field during the late Contest between our Father the King of England and the Americans. Our friend who has just uncovered the Council Fire has removed all obstructions, our minds are set at ease. The River which separates us is opened that we may have a free passage at all times. The roads are cleared of all briars and rubbish, that we may again renew that friendly intercourse which formerly existed between us. I now speak to you in behalf of the Indians residing on the Grand River, and I am desired to assure you

that all ill will is removed from their Hearts towards you from the [] American land.

Delivered a bunch of Strings of Wampum

From the point of view of posterity, perhaps the most important phrase was that "the River which separates us is opened that we may have a free passage at all times". This echoes the guarantees made to the Haudenosaunee at the council at Burlington Heights in April, as well as the earlier promises made in connection with the Jay Treaty.

Echo, an Onondaga Chief:

Brothers

I salute you in the name of the Hurons, Shawnees and Six Nations at the King's Council Fire which has just been uncovered. I speak to the Senecas, Cayugas and Onondagas from Buffalo Creek, Tehaniwandi and Allegany who are now present at our Father's Council Fire. I also address those who are at their homes, before our Father the Deputy Supt. General, the King's Officers who are now present, and tell you that all ill blood has been removed from our hearts. What has been done, is now forgotten. We are all of the same colour and ought to be friendly towards each other.

To make our Friendship lasting, we put the Tomahawk the depth of a Pine Tree under ground; and that it may not be removed we place over it a Tree that the roots may so cover it that it cannot be found again. This ceremony was performed by our Father at Burlington last Spring in presence of the Western Nations and I will now repeat to you the speech which our Father delivered to us when he informed us of the Pacification with the Americans, and our Answer (here the proceeding of the Council at Burlington last Spring on the 24th, 26th and 27th April last was repeated). We condole with you from the bottom of our hearts for the loss of your friends, and wipe the tears from your eyes, we open your throats so no obstruction shall remain, that you may speak your mind freely and with the same friendship which formerly existed between us, as we now in the name of the Nations already mentioned address you as friends. If you will stand up we will take you by the hands. Should an idle young Man make use of any improper Language we request that you will not take any notice of it.

A Large bunch of Strings of black and white wampum.

Several elements of the Great Law of Peace are used here to further the reconciliation: the burying of the weapons of war and the placement of the tree over the pit; the condolence; the admonition not to listen to bad words of idle people. The echo repeated what was said at Burlington Heights Ÿ since Claus was the speaker for the Crown at the time and was taking the minutes of this council, he would have noted had there been any deviation from his earlier statement. Since he did not, this stands as another instance of the remarkable Haudenosaunee memory for statements in council. Finally, the speech of reconciliation ends with an opportunity for all the people to "take each other by the hand", a part of council that is often repeated as a means of reaffirming friendship and continues to this day.

The American Indians stood up and the others took them by the hand repeating the assurances of friendship, after which the Old Eel, an Onondaga Chief spoke to the Deputy Supt. Genl. as follows:

Brothers

You have this day uncovered the King's Council Fire at this place where our forefathers were accustomed to assemble. I speak in behalf of the Indians who are now come here to meet our brethren from the Grand River. We salute you and wish you well. We have heard all that you have said now and last Spring, and are much pleased with it. We rejoice that the Great Spirit has brought us together to unite and be friends. Many have been the meetings at this place between the King and our Ancestors. I am an old man and have been present at many of these meetings when your Grand Father spoke to us. We will always remember his words they are buried deep in our hearts. We look to you to be a friend to the Indians as he was. It is now late in the day, and as we are to answer you we will cover the fire and meet again tomorrow.

A few Strings wampum.

"Your Grand Father" was almost certainly Sir William Johnson ÿ not Johnson's grandfather but rather his father-in-law. It is the family relationship that was known and was important ÿ the Old Eel's speech is confident in the continuity of the Johnson friendship and family.

September 1st

Tekarihoga

Brothers

We thank the Great Spirit for giving us a new day, and permitting us to meet again. We wait to hear what you may have to say.

This, like the usual ceremonies of condolence mentioned at the beginning of the record, is likely an abbreviation ÿ an indication that the council opened with a proper thanksgiving as well as a welcome.

Red Jacket, Principal Seneca Speaker

Brothers

In the name of the Indians from the other side of the River. I now address myself to the King, the Coomg. Officers, and Colonel Claus our head, and to the Six Nations, Wyandots and Shawanese.

Strings wampum.

Brothers

I am happy now to meet you in the usual friendly manner, and you may be assured that what has happened was not from any animosity towards our ancient Father and friends. We are a poor people. We cannot do as we would. We are as Prisoners. But the fetters are now off and we are at liberty to communicate freely with our friends. We are not of the same Nations only, but of the same Families also. We therefore ought to be united and become on Body.

Strings of Wampum.

Brother

You have informed us that the King's Council Fire is again uncovered. We are also informed that the United States have done the same. We seriously recommend that your people will now attend to your usual occupations of hunting and agriculture and that you pay due attention to your Women, who by our ancient customs have a voice in bringing up our Young people to the practice of truth and industry.

Strings of Wampum.

Brothers

We have now to communicate to you a message which we received from the Delawares at the White River (near the Wabash) who say that they have lands and game of every kind in great abundance. This message is addressed to all the Six Nations, and we wish you to consider it.

Strings of wampum (which were afterwards returned by Tekarihoga, saying that they did not understand the message).

The Road being now open, we will be glad to have a visit from you at Buffalo Creek. Eating and drinking together may be omitted at present, our time being so short, rising and shaking hands will do as well.

Strings of wampum.

They then mixed with each other and spoke to the Deputy Supt. general as follows.

Tekarihoga, Speaker

Brothers

You have witnesses our proceedings which it has pleased the Ruler of the World to assist us in. It has finished as we could wish, and we desire that you will immediately acquaint our Western Brethren of the work we have been doing; and that we shall soon proceed to the west to meet them and perform the same ceremony there as was agreed upon last spring in Council. We now speak to you in One Body, and we hope that we shall be allowed to travel along the road peaceably and without being insulted by the inhabitants, and that you will give us provisions to enable us to travel homewards.

The Deputy Superintendent General

Brothers

In compliance with your particular request expressed in your Speech of 26th April last, your Father General Drummond ordered that I should be present at this meeting, and I have now to express how much I am satisfied with the whole of your proceedings which I very earnestly recommend you to keep in remembrance. The Road has been open'd and made smooth for you all. When the King of England made peace with the Americans he was particular in stipulating that no

difficulties should be thrown in the road to interrupt a free intercourse between his Indian Children. I am sorry to understand that the Inhabitants have in some cases behaved improperly towards you but your young men have provoked the resentment by their own misconduct. You are all under the protection of your Great Father the King, and if you conduct yourselves peaceably towards his white children, they will not be permitted to ill treat you. Provisions will be provided for you on your return homewards. I now cover the Council Fire and wish you a safe return home.¹⁹⁶

Significance of the Treaty

The nations participating in this treaty were not only the British and the Six Nations, but western nations like the Sauks, Foxes and Kickapoos and southern nations like the Creeks and Nanticokes.

As the host of the Council, Deputy Superintendent General William Claus performed the ceremony of condolence, referring to it as "the custom of *our* ancestors" and later recommending to the Aboriginal nations to adhere to their customs and manners. As with traditional Haudenosaunee council procedure, the first day was taken up in the welcome and condolence ceremony; the second day involved Claus laying out the business of the council, and the third day was for the reply on the same points. Tekarihoga ÿ the Turtle Clan chief title from the Upper Mohawk Village ÿ broke off the council at nightfall, as required by the Great Law of the Confederacy.

The treaty is unusual in that it sets a clear delineation between the roles of the war chiefs and the *rotiianeson*. The British officers deal with the war chiefs as long as the Confederacy is holding the "King's Tomahawk". Once the weapons of war have been buried again, the sachems take over business.

The significance for modern times of the Burlington Heights Council of 1815 ÿ a council that meets all the legal requirements of Canadian law concerning 'treaties' ÿ lies in the promises made by Deputy Superintendent General Claus in the course of his communications:

- "The King's bounty will be continued to you." This is a reference to the annual presents from the King which had been promised at the Niagara Treaty of 1764.
- "The road is open for you to pass and repass freely." This refers to what have become known as border crossing rights ÿ the right of the nations to cross the border between Canada and the United States freely, both in terms of 'immigration' and in terms of customs duties on their property. The government of Canada has maintained (in *R. v. Francis* in 1956 and *R. v. Vincent* in 1992) that the Treaty of Ghent did not restore the

rights of the Aboriginal nations but only contained a *promise* to do so. The promise, not having been ratified by Parliament, cannot be enforced or recognized by the courts.

- Rights, possessions and privileges restored as at 1811. There has not been a comprehensive accounting of what rights existed in 1811. For the Haudenosaunee who had fought for the British in both the American Revolutionary War and the War of 1812, the issue of their lands across the line in the United States has loomed larger than the issue of their rights in dealing with the Crown.
- Compensation for war captures. There is no record that this matter was ever resolved.
- The Boundary Line. When Tekarihoken referred to "the ancient boundary line", he meant the line agreed to between the Haudenosaunee and the Crown in the 1768 Treaty of Fort Stanwix. The British position was consistently that the King of England could not transfer to the United States title to land he did not own. The United States position was that the Six Nations had lost their land title as a result of having been a 'conquered people' in the Revolutionary War. Britain did little to advance the rights of the Haudenosaunee to their lands ÿ nor did it feel it was in a position to do so, though it would not say this to the Confederacy's representatives.

The Grand River 'Surrender' of 1841

Background

The Grand River Territory of the Six Nations was established in the Beaver Hunting Ground placed under the King's protection in the 1701 Nanfan Treaty. Since the Mississaugas, part of the Ojibwa Nation, had entered the territory, the Crown secured a surrender from their chiefs of the lands to be set aside for the Six Nations ÿ six miles on each side of the Grand River from the mouth to the source. In 1784, the Haldimand Proclamation granted the land. In 1792, Lieutenant Governor Simcoe of Upper Canada issued a more precise 'deed', which reduced the territory by about one-third, on the grounds that the Mississaugas had not surrendered the upper part of the valley.

Through various means, non-Aboriginal people settled within the Grand River Territory. Some of them received leases from Joseph Brant, leases that were later declared void by the British courts. Others settled on lands granted by the council in clear transactions with the Crown. Many of the settlers were squatters, though, and the Crown decided to deal with the problem not by removing the squatters but by persuading the Six Nations Council at the Grand River to surrender the territory so that the squatters could buy the land and receive proper deeds.

Thayendenega's plans for the Grand River Territory involved two separate ideas. The first was to acknowledge that there would be non-Aboriginal people settling near or among the Haudenosaunee anyway, so prudence would suggest selecting the best possible neighbours.

Thayendenega and the chiefs made grants of land to people they liked, people with skills, people intermarried with Haudenosaunee. The second was to lease the more distant parts of the Grand River Valley, so that as the Haudenosaunee population expanded, the leases would expire and cleared land would become available. Both plans were blocked by a combination of Lieutenant Governor Simcoe (in the 1790s) and the courts of Upper Canada (in the 1820s).

By the 1820s it was reckoned that of the some 300,000 acres remaining of the original Haldimand tract, over 35,000 were occupied by white lessees. But the arrival of more aspiring yeomen in Upper Canada also meant that a flock of squatters would speedily encroach on the economically strategic Grand River area. Though ritualistically condemned by officialdom and repudiated by Six Nations councils, this persistent "squattocracy" constantly plagued the tract. Their aggressiveness combined with their professed ignorance of the regulations governing the tract, not to mention their frequently blatant land speculations at the Indians' expense, made them a formidable threat to order and stability.¹⁹⁷

In the fall of 1836 the Six Nations Council at Grand River requested a fresh survey of all their unsurrendered lands to clarify what remained. By 1839, the Royal Commission of Judge Macaulay suggested that "the general advancement" of the colony could be promoted if each Indian family on the Grand River Territory were allowed 200 acres, for a total of 100,000 acres and if a second 100,000 acres were reserved for future Indian populations; the third 100,000 acres could be sold, not leased, to settlers.

What was left by 1840 was a Grand River Territory overrun with illegal squatters. The Indian department was weak and, under Superintendent Samuel Peters Jarvis, was controlled by the Family Compact of Upper Canada. Jarvis himself would later be allowed to resign in disgrace when it was discovered that he had mixed Indian trust funds with his own person accounts, so that it was impossible to tell what had happened with the money. In 1840, though, faced with the question of what to do about the squatters in the Grand River Territory, Jarvis concluded that the best way to ensure that there would be no more squatters was to secure a surrender of the land and to make these people title holders instead.

The position of the Six Nations was made more difficult as a result of the collapse of the Grand River Navigation Company; government-appointed trustees had placed more Six Nations trust funds into the company as it went under, and the Six Nations chiefs faced a financial crisis, one that was not made easier by Jarvis's mismanagement of the funds.

On 27 November 1840, the executive council proposed that the Grand River lands already ceded should be valued and sold as quickly as possible; that a reserve should be established in a somewhat central location, and that the remaining Six Nations lands should be surrendered so that they might be sold.

Some of the *rotiianeson* ÿ notably William Johnson Kerr of the Mohawks ÿ were in favour of degrees of assimilation with the surrounding non-Aboriginal population. The 'lower tribes' ÿ those farther down the river, the Onondagas, Senecas and Cayugas ÿ were more resistant to both land sales and Christian missionary influences.

On 5 January 1841, a deputation of Mohawk chiefs visited the lieutenant governor to complain about the squatters. Jarvis responded with the proposal set out in the executive council minute of the previous November.

The Lieutenant Governor has directed me to inform the deputation of Chiefs from the Grand River that he has maturely considered their speech to him, and particularly that important part of it which relates to the occupation of their lands by white people without authority.

The Lieutenant Governor is of opinion that very great difficulties will be found in any medium course between the expulsion of all intruders or non-interference, as experience has shewn that with all the anxiety to do justice, and with all the care exercised to prevent injury to Indian interests, the interference of the Indians themselves, continually, has created new difficulties, to which there seems to be no end, and yet the Government is expected to compromise its own character by adjudging what is right and wisely recommended by the Indians, or what, on the other hand, may be capriciously or corruptly counselled by them.

The Lieutenant Governor is of opinion that there can be no remedy found for the continuance of this unsatisfactory and embarrassing state of affairs while the lands remain general property under circumstances which it is no reproach to the Indians to say that they cannot manage the estate for the general interests of the tribes.

The Lieutenant Governor therefore considers that it would be very much for the benefit of the interests of the Indians if they surrendered into the hands of Government the whole tract, with the exception of such part of it as they may choose to occupy as a concentrated body, so that the same may be disposed of by Government; and the Lieutenant Governor therefore strongly recommends that this course be adopted by them, that they immediately select a tract of sufficient extent to give each head of a family or grown up man a farm of one hundred or two hundred acres (as may be thought expedient) for cultivation in the most eligible situation on the river, together with a further quantity to be reserved for firewood and other contingencies; that the Indians then remove to this tract and live together as a concentrated body upon the farms assigned to them, and that the residue of the tract be surrendered to be disposed of for the exclusive benefit of the Indians.

The Lieutenant Governor is also of opinion that when the Indians are thus settled together there will be no difficulty in keeping away intruders, or summarily punishing them should they persevere in committing trespasses on their tract of land.

The Lieutenant Governor feels confident that the proceeds of the sale of the residue of the land and the timber growing on it will retrieve the affairs of the Six Nations Indians, as well as confer on that section of the Province a lasting

benefit, by bringing into cultivation a large tract of the finest description of land, which at present is not only unproductive to the Indians, but absolutely useless to them in every point of view, and which is considered by the public a bar to the improvement and prosperity of the districts in which it is situated, and in fact a nuisance which the public have a right to call upon Government to abate.

It is unnecessary for the Lieutenant Governor again to express the great anxiety felt by the Queen's Government to promote the interest of the Indians and to carry out such a system in the management of their affairs as may conduce to this end; and the Lieutenant Governor therefore trusts that every member of the community of the Six Nations Indians will believe him when he states that if he were not firmly convinced that the plan proposed in this communication was the most proper for their adoption he would not have recommended it.¹⁹⁸

A few days later, Jarvis met with the Mohawk chiefs, to reassure them that Indians who had made improvements could keep them. Jarvis wrote another letter from Seneca on 15 January 1841:

Being convinced by conversation with several Indians of the Six Nations, since my arrival among them, that my communication to the Chiefs of the 5th January, 1841, relative to the Six Nations lands upon the Grand River is altogether misinterpreted by them, I have thought it necessary to submit the following in explanation of that document and of the intention of Government, in order to protect the true interests of the Indians.

The Government is of opinion that it would greatly conduce to the happiness, comfort and wealth of the Six Nations if all their land, with the exception of what is necessary for their own cultivation and for firewood, should be disposed of, so as to create a fund continually increasing for the benefit of the Six Nations, and upon such a plan they are of opinion that the income of the Six Nations can be immediately increased by a sum varying from £3,000 to 5,000 per annum.

The Government, therefore, in the communication of the 5th January instant, proposed to the Chiefs and Warriors that the whole tract, with the exception of such part of it as they may choose to occupy as a concentrated body, should be surrendered, so that the same should be immediately disposed of for the benefit of the Indians, and to relieve the present embarrassed state of their affairs.

The Government were also of opinion that it would be for the benefit of the Indians, and proposed in the communication of the 5th instant, that they should remove to such tract as should be thus reserved and set apart for their exclusive benefit, and become pledged to protect the same from every species of injury or intrusion upon the part of the white man. But in expressing thus their opinion to the Chiefs and proposing that such a reservation should be made, it was by no means the intention of the Government, nor is it their intention, to desire the removal of any Indian from a farm at present in his occupation, and when the Indian himself is content to remain; but if they deem it advisable to secure a tract permanently for their occupation in case any of the Indians should voluntarily

desire to dispose of their improvements, under sanction of the Government, and to remove to such Reservation where a home should be secured to him apart from the interference of the white man. And I wish it now to be thoroughly understood, that it is by no means desired to remove the Indians from lands at present in their occupation, nor at any time to press such a measure upon them, but that the removal in all cases should emanate voluntarily from themselves, if, at any future period, they should think it advantageous to do so, and that the white men who are now on the tract and who have almost without exception been invited and introduced into the tract by the Indians themselves, should be no longer suffered to remain upon these valuable lands without paying a single shilling to the Indian funds, but the Government shall immediately interfere to compel the payment of a fair value into the funds.

I wish it likewise to be understood, that in case any Indian (upon the proposed plan) should desire to dispose of his improvement, and to remove to the reserved tract, no bargain can be noticed or allowed which is not in the first instance proposed, as well by the purchaser as the Indian to the Department, and approved of, and that any further trespasses or intrusion, of any nature whatsoever, upon the reserved tract, whether committed without or with the approbation of the Indians, either singly or collectively, will meet with the strongest disapprobation of the Government and that the party offending shall be immediately removed and punished according to law.

From a careful enquiry into the nature of the claims of the white man to the lands in their occupation it is but too plainly apparent that they have been invited by the great majority of the Indians, and that the latter have received large sums of money which they are wholly incapable of ever refunding. So far, indeed, from the Government receiving any co-operation from the Indians, notwithstanding their repeated remonstrances and calls upon them for protection, they find every measure proposed thwarted by the conduct of the Indians themselves, by the repeated pretended sales of their public property, and that, too, not only within the last year, but if I am correctly informed, within the last fortnight, by some of the Chiefs and Indians who have been most urgent in their remonstrances.

Under such circumstances it cannot be expected, nor would it in any manner tend to the interests of the Indians, that upwards of 2,000 white persons nearly equal in number to the Indians upon the Grand River, should be utterly removed from their homes, for which in some instances they have paid so dearly to individual Indians; neither justice nor policy, or a due regard to the Indian interests, requires or will permit of such a measure nor can any such be expected to be approved of by me, or recommended to the Government.

I am informed, and believe from my own observations, that the above plan proposed meets with the approbation of the most intelligent, industrious and worthy of the Indians, and I am fully satisfied that their true interest requires its adoption.

Those who are opposed to it must therefore reflect that any private division in the Council, from whatever cause proceeding, cannot prevent the

Government from interfering in seconding the wishes of the industrious and promoting the wealth and prosperity of the Six Nations as a body.

In case any further divisions should take place in Council, and by declining amicably to meet the views of Government, the Indians should continue to thwart the measures devised as most conducive to their interest, I am apprehensive that the Government will be compelled, however reluctantly, to take into their own hands the exclusive management of their affairs, and as Chief Superintendent it will be my duty, immediately upon my return, to recommend such a course, to prevent the public property of the Six Nations from being sacrificed to the avarice and rapacity of individuals.

I have made frequent applications to the British Government relating to the stock in the Grand River Navigation Company held by the Indians, and I think I can with safety say that measures will be soon adopted in relation to that matter advantageous to the Indians. In conclusion, I can only further assure you that if the above measure proposed has not been maturely considered, and if it was not thought most calculated to promote the interests of the Six Nations, it never would have received the approbation of the Government, nor of myself as head of the Department.

I therefore recommend to the Indians in Council that they approve of the Government disposing for their exclusive benefit and advantage, either by lease or otherwise, of all their lands which can be made available, with the exception of the farms at present in their actual occupation and cultivation, and of 20,000 acres as a further reservation, and that the selection of this reservation be deferred until after a general survey of the tract, when the position most advantageous to the general interests and peculiar wants of the Indians can be more judiciously selected.

I will merely add that I will meet the Chiefs in Council at the Onondaga Council House on Monday next at 1 o'clock, to receive their answer.¹⁹⁹

Jarvis's second letter to the chiefs contained some clarifications – like the idea that lands already occupied by the Six Nations could be retained. It contained some promises – like the hint that the Grand River Navigation Company stock issue would soon be resolved to the advantage of the Six Nations. (It was not.) It also contained a threat – that the government would "interfere in seconding the wishes of the industrious" Indians if the council could not resolve the matter.

Three days after the second letter, the surrender was signed. The document stated: The Chiefs and Warriors of the Six Nations Indians upon the Grand River in full Council assembled at the Onondaga Council House, this eighteenth day of January, in the year of Our Lord one thousand eight hundred and forty-one, having maturely considered the proposal made to them by Samuel Peters Jarvis, Esquire, Chief Superintendent of Indian Affairs, contained in the annexed documents, dated the 5th and 15th January, 1841, in full reliance and confidence in Her Majesty's Government that they will dispose of the property of the Six Nations Indians, for the sole benefit of them and their posterity for ever, according to the intent and meaning of the annexed documents, and for no other purpose whatsoever, to the best of their judgement, and also in full confidence

and reliance upon Her Majesty's Government, that they shall not sell, or dispose of in fee simple any portion of that tract called the Johnson Settlement, unless what is available to be sold as town lots in the immediate neighbourhood of the Town of Brantford, without the assent of those Indians for whom the same was formerly reserved first being obtained, having and do hereby assent to Her Majesty's Government disposing of the land belonging and formerly reserved upon the Grand River for the Six Nations Indians, for the benefit of the said Six Nations, and for full and valuable consideration according to the best of their judgment, so as to preserve the benefit thereof for them the said Six Nations and their posterity for ever, and for no other purpose, according to the intent and meaning of said annexed documents, dated the 5th and 15th January, 1841, respectively.

IN TESTIMONY WHEREOF, we, Moses Walker, John Smoke Johnson, Skanawate, Kanokaretini, Peter Green, John Whitecoat and Jacob Fish, being deputed by the said Six Nations in full Council assembled to assent to the same in their behalf, have hereto set our hands and seals this 18th January 1841.

The names of Moses Walker, Peter Green and John Smoke Johnson appear to be signed on the document. Skanawati, Kanokaretini and John Whitecoat left their marks. Jacob Fish did not sign in any way at all.

By early February 1841, a petition signed by 51 of the chiefs and warriors was sent to the governor general. It stated that the surrender had been executed without proper consultation or authority and that the process had been so rushed by Jarvis that very few people actually understood what was involved.

At Jarvis' urging, Winniett immediately instructed another official, Charles Bain, Deputy Warden of Forests at Grand River, to call a council of the disaffected chiefs to enquire if they had genuinely understood and signed the petition at a meeting purportedly held on [Land speculator J.H.] McKenzie's property. At that council, convened on 16 February, 1841, Bain confirmed that they had, though he noted that many of the signatures belonged to so-called juniors of the Six Nations. In any case, the chiefs stated further that while willing to surrender a portion of their lands they still wanted the government to reconsider what had been done on the grounds that the chiefs who signed the surrender acted only as individuals and not as representatives of the whole of the Six Nations. Moreover, they claimed that two of the signatories, one of whom was Skanawati (John Buck), were prevailed upon to sign by Jacob Martin, the Mohawk interpreter for the occasion.²⁰⁰

In July 1841, the surveying work began. At the same time, another petition went to the governor general, calling for the cancellation of the surrender and the removal of Jarvis from

office. It stated that Jarvis had refused to listen to other proposals that had been made to him and had called those who opposed the surrender "ignorant, idle and worthless" people. The petition stated that two of the men who signed the surrender were not chiefs. The petition was signed by 122 chiefs and warriors.

Two of the people who signed the July 1841 petition were Skanawati and Peter Green. These two *rotiianeson* continued to oppose the surrender over the years that followed. In 1843 a delegation of chiefs appeared before a commission that had been appointed to investigate Indian affairs. They explained that Peter Green had not signed the 1841 surrender at all and that Skanawati had been promised land in return for his signing, but since the promise had not been kept he wished to disavow his participation.

In August 1841, a deputation of *rotiianeson* went to Kingston, the new capital of the United Province of Canada, to complain about the surrender. They were rebuffed by the assistant superintendent general of Indian affairs, George Vardon. In September, the chiefs approached Lord Purdhoë to present a petition on their behalf to the Queen. It seems Jarvis intervened to prevent this.

...the charge that Jarvis had shouldered aside customary procedures and rushed the arrangements, achieving his goals with little or no respect for a genuine Indian timetable is borne out ÿ in spite of what one of the leading signatories had to say at the time ÿ by the second thoughts later expressed by other signatories of the surrender document. There is also the very real possibility that one of the signatures, Peter Green's, was forged on it, as subsequently ÿ and plausibly ÿ alleged. And on the subject of the signatures generally one cannot help but pause over the comparatively few that graced the statement that surrendered a large tract of some 200,000 acres ÿ roughly one-third no less of the original Haldimand grant ÿ and the multiplicity of autographs that habitually appeared on less momentous documents.²⁰¹

On the matter of the number of signatures, we can look to other Grand River Territory land transactions. On 20 May 1796, a gift of 2000 acres was signed by 22 people, including six clan mothers ("principal women"). On 13 March 1809, a 4000-acre transaction bore 34 names. On 8 February 1834, just over 50,000 acres were given up; there were 21 names of chiefs on the surrender document. On 26 March 1835, a surrender of lands previously leased bore the names of 15 chiefs. On 2 April 1835, a surrender of lands in Brantford Township was signed by 26 chiefs ÿ including Skanawatih, Peter Green, Kanonakeritawi, and John Johnson. On 29 August 1837, a grant of half a lot to Rachel Parke was approved and signed by 17 chiefs. On 21 February 1840, a grant of 100 acres to Aaron Helmer was signed by 27 chiefs and principal men.

On 21 September 1865, a surrender of five acres was signed by 41 chiefs. On 26 March 1867, a surrender of 247 acres in Townsend Township involved 31 signatories.

Why would the single largest land transaction in the history of the Grand River Territory involve fewer than half as many signatories as any other? Taking into account the allegations of duress, forgery and misinformation, the 1841 surrender begins to look even worse.

The aftermath of the 1841 surrender does not make it shine any brighter. On one hand, several thousand acres of land were never sold ÿ but, as a result of the legalities of Confederation in 1867, they passed into the hands of the province of Ontario without compensation. Negotiations for the recovery of some of the lands are painfully slow. On the other hand, there are dozens of claims arising from sales of lands actually occupied by Six Nations people and never intended to be included in the surrender. There are also problems with land that was occupied by squatters ÿ and even by municipal governments ÿ and never paid for. As for the money, the Six Nations did not prosper. There has never been a proper accounting, though it has frequently been demanded by the Confederacy chiefs and the elected band council. Investments in everything from bridge stocks in England to Canadian War Bonds disappeared from the books.

When the land was sold, expenses and commissions were taken off for surveys, advertising, the Indian agent (whose 5 per cent commission was far higher than that of any real estate man of the day), and something called the Indian Land Management Fund, which took 10 per cent of the revenues from dispositions of Indian lands and used them to pay the expenses of the department of Indian affairs, to the point of paying for an Indian affairs superannuation fund. The proceeds were at times used to make improvements on non-Indian lands. In the Six Nations Grand River Territory, as in other reserves in southern Ontario, lax Indian department administration combined with local corruption. The lands were sold on an instalment plan that sometimes allowed the buyers to strip the timber, sell it, and make no further payments. The lands were sold at low 'upset' prices. The lands were sold to speculators.

Nearly a Treaty: Dorval, 1990

Background

What had begun in May 1990 as a protest by the Mohawks of Kanesatake over the proposed expansion of a golf course by the municipality of Oka into The Pines, a wooded area regarded by the Mohawks as both Mohawk land and 'the commons', had turned very bad.

On 11 July 1990, the riot squad of the Sûreté du Québec attacked a barricade that had been erected by the Mohawks. One officer was shot dead. The community of Kanesatake was then surrounded by the provincial police.

By August, Kahnawake Mohawks had blocked the Mercier Bridge, a major connection between Montreal and the south shore of the St. Lawrence. The provincial police surrounded and cut off that community, too.

Negotiations between Quebec, Canada and Mohawks had been going poorly, and on August 25, they collapsed completely.

The government of Quebec invited Haudenosaunee participation through Thadadahoh (Leon Shenandoah), but the Confederacy did not actually become involved until a grand council decision responded to an appeal from Tekarihoken (Samson Gabriel).

Haudenosaunee negotiators arrived in Montreal on August 27 to see whether they could secure an agreement that would remove the obstacles to peace. The talks took place at the Dorval Hilton Hotel, near one of the airports serving Montreal.

Quebec was represented by its minister responsible for international affairs, John Ciaccia, who was also its minister of Native affairs. The government of Canada was represented by the assistant deputy minister of Indian affairs, Roger Gagnon. The Haudenosaunee negotiators included Deskahe (Harvey Longboat), Sosistowahs (John Mohawk), Ganoegeedaweh (Bernard Parker), Tekarihoken (Samson Gabriel), Joagquisho (Oren Lyons), Arihote (Curtis Nelson), and Kayanesenh (Paul Williams).

The parties identified a series of issues that needed to be resolved to bring peace to the Mohawk communities, both in the short term and in the long term. Over the course of the following two days, those issues were addressed in an agreement that underwent numerous drafts as it moved toward completion.

There was considerable pressure on the negotiations: the parties had been told that the Canadian Armed Forces would move into both communities within 48 hours of the beginning of the talks, unless the negotiations were successful.

The Confederacy's representatives identified 15 issues that needed to be addressed. Over the following three weeks, some of those issues became irrelevant: disengagement of armed forces and clearing bridges and roads, for example. The last draft of the agreement, in mid-September 1990, read as follows:

WHEREAS the parties to this agreement desire to resolve several issues of mutual concern related to the communities of Kahnawake and Kanesatake;

AND WHEREAS the parties to this agreement seek to restore peace to their lands and peoples;

AND WHEREAS the Confederacy and the Crown have had long and friendly relations, by treaty and otherwise, which they desire to recognize and maintain; NOW THEREFORE THE PARTIES TO THIS AGREEMENT AGREE AS FOLLOWS:

1. *The Land at Kanesatake:*

(a) Land Tenure:

The land (approximately 97 acres) at Oka shall be acquired by Canada and shall be confirmed as Mohawk land to be held by the Mohawk people of Kanesatake.

There shall be no restriction placed on the use of the land, though the people of Kanesatake shall agree voluntarily to maintain the Pines in their natural state.

(b) Joint Planning Board:

The parties shall name a Joint Planning Board, composed of six persons, one nominated by Canada, two by Quebec and three by the people of Kanesatake. This Board shall review the present issues of land use and building permits for Mohawk people in the Municipality of Oka and shall prepare and present its recommended solutions to the problems of "checkerboarding", building permits and jurisdiction at Oka and Kanesatake to the parties within three months of the ratification of this agreement.

2. *Land Rights of the Mohawks of Kanesatake:*

With respect to the rights of Kanesatake to land or territory in the Province of Quebec, the parties hereto commit themselves to creating a process based on justice and equity, governed by a code of procedure. Rights or claims of the Mohawks shall be recognized not only on the basis of "lawful obligations" under the laws of Canada and Quebec, but also on the basis of "fair and honourable dealings". The performance and good faith of the parties in land claims and rights matters shall be enforceable by providing the parties with effective and speedy remedies from an impartial and independent body. The remedies shall include the non-binding arbitration of questions which have arrived at an impasse between the parties.

The parties hereto commit themselves to the creation of the code of procedure for the above in land claims or land rights, and to the joint appointment of the impartial and independent body, both to take place within three months of the signing of this agreement.

3. *Peacekeeping and the Restoration of Peace:*

The parties are committed to restoring peace to the communities of Kahnawake and Kanesatake and to the creation of community peacekeeping forces.

The parties acknowledge that they have created committees in each community which shall have the responsibility of overseeing policing and peacekeeping in the community and which shall work toward the creation of Mohawk peacekeeping forces for each community.

The removal of armed forces shall be gradual and shall ensure that the safety of all people is protected.

The committee referred to above shall monitor and supervise the process of the restoration of peace, and shall transmit regular written reports to the parties on their progress.

The committees shall have the power to call upon other peacekeeping agencies for assistance in maintaining such peace and protection.

4. Protection and Prosecution of Individuals:

The parties to this agreement share the following beliefs and objectives:

- that the safety of any person taken into custody by any police agency must be guaranteed;
- that there must be a fair process for determining criminal responsibility; and
- that any criminal trials that take place must be fair.

Originally, the Haudenosaunee had asked that neutral appointees should provide a report on which kinds of acts should lead to prosecution. Quebec insisted that nothing should fetter the discretion of its attorney general in court. The following terms were agreed to by 16 September 1990 • after the Canadian Armed Forces had moved into both communities • but Quebec's agreement was tentative, subject to approval by the people who were in the Treatment Centre in Kanesatake, and the Armed Forces ensured that no access to these people was possible so that the agreement could be explained, examined or approved.

In order to ensure that these beliefs and objectives are observed, Quebec agrees to the following:

(a) Persons taken into custody

If a person is taken into custody in relation to the incidents that occurred at Kahnawake and Kanesatake, that person shall have immediate access to a lawyer through a twenty-four hour telephone line available for that purpose. Any person so taken into custody shall not be interrogated until a lawyer has been contacted. A group of lawyers will be created and paid for by Quebec for the purpose of implementing the provisions of this paragraph.

(b) Provisions relating to custody:

Any person taken into custody in relation to the incidents that occurred at Kahnawake and Kanesatake by the Canadian Armed Forces or the Sûreté du Québec, while in custody and not in court, shall be held solely in the custody of the Canadian Armed Forces at their base in Farnham unless that person agrees otherwise, in writing and in the presence of his lawyer. All other provisions of this agreement relating to criminal charges and procedures shall also apply to people taken into custody at the Treatment Centre.

(c) Other Rights and Defences:

Nothing in this agreement shall be interpreted so as to derogate from or remove any right or defence that would otherwise have been available to any person taken into custody or charged with an offence.

(d) The Special Crown Attorney:

The Attorney General of Quebec shall appoint a special Crown Attorney (hereinafter, "the special Crown Attorney"), who shall have personal conduct of all criminal cases arising out of the incidents at Kanesatake and Kahnawake. The special Crown Attorney shall not have been an employee of the Government of Quebec or the Government of Canada, and shall not be a citizen of any of the nations of the Haudenosaunee.

The special Crown Attorney shall have the full powers and authority of a Crown Attorney in fulfilling his or her duties, and shall further be empowered to select such personnel as are necessary to accomplish his or her duties. These personnel may be selected as the special Crown Attorney chooses, and their salaries and expenses shall be paid by Quebec.

Subject to the prerogatives of the Attorney General, the special Crown Attorney shall have exclusive discretion in determining whether criminal charges shall be laid, and what charges shall be laid, and how they shall be proceeded with, in any matter relating to the events at Kahnawake and Kanesatake from May, 1990 to September, 1990 inclusive.

One responsibility of the special Crown Attorney is to ensure that any trial that takes place meets high standards of fairness, and that no trial takes place in circumstances that are not likely to be fair.

Where a warrant for the arrest of any person has been sworn or is about to be sworn for any acts arising out of the creation and operation of the barricades at Kanesatake and Kahnawake, not involving personal injury, such warrants shall not be acted upon by police forces until they have been reviewed by the special Crown Attorney, and then shall be acted upon only in a manner consistent with his directions.

The special Crown Attorney shall fulfil his duties free from any political involvement or interference. No Crown Attorney other than those under his supervision shall act in connection with the charges described in this clause of this agreement.

There was a precedent for a special prosecutor: in the days following the October Crisis of 1970, a special prosecutor had undertaken Quebec's work on the people who had been arrested, and his independence from political influence was seen as a factor in maintaining fairness. That prosecutor, it seemed, was available to deal with the Mohawk crisis 20 years later.

5. *Weapons:*

The weapons held by persons in the Treatment Centre at Kanesatake shall after identification of make and type be placed in a sealed container which will be kept sealed and shall be held by the Canadian Armed Forces until these weapons are destroyed by the Confederacy in a manner verifiable by the other parties.

Within three weeks after this agreement comes into effect, the Confederacy and the Mohawks of Kanesatake and Kahnawake shall destroy weapons that are restricted or prohibited by the Criminal Code of Canada, and are not in the possession of Peacekeepers, in Mohawk hands at the time this agreement comes into effect, in a manner that is verifiable by the other parties.

There was not going to be a 'surrender' of the weapons. Instead, consistent with Confederacy tradition, they were going to be buried in a deep pit, never to be seen again. And the Confederacy was preparing to ask Quebec and Canada: "This is the kind of people we are ÿ this is what we do with our weapons when peace is restored. Where are your weapons?".

6. *Relief:*

The people of Kahnawake and Kanesatake shall be eligible for government relief programs on the same basis as other people.

The government of Canada has, since 1990, provided non-Mohawk residents of Oka and Kanesatake with an unusual form of relief. They have been compensated for the reduction in value of their properties resulting from the continuing troubles. Canada has not offered the same kind of compensation to Mohawks.

7. *Reconciliation:*

The experiences of the past two months have been damaging to the peace of several communities. To restore peace and good relations, the parties commit themselves to repair the damage that has been done to the relationship, as well as possible.

The parties to this agreement shall take steps to provide counselling to ease the minds of those who have undergone the trauma of the past two months.

The Confederacy's ways provide that a ceremony should be used to clear the minds of those who have suffered grief, anger or some other clouding of the mind. A ceremony shall be performed for the communities of Kanesatake and Kahnawake, and also for their neighbours, with the participation of representatives of Canada and Quebec if they so wish.

8. *Economic Non-Dependence:*

The parties acknowledge that the lack of a viable and non-dependent economy in the communities of Kahnawake and Kanesatake has contributed to the problems that have existed.

The parties hereby commit themselves to the establishment of viable economic growth for the communities of Kahnawake and Kanesatake.

9. *Relations and Alliances:*

The long and friendly relations and alliances between the Confederacy and the Crown, by treaty or otherwise, are hereby recognized.

It is understood that this recognition shall not be interpreted as affecting the title or tenure of any land.

Canada and Quebec commit themselves to the restoration of appropriate relations with the Confederacy, including the establishment of mutually approved clear methods of peaceful resolution of disputes.

In the year following 1990, the government of Canada actually explored the possibility of restoring and affirming relations with the Confederacy. One of the preparations for this was the assignment of several people to review treaty relations between the Confederacy and the Crown. When the minister of Indian affairs and northern development decided in 1992 to abandon this opening, the work was also abandoned and never completed.

10. *Compliance:*

The parties shall appoint a compliance committee, to consist of one appointee of each party, which shall prepare reports to the parties on the progress made in the implementation of this agreement. Such report shall be presented to the parties three months after the agreement is signed, nine months after that date, and fifteen months after that date. The compliance committee shall recommend steps to be taken to ensure full compliance with the spirit and intent of this agreement.

11. *Internal Government of Kanesatake:*

The parties hereto recognize the inherent right of the Mohawks of Kanesatake to determine their internal governance and to choose their representatives for all purposes.

12. *Coming into effect:*

This agreement shall come into effect upon its signing by the Minister of Indian Affairs and Northern Development of Canada, the Minister of Native Affairs of Quebec, one Royaner of each Nation of the Confederacy, and by members of the communities of Kahnawake and Kanesatake.

13. *Neutrality of this Agreement as to Sovereignty:*

Nothing in this agreement shall be deemed to be an admission by Canada or Quebec of the sovereignty of the Confederacy or the Mohawk Nation, nor a renunciation or change of the position of the Confederacy or Mohawk Nation on that question.

Originally, this clause provided that no party, by entering into the agreement, was admitting or denying the sovereignty of any other party. It was only after two days that the government of Canada realized that it might be admitting degrees of sovereignty for Quebec that Canada could find unacceptable, especially if this agreement had constitutional protection pursuant to section 35 of the *Constitution Act, 1982*.

There was one issue remaining: the provincial government felt that it would be necessary to prosecute people who had been involved in criminal activities. The Haudenosaunee felt that it was crucial that any prosecutions and trials be fair. The Haudenosaunee proposed that the parties could appoint individuals to determine what activities required prosecutions and how fair trials could be conducted. Provincial representatives insisted that they could accept nothing that might fetter the discretion of their attorney general.

Before this issue could be resolved, several events occurred.

Kahnawake Mohawks arrived with a 'new' position. In fact, it was the same document, retyped, that had caused the collapse of the negotiations a few days earlier. They announced that this was their approach to the talks. This caused anger and confusion among the Mohawks attending the talks.

Roger Gagnon, who had commented on the agreement clause by clause for two days, announced that he was not and had not been there on behalf of Canada and was only an observer. He stated further that Canada wanted a clause in any agreement that would clarify that this was not to be a land claims settlement as defined in section 35 of the *Constitution Act, 1982*. This, he

explained, was necessary because the agreement did address Kanesatake land issues, and a land claims settlement under section 35 would have constitutional protection and entrenchment.

Haudenosaunee representatives pointed out that Canada would fear entrenchment of the agreement only if it intended to break the agreement in the future. They also said that it was unreasonable for the assistant deputy minister to ask people to believe that he had not been speaking for Canada for the previous two days.

The Kahnawake Mohawks removed their barricade on the Mercier Bridge.

The combination of three separate forces intent on blocking any treaty that did not meet all their terms ensured that no treaty was made.

The Canadian Armed Forces entered Kahnawake and Kanesatake. Some of the people at Kanesatake retreated into a Treatment Centre and remained there, surrounded by the Army, for several weeks. The political trials that followed the Oka crisis did not result in any criminal convictions. (A few charges involving assaults and weapons offences did lead to jail terms.)

Analysis

What happened in Dorval was not a treaty. It was, instead, a painful collection of ironies and reminders of the past.

Some in the Confederacy suggested that negotiations should not be carried out with Quebec, which was not properly a nation, but should be conducted with Canada alone. The Haudenosaunee negotiators responded that it was Quebec that had actual control over the people with guns pointed at the people in Kanesatake and Kahnawake: the negotiations were intended to be practical.

One of the most difficult issues in 1990 was what should be done with the people who had taken up arms in Kanesatake. The Confederacy's position was that, to achieve peace, much of what happened on both sides would have to be buried, deliberately forgotten. Some arrangement would have to be made for the fair disposition of acts that were definitely criminal rather than political in nature. The government of Quebec was less willing to forgive and forget.

The Confederacy as a whole was slow to react to the situation in Kanesatake. In the relative vacuum that existed, first the Oneida council sent delegates to try to assist the people in Kanesatake, and at the same time the 'warriors' decided to take a leading role. In the confusion, Canada and Quebec decided at times that they could not tell who really spoke for the Haudenosaunee.

The Mohawks, as the keepers of the Eastern Door of the Confederacy's house, have often been the ones who lost land first, who fought back first, who took and meted out the most punishment. It is not surprising that their land issues should have ignited first into violence. In the face of both internal and external violence, Haudenosaunee institutions, already facing erosion and battering, were slow to

react effectively. Geography ÿ the spread of the communities over hundreds of miles ÿ continued to be a barrier to extended meetings. The Oneidas had at times acted separately, out of initiative, frustration or perversity (depending on who was explaining their actions), but then they had done so at several key times in the Confederacy's history, especially in their dealings with the United States. So, too, was the friction between `warriors' and the *rotiianeson* nothing new. Once again, it reflected the impatience of the young with the deliberateness of the old, and the willingness of the former to resolve by violence what the latter would rather deal with through diplomacy.

As for Canada's inability to understand or identify who spoke for the Confederacy, this was not completely sincere. Yet it is ironic that, after nearly a century of deliberately trying to destroy the institutions of the Haudenosaunee, Canada would become unable to explain internally who carried the chances for peace.

In the aftermath of the `crisis' of 1990, the Haudenosaunee Grand Council established an external relations committee to address the issues raised. The committee has asked several times to meet with the government of Canada. In August 1991, the minister of Indian affairs, Thomas Siddon, agreed at first to meet with the committee at the Grand River Territory, then cancelled the meeting a few days before it was to take place. The official position of the government of Canada had become that it would not meet with representatives of the Confederacy unless *every* elected band council told the government of Canada that it should do so. All but one of those elected councils have done that. Canada still refuses to deal directly with the Haudenosaunee, formally or informally.

Three years later, none of the issues listed in the near-agreement of August 1990 had been resolved.

PART IV
THE CHAIN TARNISHED
THE STREAM POLLUTED
THE BRIGHT PROMISES FADE
AS THE SUN STILL SHINES

The present state of the relationship between the Crown in Canada and the Haudenosaunee does not reflect the Covenant Chain and the Two Row Wampum.

The Crown not only does not recognize Haudenosaunee laws and government ÿ it continues to do what it can to subvert or destroy them.

It has done so partly by creating and supporting governments that are inconsistent with the Great Law and that by their short-term and adversary nature have created division and bitterness within the communities.

Many land rights issues, which Canada calls 'claims' or 'grievances', remain unresolved. There is a serious lack of fair and efficient processes by which they can be resolved.

The lack of recognition of Haudenosaunee law and government has allowed and promoted deterioration of the social institutions in the communities, as Canada deliberately promotes a dependency on its own laws and institutions, which do not serve the people's needs adequately.

The lack of viable economies in Haudenosaunee communities has led to alternative economies that injure the communities, create imbalances in people's economic power, threaten all political institutions, and violate both Canadian law and natural law. People violating Canadian law do so behind the cloak of Haudenosaunee sovereignty, while Canada's refusal to deal with the real government of the Haudenosaunee permits this activity to continue.

The confrontation in 1990 took one-third of Canada's active army to deal with. It cost Canada and Quebec hundreds of millions of dollars. At a time when Quebec should have been proud of its place in the world, it held up to that government a mirror of the racism of its people.

The losses of 1990 might have been acceptable had people learned from them. Nothing done by any government since then suggests that anything has been learned.

Introduction

The relationship between the Haudenosaunee and the Crown is complex. It is more than three centuries old. It is based on several generations of consistent process, language and behaviour in regular treaty councils.

The two dominant symbols of that relationship are the Two Row Wampum and the Silver Covenant Chain. Both symbols are consistent with the Great Law of Peace of the Confederacy. Both involve respect for the internal government of each nation taking part in a league. Both involve a mutual protectorate. The Two Row Wampum emphasizes the separateness of the laws and government of each party, while the Covenant Chain accentuates the closeness of their links. In recent years, probably because of the encroachments by the Crown on Haudenosaunee rights, it has been the Two Row Wampum that has been held up as the bulwark of a righteous defence. In fact, that symbol is as much a symbol of closeness as of distance, just as the Covenant Chain works as well to recognize the integrity of its constituent links as circles in their own right.

There is no direct translation in Mohawk of the English word 'treaty'. While the English word, derived from the word 'treat', implies some aspects of commercial bargaining, the Mohawk word that is generally used, *Kayanere*, has no such tone,

and instead implies 'the law', 'the League', 'the Union', and 'the Good'. For the Haudenosaunee the coming together of the nations was for the purpose of agreement, harmony, mutual strength and the creation of greater unity. Each party brought a different heritage of law to the treaty process. Even in the meaning of the word for what they were doing, there were basic differences.

The principles underlying the Two Row Wampum and the Silver Covenant Chain have been under attack by the Crown for the past century and a half. Once the Confederacy was no longer needed as the defensive barrier between the British and the French, and then between the Canadas and the United States, respect by the Crown for its own treaty promises deteriorated quickly.

In modern Canada, the federal government has generally denied that it is bound by the Crown's obligations to the Haudenosaunee. It also maintains that the relationship never really involved recognition of the Confederacy's sovereignty. The relationship has been eroded in several ways. The purpose of this part is to chronicle and describe the erosion.

The means of erosion can be divided into legislation by Parliament and provincial legislatures, jurisprudence by the courts, and policy and direct action by the governments of Canada and the provinces. In the Canadian political system, these are the three branches of government – legislative, judicial and executive. On each issue, these means and branches combine to bring about the effect. As well, there has been erosion on the Haudenosaunee side, as people and values change, and as custodians of traditional knowledge pass away.

For example, the promises to the Haudenosaunee in the mid-1700s that land would never be taken by the Crown except with their consent in full council were reduced by deliberate legislation. By the 1950s, Canada's *Indian Act* made it possible for a minority of the people, no matter how small, to be deemed to be a majority if they voted in favour of a land surrender. On 27 July 1957, 30 votes out of 3600 eligible voters – less than 1 per cent of the people – were deemed to be a majority of the Six Nations of the Grand River for the purposes of a surrender.

When the legality of this was challenged by Haudenosaunee representatives in *Logan v. Styres*,²⁰² the court concluded that "while it might be unjust or unfair for the Parliament of Canada to interfere with their system of internal government...Parliament has the authority to provide for the surrender of reserve land". The judge noted that the surrender could still be refused by the governor general in council and that "it is difficult to see what advantage would accrue to the Six Nations Indians by surrendering the land in question". The court also said that the Six Nations Grand River people were not "allies" but "subjects" of the Crown, having acquired that status when they settled on the Grand River lands. The third step in this particular episode of erosion, government policy, was taken when the governor in council – in the present Canadian reality, the federal cabinet – accepted the surrender and the department of Indian

affairs sold the land. At each step – Parliament, the courts, the government – a choice was made between what was right and what was possible, and Canada chose the possible, to its own benefit.

The three parts of the Canadian government do not always work in lockstep coordination. When the executive chose to prosecute Haudenosaunee hunters in 1987, the courts provided protection through the combination of treaties and legislation (see *R. v. Ireland and Jamieson*, [1991] OR (3d) 577). Though Parliament and the courts have made customs duties applicable to the Haudenosaunee, the executive, through remission orders, has implemented part of the treaty promises of 1795 and 1815 in Akwesasne.

The Crown has tended to reinterpret the treaties, after the fact, to its own advantage. This is not new. The placing of the Beaver Hunting Ground under the Crown's protection in 1701 was used 50 years later to justify British ownership and 85 years later to support New York state claims to the land. The intent of the *Royal Proclamation of 1763* to create a temporary boundary has been seen by Canada and some Aboriginal groups from the 1970s on as a permanent and holy document. Canada has somehow twisted its recognition of the "Nations" into a denial of the sovereignty of those nations.

Despite the many clear promises made by Lieutenant Governor Simcoe and Lord Dorchester in the 1790s – that the Haudenosaunee would be placed in the same position in Canada that they had in New York before the American Revolution – the coming of Haudenosaunee people to the Bay of Quinte and Grand River territories has been interpreted by Canadian courts as an act that turned allies into subjects.

Times change. Relationships change. Promises shouldn't.

The Haudenosaunee believe that if Canada wants to change the treaties to keep up with changing times, it should offer to renegotiate the treaties. It should not ignore them. The Haudenosaunee have been consistent in this position – for centuries.

Teyoninhokarawen (Major John Norton) was sent to England on behalf of the Haudenosaunee in 1807. He stated there:

...is it honourable no longer to assert their rights (particularly when they were granted by ourselves) because we fear no danger from them? Surely it is not wise and cannot adduce to the greatness of the English power not to abide by treaties which themselves have made...²⁰³

Canada, which claims all Britain's powers and prerogatives, should answer the same questions about Britain's responsibilities.

Giving Thanks: Erosion of Relations with the Natural World

In the first two centuries of relations between the Haudenosaunee and the Crown, the settlers were not seen to be doing great damage to the natural world. When the Haudenosaunee continued to give thanks at the beginning of every council ÿ internal and external ÿ they had the feeling that human beings and every other part of nature were still fulfilling their responsibilities. In the second half of the twentieth century, that feeling is gone, replaced by the knowledge that all other parts of the natural world are struggling, in alliance with the natural peoples, to maintain their duties in the face of an enormous environmental disaster:

In the beginning we were told that the human beings who walk about on the earth have been provided with all the things necessary for life. We were instructed to carry a love for one another, and to show a great respect for all the beings of this Earth. We were shown that our life exists with the tree life, that our well-being depends on the well-being of the Vegetable life, that we are close relatives of the four-legged beings.

The original instructions direct that we who walk about on Earth are to express a great respect, an affection and a gratitude toward all the spirits which create and support Life...When people cease to respect and express gratitude for these many things, then life will be destroyed, and human life on this planet will come to an end.

...To this day the territories we still hold are filled with trees, animals and the other gifts from the Creation. In these places we still receive our nourishment from our Mother Earth...

The Indo-European people who have colonized our lands have shown very little respect for the things that create and support Life. We believe that these people ceased their respect for the world a long time ago. Many thousands of years ago, all the people of the world believed in the same Way of Life, that of harmony with the Universe. All lived according to the Natural Ways.

Today the species of Man is facing a question if [its] very survival....The way of life known as Western Civilization is on a death path on which their own culture has no viable answers. When faced with the reality of their own destructiveness, they can only go forward into areas of more efficient destruction.

The air is foul, the waters poisoned, the trees dying, the animals are disappearing. We think even the systems of weather are changing. Our ancient teachings warned us that if man interfered with the Natural laws, these things would come to be. When the last of the Natural Way of Life is gone, all hope for human survival will be gone with it. And our Way of Life is fast disappearing, a victim of the destructive process.

The technologies and social systems which destroyed the animal and the plant life are destroying the native people...We know there are many people in the world who can quickly grasp the intent of our message. But our experience has taught us that there are few who are willing to seek out a method for moving toward any real change.

The majority of the world does not find its roots in Western culture or tradition. The majority of the world finds its roots in the Natural World, and it is the Natural World, and the traditions of the Natural World, which must prevail.

We must all consciously and continuously challenge every model, every program, and every process that the West tries to force upon us... The people who are living on this planet need to break with the narrow concept of human liberation, and begin to see liberation as something that needs to be extended to the whole of the Natural World. What is needed is the liberation of all things that support Life ÿ the air, the waters, the trees ÿ all the things which support the sacred web of Life.

The Native people of the Western Hemisphere can contribute to the survival potential of the human species. The majority of our peoples still live in accordance with the traditions which find their roots in the Mother Earth. But the Native people have need of a forum in which our voice can be heard. And we need alliances with the other people of the world to assist in our struggle to regain and maintain our ancestral lands and to protect the Way of Life we follow.

The traditional Native people hold the key to the reversal of the processes in Western Civilization, which hold the promise of unimaginable future suffering and destruction. And we, the Native people of the Western Hemisphere, are among the world's oldest surviving proprietors of that kind of consciousness...Our culture is among the most ancient continuously existing cultures in the world. We are the spiritual guardians of this place.²⁰⁴

These are not empty words: the impact of the economic choices made by Euro- American governments in Canada and the United States has been devastating to the global environment, but particularly to the natural world in and around the communities of the Haudenosaunee. Those communities have not been fully involved in those economies, but have suffered directly as a result of the choices made by other governments and societies.

The Grand River, where it flows through the remaining Grand River Territory, is polluted by industrial and agricultural development. Many of the people of the Six Nations Grand River Territory have to drink bottled water because of the presence of NDMA and other carcinogens in water drawn from the river. In the southern half of the Grand River Reserve, the water table has virtually disappeared as a result of gypsum mining underground. The Grand River Territory is one of only three remaining sizable tracts of Carolinian forest in southern Ontario ÿ the other two being Long Point Provincial Park and Point Pelee National Park. Since 1990, 28 unauthorized waste dumps have been found in the Grand River Territory, including disposals of Toronto hospital and construction waste. The Confederacy has objected to plans to develop the Grand River for tourism by constructing locks to allow motor boat traffic from Lake Erie upstream ÿ without adequate consideration of the effects of that increased traffic on the river's ecosystem.

Akwesasne, on the border between Canada and the United States, is surrounded by pollution and natural disaster. The construction of the St. Lawrence Seaway flooded islands and modified the flow of the St. Lawrence River. Industrial development ÿ a paper mill on the Canadian side, an aluminium smelter and a General Motors plant on the U.S. side ÿ has polluted

the air, the land and the water. Both domestic and wild animals have been affected. Cattle on Cornwall Island lost their teeth to fluoride pollution and had to be killed. Turtles in the river have such high concentrations of carcinogens that they can be disposed of, after testing, only as toxic waste.

At Tonawanda, the council fire of the Seneca Nation, waste dumping without the sanction of the council has also caused serious problems. A fire in one of the dumps burned underground for more than two weeks in the summer of 1993.

We are indigenous people to this land. We are like a conscience. We are small, but we are not a minority. We are the landholders, we are the landkeepers; we are not a minority. For our brothers are all the natural world, and by that we are by far the majority. We want you to understand the opportunity now. It is no time to be afraid ÿ there is no time for fear. It is only a time to be strong, only a time to think of the future, and to challenge the destruction of your grandchildren...and to think about the coming generations.²⁰⁵

[Indigenous] communities are the repositories of vast accumulations of traditional knowledge and experience that links humanity with its ancient origins. Their disappearance is a loss for the larger society, which could learn a great deal from their traditional skills in sustainably managing very complex ecological systems. ...The starting point for a just and humane policy for such groups is the recognition and protection of their traditional rights to land and the other resources that sustain their way of life ÿ rights they may define in terms that do not fit into standard legal systems. These groups' own institutions to regulate rights and obligations are crucial for maintaining the harmony with nature and the environmental awareness characteristic of the traditional way of life. Hence the recognition of traditional rights must go hand in hand with measures to protect the local institutions that enforce responsibility in resource use. And this recognition must also give local communities a decisive voice in decisions about resource use in their area.²⁰⁶

To accomplish the transition to a new economics of sustainability, we must begin to quantify the effects of our decisions on the future generations who will live with them. In this, we have much to learn from the Iroquois nation, which requires its tribal councils to formally consider the impact of their decisions on the seventh generation into the future, approximately 150 years later. Of course, it is sometimes genuinely difficult to project the future, but even where it is not, we have obstinately refused even to consider it. That must change ÿ again, not just in

theory but in practice, with the sustainability of economic choices factored into decision-making at every level of commerce.²⁰⁷

In a series of treaties, the Haudenosaunee shared the land with the settler nations. In sharing the land, the Haudenosaunee assumed that the settlers would also share their respect for the natural world and their concern for future generations.

What has happened, instead, is that given a choice between short-term economic difficulties and long-term environmental ones, Canada and the United States have tended to make their decisions based on economic rather than environmental considerations.

Haudenosaunee communities are not self-contained, self-sufficient enclaves. The environmental choices made by other governments and peoples have severe effects on each Haudenosaunee community ÿ on the air and the water and the wildlife and the land.

The principles of mutual respect contained in the Covenant Chain and Two Row relationships are violated by the depositing of industrial wastes into the air, waters and lands of Haudenosaunee communities, as well as by the severe environmental impact of pollution and overconsumption on the rest of the lands and waters of North America and the world.

The Rest of the Natural World: Hunting and Fishing

There is a second aspect of Canada's erosion of Haudenosaunee links with the natural world. It involves the rights to hunt and fish.

Anthropological estimates of traditional Haudenosaunee diets suggest about 70 per cent of the food was the result of farming, while about 30 per cent came from hunting and gathering. Game and fish, high in protein, were always part of this balanced diet.

Conservation laws began in what is now Ontario out of necessity: commercial fishing had caused the collapse of the fish stocks of the lower Great Lakes. Logging and land clearing for farming had modified the habitats of southern Ontario.

In 1921, in the court case of *Sero v. Gault*, the widow Sero, a Mohawk of the Bay of Quinte territory, sued Thomas Gault, a fishery inspector, to recover her seine net. The net had been seized pursuant to an Ontario fish and game law.

About treaties and the status of the Haudenosaunee, the court said:

It is well known that claims have been made from the time of Joseph Brant that the Indians were not in reality subjects of the King but an independent people ÿ allies of His Majesty ÿ and in a measure at least exempt from the civil laws governing the true subject. "Treaties" have been made wherein they are called "faithful allies" and the like, and there is extant an (unofficial) opinion of Mr. (afterwards Chief) Justice Powell that the Indians, so long as they are within their villages, are not subject to the ordinary laws of the Province.

As to the so-called treaties, John Beverley Robinson, Attorney-General for Upper Canada (afterwards Sir John Beverley Robinson, C.J.), in an official letter

to Robert Wilmot Horton, Under Secretary of State for War and Colonies, March 14, 1824, said:

"To talk of treaties with the Mohawk Indians, residing in the heart of one of the most populous districts of Upper Canada, upon lands purchased for them and given to them by the British Government, is much the same, in my opinion, as to talk of making a treaty of alliance with the Jews in Duke Street or with the French emigrants who have settled in England":

Canadian Archives, Q 337, pt. II, pp. 367, 368.

I cannot express my own opinion more clearly or convincingly. ...I can find no justification for the supposition that any Indians in the province are exempt from the general law ÿ or ever were.

But, whatever may have been the status of the original Indian population, the law as laid down by Blackstone in his Commentaries...has never been doubted: "Natural-born subjects...are such as are born within the dominions of the Crown of England...and aliens are born out of it".

In 1950, William Hill of the Mohawk Territory at the Bay of Quinte was charged with possession of seine nets under the Ontario Game and Fish Act. This time, the Ontario courts found that the provincial law did not apply. The court said:

...There is no question in my mind but that an Indian on the reservation is subject to the Criminal Code. That, of course, is a federal statute and a federal law, and the Indian is subject to control and under the legislative authority of the Parliament of Canada.

There is also no question but that the Indian is subject to the laws of the Province once he is off or out of the confines of the reservation. There is considerable law on this point.

...I have...come to the conclusion,,that the accused here is not guilty by reason of the facts that the offence, if any, would be a breach by an Indian upon an Indian reservation of a provincial act, and that the Parliament of Canada is the only competent legislative authority which can regulate the situation which is involved here.²⁰⁸

This 'enclave' theory of Indian reserves being protected against provincial laws did not last. The Parliament of Canada made provincial laws of general application applicable "to Indians in the province" by section 88 of the 1951 *Indian Act*.

Until 1951, the provisions of treaties were held to be subject to any federal or provincial law that conflicted with them. In fact, there has never been a case before Canadian courts that enforced treaty provisions ÿ there have only been cases that used the treaties as protection, against laws that would violate treaty rights. In British law, it would be said that treaties, like equity, are "a shield but not a sword". After 1951, the new section 88 of the *Indian Act* was interpreted by the courts to make provincial (but not federal) laws subject to inconsistent provisions of treaties.

Until 1973, there was little recognition of Aboriginal land title, either. The Supreme Court of Canada's split judgement in the *Calder* case that year left the issue to the politicians, while sending the message that Aboriginal land rights and title *did* exist. Land, ownership, title, and the use of land for hunting are all bound up together in Canadian law – but hunting and fishing rights, for many years, were the focus of activity in Canadian courts.

Haudenosaunee hunting rights, though, as distinct from those of other nations, were not considered by Canadian courts until 1987, when Jesse Ireland of Oneida was charged with hunting raccoons without a licence and in a closed season, contrary to the Ontario Game and Fish Act. The defence was that the 1701 Nanfan Treaty protected Haudenosaunee hunting rights throughout southwestern Ontario. The provincial government lost the case at trial and appealed. The appeal court concluded in November 1990:

Hunting is part of the way of life of the respondents. It appears they are responsible hunters. Hunting skills and rules are handed down by the males on the maternal side of the clan or tribe. They teach respect for creation and mother earth; one should not cause unnecessary damage to the animals or the environment. They have regard for the mating season and do not hunt at such times. There is a spiritual and religious component in the hunting involving petition and thanksgiving; there is a custom of leaving something with nature if something is taken from nature – in this case one of the raccoons was left. It was stated that hunting should be for the community rather than for selfish purposes. The raccoons that the accused shot were intended as food for their tables and the tables of some of the older people of the community who could not hunt.

...The Treaty says that the Iroquois Indians are to have free hunting. It is a clear and positive statement of the rights of the Indians. There is no suggestion that these rights were contingent on a particular event at a particular time, nor is there any suggestion that the King of England only guaranteed the Iroquois protection from interference by other tribes.

...If there is any evidence by conduct or otherwise of how the parties understood the terms of the treaty, such understanding is of assistance in giving content to the treaty. There is such evidence here and it supports the position of the Indians.

The respondents and other members of their tribe have hunted in the area covered by the treaty without provincial hunting licences and without following provincial hunting seasons. This is evidence of the Iroquois understanding that these treaty rights were to be free of all disturbances.

The Crown argued that the Five Nations...abandoned the territory in the late 1690s and took up residence in New York State... The Crown says this abandonment...constitutes an extinguishment of any treaty rights they might have had.

...Can non-use extinguish treaty rights? I should not think so. ...A treaty is a solemn, sacred agreement between the Crown and the Indians and there are sovereign elements to it. This being the case, much more is required than mere non-use to show abandonment...

The Crown argued that there had been extinguishment because of the use of the lands by the Crown. It was said that the use of the lands is incompatible with free hunting and the Indians' rights must yield because the Crown's right to use the land, based on ownership, is superior. If the Crown decides to use the land in a way which is incompatible with free hunting, the latter must give way; the Crown can, as owner, extinguish the rights unilaterally.

...I think it can now be said that a treaty and the rights created under it cannot be unilaterally extinguished. It requires consent....it makes no difference if the use in question is one of occupation or one of management and conservation.

The court then wrestled with the problem of the two rights in opposition: the Indians' free hunting rights and the Crown's land ownership and development rights. It said:

...the parties intended that the competing rights should be reconciled, and this reconciliation would vary with time and circumstances. The rights are not frozen in time. A treaty must be seen as a living document that evolves with changing times according to the original intent. When the rights of the parties conflict they must be adjusted.²⁰⁹

Ireland and Jamieson set several precedents beyond the judge's statements. (Those statements echoed decisions earlier in 1990 by the Supreme Court of Canada, notably in *Sioui*.) For the first time, a Haudenosaunee treaty was held to bind the Crown. The Treaty was in 1701 Ÿ about 50 years before any treaty previously recognized in Canada. The treaty was made in Albany, not within Canada's present boundaries Ÿ an issue that was not raised in argument in this case. The court also found that one purpose of the 1701 treaty had been a land surrender so that the Crown could settle and use the land Ÿ an issue that had not been argued and can be shown to be historically misinformed.

As for hunting on Indian reserves, where there may not be explicit treaty protection, Canadian law says that provincial laws can regulate the activities of Indians on reserves (because section 88 of the *Indian Act* makes those laws apply to Indians), but not the use of land by Indians on reserves (because "Lands reserved for the Indians", an exclusively federal head of power, are not mentioned in section 88). This has led to an unusual situation. In Ontario, hunting by an Indian on a reserve has been held to be an 'activity' (*R. v. Russell Martin*, unreported, 1988 Timmins District Court, following the 1949 case of *R. v. Smith* on federal military lands), while in Nova Scotia it has been held to be a 'use of land' (*R. v. Isaac*, [1975] 13 NSR 460), integral to the Indian way of life and to Aboriginal and treaty rights and title.

In places where the treaty protection for Haudenosaunee hunting and fishing is not as clear, there continues to be confrontation. In *Adams v. The Queen* (C.A. 500-10-000371-854, March 23, 1993), a Mohawk of Akwesasne was convicted of fishing offences under federal fishery regulations in Quebec. One of the issues is whether the unsurrendered waters and

marshes of Lake St. Francis are subject to Mohawk Aboriginal title. Though 'fisheries' are an exclusively federal head of jurisdiction under the *Constitution Act, 1867*, the federal government has delegated virtually all its powers to the governments of Ontario and Quebec. In those provinces, fisheries regulations are drafted, administered and enforced by provincial agencies, and their only federal aspect is their approval by the federal minister of fisheries. When reminded of its fiduciary obligation to Aboriginal peoples, the federal department of fisheries generally avoids any clear response.

In 1982, the Canadian constitution was amended. Section 35 affirmed "existing aboriginal and treaty rights". Canada and the provinces immediately began to argue in court that the word "existing" referred only to those rights that had somehow survived the legislation of the previous two centuries. The Supreme Court of Canada eventually disagreed. In *R. v. Sparrow* ([1990] SCR 1 at 1075) and *R. v. Sioui* ([1990] SCR 1), the Supreme Court sent a clear message to federal and provincial authorities and to Aboriginal governments. "Existing rights" means those rights that have not been totally extinguished by clear and deliberate acts. Under Canadian law, said the court, Aboriginal and treaty rights can no longer be curtailed arbitrarily. Any interference with those rights has to be justified. Once there is justification, there is still a burden on the Crown to show that the legitimate purpose of the law cannot be accomplished except by interfering with the rights; that there has been consultation with the Aboriginal people affected; and that all other uses of the resource have been curtailed before Aboriginal peoples' rights are cut back.

In Ontario, there have been the beginnings of negotiations since 1991 on the subject of hunting and fishing rights, but no agreements have been reached. In Quebec, there have been no negotiations. The *Adams* case is being appealed to the Supreme Court of Canada.

It is only recently that Haudenosaunee hunting rights in part of Ontario have been recognized by Canadian courts. Hunting, in Quebec, and fishing, in both Ontario and Quebec, remain contentious issues. While the Haudenosaunee have never had an economy that concentrated on hunting and fishing, those ways are an important part of the culture, and many people rely on them today.

Many of the test cases on treaties and rights involve hunting and fishing, instead of the more fundamental issues of lands and governance. There are several reasons for this. The nations have not been inclined to submit the issues of their lands and sovereignty to the courts of another people: that would, in itself, be a violation of the Covenant Chain. It would also be a denial of sovereignty. As a result, the cases that have gone to court were not initiated by the Haudenosaunee, for the most part. They were the results of criminal or quasi-criminal charges, laid by Canadian provincial and federal authorities. They were often not as well argued as they might have been, since often the people did not have the financial resources, and their lawyers

did not have the knowledge, to present a full picture of the historical facts. Today, though some of the racist attitudes of earlier Canadian courts have faded, the Haudenosaunee see no reason to trust the courts of Canada with matters that are more properly political in nature. Hunting and fishing cases are defensive in nature, but the recognition of treaties that they bring may open the door to the necessary political dialogue in other areas.

Condolence: The Crown Turns its Back

The first warnings that the Crown felt changing times justified a changed relationship came with the abandonment of the processes of council. The changes came in the 1830s, as the last of the Indian department functionaries of the Johnson era died or were pensioned off. The new administrators of Upper and Lower Canada saw Indians as a liability, now that the non-Aboriginal population had increased and the military threat from the United States was reduced.

The first Euro-Americans deliberately to forsake the processes of council were representatives of the United States, and they did so deliberately as part of an attempt to break the spirit of the Confederacy in the 1780s and 1790s. The 1784 Treaty of Fort Stanwix, and the several dubious land transactions of the state of New York that followed it, are the best examples of these practices.

On the Canadian side, there were advantages to the Crown's maintaining the independence of the Aboriginal nations (so that they could engage in military activities that would weaken the United States without embroiling the British directly in the fighting). Deliberate abandonment of treaty processes took place nearly 40 years later, as administration of Indian affairs moved gradually into provincial (as distinct from imperial) control.

The Johnson era in Indian affairs had ended with the death of Sir John Johnson in 1830. New functionaries took over from the Johnsons, McKees, Butlers, Elliotts and others who had been familiar with the laws and processes of the Confederacy. The new appointees were often short-term, local administrators and agents who, while usually fluent in the language, lacked any depth of understanding of the culture or the will to acquire it.

Other factors also had their influence. Once the boundary between the Canadas and the United States became firmer, the availability of wampum declined somewhat (though wampum factories in New Jersey actually continued to operate until the early twentieth century). As more people learned to read and write, wampum became less necessary as an aid to memory or in the transmission of messages, though people like Thayendenegea (Joseph Brant) and Kiantwahke (Cornplanter) would send written letters with runners who also carried wampum.

On the Aboriginal side, Christian missionaries were having an impact in more than the advance of literacy. Many missionaries were telling their flocks that being Indian was the same

as being 'pagan' and 'bad'. In the early 1800s, community rules among the Moravian Delawares provided:

2. None shall live with us who go to other places to feasts and dances...

10. None that paint, shave, shear or dress themselves as the heathen do, wearing plumes or feathers, hanging wampum and silver tuck about them, nor play moccasin, cards and the like...

11. None that has a Chief's or Captain's medal or silver...²¹⁰

People were sometimes made to feel ashamed of their ways. Just as the use of Aboriginal languages came to be discouraged by the missionaries, so the use of council ceremony was frowned upon as a reminder of 'pagan' times. Since the spiritual and political aspects of council were closely intertwined, the missionaries were probably correct in their belief that the people's political heritage as well as their culture had to be broken if assimilation was to succeed. This was not true of all missionaries: Kahkewaquonaby (Peter Jones) was a Mississauga Ojibwa Methodist preacher who also worked hard to preserve Mississauga land and treaty rights in the first half of the nineteenth century, and some of the Ojibwa Methodist preachers also became chiefs.

For two centuries, Haudenosaunee spiritual and legal practices guided the process of treaty making in northeastern North America. Today, the Crown in Canada has no knowledge of those practices and no willingness to learn them. To the Haudenosaunee, they remain law, and each aspect has a practical reason for being. From thanksgiving to condolence to repolishing the Covenant Chain with the governor general as the Crown's representative, the Confederacy has sought to maintain a proper relationship in the proper manner. In Haudenosaunee terms, the benches for the Crown, on the other side of international councils, have been empty for a hundred years.

Erosion by Treaty: Criminal Jurisdiction

Traditional Haudenosaunee criminal law was generally informal. In 1698 Hennepin wrote:

Their old men, who are wise and prudent, watch over the publick. If one complains that some person has robb'd him, they carefully inform themselves who it is that committed the theft. If they can't find him out, or if he is not able to make restitution, provided that can be satisfied of the truth of the fact, they repair the loss, by giving some present to the injured party, to his content.²¹¹

The present, in many cases, and especially in the case of a murder, was not so much in restitution as in recognition of the offence and in atonement or repentance.

As all quarrels were generally reconciled by the relatives of the parties, long-cherished animosities, and consequently homicides, were infrequent in ancient

times. The present of white wampum was not in the nature of a compensation for the life of the deceased, but of a regretful confession of the crime, with a petition for forgiveness. It was a peace-offering, the acceptance of which was pressed by mutual friends, and under such influences that a reconciliation was usually effected, except, perhaps, in aggravated cases of premeditated murder.²¹²

When the British arrived in the territory, their own criminal laws were only beginning to be codified. Haudenosaunee laws concentrated on reconciliation and peacemaking, while British laws tended to promote order through example, respect and punishment. Morgan wrote:

They have scarcely any penal laws: the principal punishment is degrading: even murder is not punished by any formal law, only the friends of the murdered are at liberty to slay the murderers, if some atonement is not made. Their not annexing penalties to their laws, is perhaps not so great a crime, or as unjust and cruel, as the bloody penal laws of England.²¹³

To the Haudenosaunee, the English practice of capital punishment was barbaric. (Sir William Johnson's Mohawk son Peter called public hangings "the most dismal sight I ever saw".²¹⁴)

The 1664 Fort Albany Treaty provided that each party would bear responsibility for the criminal acts of its citizens who injured citizens of the other. For British purposes in the latter half of the seventeenth century, this was a convenient arrangement. The British could not enforce criminal laws in Haudenosaunee territory; it was to Britain's advantage to gain the political leverage that came from holding the entire Confederacy responsible for acts of its citizens.

Before long, the British began to demand jurisdiction over major crimes. In 1682, Maryland proposed a peace treaty with the Haudenosaunee, suggesting that

In case any Indian or Indians living amongst you shall for the future murder any Christian or Christians in Maryland or Virginia, we do expect that you will cause him or them to be delivered up to the Lord proprietary, to be dealt with all according to the Christian law, and in case any Indian or Indians shall kill any horses cattle or hoggs, or rob or steal any thing from us that you cause satisfaction to be made to us to the full value thereof.²¹⁵

The chiefs did not accept this proposition. They covered the graves with the ceremony of condolence; they explained their ways; they offered payment for past problems ÿ but they did not accept that any of their people would be placed under Christian law, even for murder.

The idea that the killing of a person should be resolved by law through the execution of the murderer ran counter to the very foundations of Confederacy law, which had been designed to stop revenge killing, to put away the shedding of blood. The differing ideas of private property also gave rise to friction, as passing haudenosaunee individuals would sometimes help themselves to the livestock of the settlers. These incidents continued to be dealt with by the chiefs and governors in council, on a nation-to-nation basis.

When Sir William Johnson negotiated the extension of the Covenant Chain to the Western or Lakes Confederacy in 1764, he also demanded a change in the criminal law terms of the Covenant Chain as set out in the 1664 Albany Treaty. He had concluded that it was important to secure British criminal jurisdiction over Indians in cases of murder and robbery where the victims were not Indians. This was no doubt because such incidents were spreading; because the victims had no clans to resolve matters quickly and the Haudenosaunee had no systematic criminal justice structure.

The frontiers were places of little law. The settlers were not under the kind of orderly control that latter-day popular histories try to project. Haudenosaunee institutions were under constant attack as settlers and citizens challenged the established, deliberate ways of resolving conflict. The presence of two sovereigns in one territory led to uncertainty, while the non-coercive Haudenosaunee institutions were having increasing difficulty imposing order. Johnson wrote in February 1764, when he was preparing for the Treaty of Niagara, that it was essential to secure the expanded jurisdiction:

This may & doubtless will appear verry Hard (& is contrary to the original Covenant) but it is nevertheless a very necessary point to push.²¹⁶

In March 1762, at a conference at Johnson Hall, the discussion turned to the application of British criminal law, when Sir William Johnson demanded the yielding up to British law of several young Senecas who had apparently murdered some Englishmen. The Confederacy's speaker urged Johnson to leave things as they had been:

...this accident affords us as much uneasiness as it can you, and after mature deliberation we are of opinion, as it is not in our power to deliver up the murderers, having no laws for that purpose, that the same should be amicably settled according to the antient Custom of our Forefathers, and Yours, who first entered into that Agreement together in such cases, which they have always abided by, as our Forefathers were of opinion, that it was better to accommodate Matters already bad enough, than to shed further Blood thereon.

Johnson replied with the British argument in favour of the application of the British criminal law:

I well know the customs of your Forefathers, and I look upon that Agreement to have been made when times were very different, and when you did not act as you now do. We have writings, and know the transactions of them times very well. At the same time, you must be convinced that such a Covenant would in time require to be altered, as it would be productive of many Quarrels...

We don't want the Blood of any one, merely out of a thirst of revenge. No. We want only to preserve the Peace, which we can never do, if either of us may Murder at Discretion.

If people are not punished for capital offences, they will often repeat them; but if proper examples are made of the guilty, it will put a stop to the committing of crimes, which it is in your interest, more than ours to consider...

...in case you are licensed to murder, our people will claim the same privilege, and, not only that, but we must be obliged to stop up the road of peace, and withdraw all our traders and smiths from amongst you.

On the following day, the Confederacy's speaker replied, after recalling the planting of the Tree of Peace between the British and the Haudenosaunee:

It has always been our Custom, and that of our Forefathers, & yours to make up such affairs, and to forget them; neither do we know of any Instances to the Contrary, for which Reason, it would be very hard for us to Break so old a Custom... We likewise beg you will Consider, that our Alliance with the Indians is now very Extensive, and should the Indians find us deviating from our Antient Agreements, and spilling fresh Blood, what Opinion must they entertain concerning us...

The written treaty with the Senecas in April 1764 provides that the British will take jurisdiction over Senecas charged with all cases of robbery and murder.

That should any Indian commit Murder, or rob any of His Majesty's subjects, he shall be immediately delivered up to be tried, and punished according to the equitable laws of England, and should any White man be guilty of the like crime towards the Indians, he shall be immediately tried and punished if guilty.

And the Senecas are never for the future to procure themselves Satisfaction, otherwise than as before mentioned, but to lay all matters of complaint before Sir William Johnson, or His Majesty's Superintendent of Indian Affairs for the time being, and strictly to maintain and abide by the Covenant Chain of Friendship.²¹⁷

The Confederacy's own traditions state that the jurisdiction extends further ÿ it includes rape as well, and it is not restricted to cases in which the victim is non-Aboriginal. This is referred to, for example, in William Jacobs' letter to Joseph Howe on 7 May 1872. After explaining the Two Row Wampum, Jacobs wrote:

There is three things in you Law we wish to be like yours the way to punish the bad this is all.²¹⁸

The "three things" are murder, rape and theft.

In the 1940s, the chiefs at the Grand River Territory did not act in a case of theft. John Noon wrote:

The Chiefs claimed to have made an agreement with the British Government to relinquish jurisdiction over the crimes of theft, rape and murder. Since this charge

made by the plaintiff falls within this group of crimes, they may have, for this reason, considered the case beyond their jurisdiction.²¹⁹

In the early 1790s, Lieutenant Governor Simcoe attempted to take jurisdiction over a Mohawk who had allegedly killed another Mohawk in the Grand River Territory. He was rebuffed and did not pursue the matter further.

In 1826, an Ojibwa named Shawanakiskie was charged with murdering an Indian woman on the streets of Sandwich (later Windsor, Ontario). His lawyer raised the issue of the court's jurisdiction, and the attorney general in England advised the court that, in the absence of a treaty to the contrary, the laws of England would apply to an Indian in Upper Canada. (It is not clear whether Shawanakiskie, in the end, was hanged or exiled to Australia.)

In the same year, authorities in Upper Canada claimed jurisdiction over a case that had occurred within the Grand River Territory. In council at Fort George, the Mohawk chief Peter told the deputy superintendent of Indian affairs:

Brother

It is not long since...that a great man with a red coat (meaning the late Major General Sir Isaac Brock) came to our villages and invited our warriors to take up arms in defence of the King. We obeyed, fought many battles, and lost many of our nearest and dearest friends. He also renewed our friendship and guaranteed our laws and customs; since then one of our Men has been arrested and is at this time imprisoned for a crime alleged to have been committed against another Indian within our territory, which is contrary to former engagements therefore we wish our Brother released from prison and restored to his people.

The deputy superintendent general referred to the opinion of the attorney general in the Shawanakiskie case that the Indians were subject to British criminal law, since no treaty could be found to the contrary. He made no reference to the 'treaty' aspect of the opinion, though. Instead, he

...pointed out in the strongest manner their Great Father's paternal regard for all his Indian children and explained the various and important changes that had intervened since the treaty they alluded to and recommended to them to avoid crimes that are offensive to the law of God as well as the law of the land they live in.

Referring again to the treaty in question the Deputy Superintendent General further remarked that when the treaty was made the Country from the Mohawk River as well as this Province was peopled by Indians with the exception of a few traders; that since then great changes had taken place, their situation was reversed by a change in population and improvement.²²⁰

The same taking of jurisdiction over criminal law was happening in the United States. A Seneca who had been ordered by the chiefs to execute a woman they had found guilty of witchcraft was charged with murder under the laws of New York state. He was convicted despite a famous defence by Sakoyewatha (Red Jacket), who pointed out that New Englanders had themselves been executing witches in a far more barbarous fashion not long before and then pardoned. The statute that pardoned him extended state criminal jurisdiction to the "New York Indians".

In the 1970s, Kahnawake Mohawks (in *R. v. Louis Hall et al.*, unreported, 1974 Quebec Superior Court) argued that the Two Row Wampum effectively exempted them from the application of Canadian criminal laws. They lost, and rather than appeal the decision or face trial, several of the defendants moved to the new Mohawk settlement of Kanienkeh, in New York.

Several prominent Canadian inquiries have concluded that the Canadian system of criminal law does not deliver justice to Aboriginal people. The Manitoba Native Justice Inquiry, the Donald Marshall, Jr. inquiry in Nova Scotia, and the report of the Law Reform Commission of Canada, all in the 1990s, recommended separate Aboriginal justice systems. They made these recommendations in recognition of the likelihood that such systems would better serve the interests of the people and of justice. For the Haudenosaunee, the need for a separate system is combined with the unfulfilled treaty right to maintain separate laws.

The British system of criminal justice, which is used in Canada, is an adversary system. In this it is incompatible with many Haudenosaunee ways. The behaviour of lawyers and judges in court, by Haudenosaunee standards, is abrupt and disrespectful. The 'art' of cross-examination confronts witnesses and involves many of the practices recommended to United States negotiators in 1784 to intimidate the Haudenosaunee.

In 1990, during the Oka crisis, the federal minister of justice, Kim Campbell, announced that "the rule of law" had to be maintained and that there was only one law in this country – Canadian law. Many Haudenosaunee found the ignorance and arrogance of this statement offensive.

In September 1993, the Quebec Superior Court dealt with charges against Stuart Myiow of Kahnawake under the *Criminal Code* of Canada. Representing himself, Myiow argued that the *Royal Proclamation of 1763*, the *Canadian Charter of Rights and Freedoms* and the *Constitution Act, 1982* combined to prevent the courts of Canada from taking jurisdiction over a Mohawk in Mohawk territory. Judge Pierre Viau wrote:

I believe that this court has clearly jurisdiction to proceed with this jury trial. Should we agree with Mr. Myiow's argument that he can only be judged by his peers from the Mohawk Nation, no other Canadian would then be entitled to act as a juror in the present trial. Moreover, no proper procedure nor evidence have

been submitted by Mr. Myiow to support his arguments concerning treaties, jury trial, or any other point. We shall live with our judicial system as it is presently. Judge Viau ended his judgement with a quotation from Taiowahronhagai (William Newell), author of *Crime and Justice Among the Iroquois Nations*:

Above all I should call your attention to one of the most outstanding principles of the League of the Iroquois, and that was the idea that man's rights and privileges never exceeded his duties and responsibilities. The principle which we find in the old Indian League differed from our own ideas on the subject that in modern times the majority of us think only of our rights and privileges. We fight for them, we cheat to get them, and we shirk our duties to avoid our responsibilities and obligations. The old Iroquois was just as determined that he would do his duty and assume his responsibilities. A study of the League distinctly brings out this fact and it is surprising that more people have not recognized it.

There is also a curious contradiction in the field of criminal justice, as in the entire area of jurisdiction and what Canada has called "Aboriginal self-government". The federal and provincial governments have, over more than a century, moved to impair and dismantle traditional institutions. Today, it is fair to say that in most communities, neither Haudenosaunee criminal law nor Haudenosaunee justice systems are in a position to resume their roles if Canada withdraws. Having injured traditional institutions of law and justice, Canada then uses their impaired state as a further reason for the continued imposition of Canadian criminal law.

Despite clear treaty provisions for separate criminal justice systems, the government of Canada and its colonial predecessors have asserted criminal jurisdiction over Haudenosaunee citizens and territories since the 1830s.

Despite clear reasons why separate Aboriginal justice systems make practical sense, and clear evidence that Canadian law has not provided 'justice', there has been no movement by Canada to deal with this issue.

Erosion by Lack of Legislation: Border Crossing Rights

The British made a series of promises to the Haudenosaunee during the American Revolutionary War. Most of these promises involved protection of land rights and compensation for losses. When the British lost the war, the Treaty of Paris of 1783 made no provision for the King's allies. They were left to make separate treaties with the United States, which treated them and their territory as 'conquered'.

The Jay Treaty of 1794 was more explicit: it provided that British subjects, United States citizens, and "the Indians dwelling on each side" of the new boundary would be free at all times to travel back and forth with their personal property. Significantly, the treaty did not consider the

Indians to be British subjects or U.S. citizens. In 1795, Lieutenant Governor Simcoe of Upper Canada assured the Haudenosaunee of the right to pass and repass freely.

After the War of 1812-1814, the Treaty of Ghent (1815) reaffirmed the Indian nations in possession of all the rights they had in 1811, before the outbreak of hostilities. Also in 1815, at Burlington Heights, the deputy superintendent general of Indian affairs read the provisions of the Treaty of Ghent to the Haudenosaunee and again assured them that the road was open for them to pass and repass freely.

The Haudenosaunee communities remained on both sides of the new border. People continued to move back and forth, to intermarry, to trade between the communities. On the U.S. side of the border today are Tuscarora, Tonawanda, Allegheny, Cattaraugus, Onondaga, Oneida (New York), Oneida (Wisconsin), Kanienkeh and part of Akwesasne. On the Canadian side are Oneida, the Grand River Territory, the Mohawk territories of Wahta, the Bay of Quinte, Kahnawake, Kanesatake, and the rest of Akwesasne. The border divides the people in half.

The legislation in Upper and Lower Canada implementing the 'Indian' terms of the Jay Treaty and the Treaty of Ghent was allowed to lapse in 1821 and 1822. Still, there was no practical problem. The British authorities continued to encourage Haudenosaunee people to come to the Canadian side, and many of the Cayugas and Oneidas did so in the 1830s and in 1840.

As European immigration increased and customs duties were instituted, and as the fur trade became a less significant part of the Canadian economy, the Canadian authorities began to enforce border legislation, with respect to both immigration and customs. Neither Canada nor the United States recognized what have become known as border crossing rights.

The first test of U.S. immigration laws was in *McCandless ex. rel. Diabo*. It involved Kanento (Paul Diabo), a Mohawk ironworker from Kahnawake, and his right to work in the United States without being a citizen. Ironically, the court determined that it should recognize the rights provided for in the Jay Treaty in part because it was persuaded that Canada recognized those rights, so the United States should do no less.

The Indian Defence League of North America was active in the 1920s in seeking a change in U.S. legislation. Chief Clinton Rickard of Tuscarora was perhaps the central figure in the League, and he worked closely with people from several Haudenosaunee communities. (Indeed, Deskahe (Levi General) spent his last months living with Rickard when Canadian authorities allegedly barred him from re-entering Canada after his visit to Geneva in 1924.) In 1928, U.S. law explicitly implemented part of the provisions of the Jay Treaty. People who are 50 per cent or more "American Indian" by blood have the same right to enter, work in, and claim benefits in the United States as do citizens of that country. Partly as a result of this, Haudenosaunee ironworkers from the Canadian side of the border have joined those from the

American side in playing an important part in the construction of many of the skylines of the cities of the United States.

As for the right to carry personal goods across the border without paying duty or taxes, the first case to examine that issue involved Annie Garrow in Akwesasne, who would bring her baskets across the international border between Canada and the United States without once leaving Mohawk land. The court determined that no such right existed.

On the Canadian side, a test case emerged in the 1950s. Louis Francis lived in St. Regis Village. He bought a used washing machine from his brother-in-law, who lived a few yards away in the U.S. part of Akwesasne. To declare it and pay duty, he would have to travel several miles through the United States and Ontario, then travel home again.

The Supreme Court of Canada issued its judgement on 11 June 1956. It concluded that the Jay Treaty provisions were not binding on the Crown because the treaty was one of friendship, commerce and navigation rather than a peace treaty and would need ratification to come into effect. As for the Treaty of Ghent, though it was a peace treaty, it contained a promise to restore the pre-1811 rights, but not the actual restoration of the rights.

One judge added that the word 'treaty' in the *Indian Act* "does not extend to an international treaty such as the Jay Treaty but only to treaties with Indians which are mentioned throughout the statute".²²¹ (Treaties are mentioned only twice in the *Indian Act*, once in section 88 and once in section 90.)

In the 1970s, people in Akwesasne and elsewhere noticed that they could bring petroleum products across the border without being asked for customs duties; this led to a lucrative traffic in gas and oil, the direction varying with fluctuations in prices on either side of the border, until Canadian authorities cracked down some years later. By the 1980s, a practice had developed of buying cigarettes from Canadian tobacco manufacturers for export and thus free of provincial and federal taxes and shipping them through the United States and then back into Canada, often through Akwesasne. By 1991, the amount of taxes being avoided was estimated at more than \$2 billion for all of Canada, and estimates were that Haudenosaunee 'business' operations accounted for at least half that amount. One indicator of the extent of Mohawk involvement and tobacco exports from Canada dropped by nearly 80 per cent during the summer of 1990.

Haudenosaunee offers to Canada to meet to discuss the 'smuggling', as Canada called it, were rejected. The Haudenosaunee had considered various forms of regulation of the tobacco 'industry', both to reduce Canada's losses and to ensure community rather than individual benefits from the trade.

For a few short weeks in 1991, the government of Canada imposed its tobacco taxes on the manufacturers rather than on the buyers. Once again, tobacco exports fell sharply. The

manufacturers pointed out that Canadian tobacco taxes are far higher than U.S. taxes, so that if Canadian cigarettes were not brought into Canada illegally, it would be U.S. cigarettes instead. They told the government of Canada they would consider shutting down their Canadian factories and stop buying Canadian-grown tobacco unless Canada either reduced tobacco taxes or shifted the tax back to consumers, thus once again allowing the movement of 'export' cigarettes back into Canada. The government of Canada removed the tax on manufacturers within six weeks of having imposed it. It appears that Canada and the provinces are willing to suffer a loss of part of their tax revenue rather than change their tax structures or deal with traditional Haudenosaunee governments to resolve the problems.

The issues are becoming harder rather than easier; 1992 and 1993 saw the proliferation of 'smoke shacks' on the Grand River Territory to serve the Hamilton and Toronto markets. People who once controlled the movement of cigarettes manufactured by large Canadian corporations have since created their own factories, making cigarettes to Canadian specifications on Mohawk lands. The people behind the tobacco operations in Haudenosaunee communities have become so disproportionately powerful, economically, that they have moved to consolidate that power politically. The elected governments of several communities on either side of the border have been affected by that power.

Canada's refusal to implement the Crown's promises concerning the border affects two areas. It creates hardships in 'immigration'. It has led to hardships and abuses in the transportation of goods across the borders, while Canada refuses to deal with the Confederacy to consider the situation.

Erosion by Law: The Application of Provincial Laws

In 1907, George Hill, of the Six Nations Grand River Territory, prescribed some Indian medicine for two ladies in the town of Hanover. He was charged with practising medicine without a licence, contrary to the Ontario Medical Act.

The Ontario Court of Appeal concluded that the provincial law did apply to Hill: Parliament may, I suppose, remove him from their scope, but, to the extent to which it has not done so, he must in his dealings outside the reserve govern himself by the general law which applies there. He is no more free to infringe an Act of the Legislature than to disregard a municipal by-law, the general protection of both of which he enjoys when he does not limit the operations of his life to his reserve, but, though unenfranchised, seeks a wider sphere. If he may become a doctor of medicine, and take advantage of the Medical Act by registering under it, it certainly ought to follow that he cannot become a free lance and practise wherever he pleases without regard to its provisions.²²²

There is a strong implication that provincial laws of general application would not apply to the people of the Six Nations on their own land ÿ a territorial division that would have left the Six Nations under their own laws in their own territory.

Both judges based their decisions on the lack of clear exemptions for Indians in Canadian laws and the idea that if the Indians were allowed to take advantage of the positive provisions and protection of the laws, they must also be subject to those laws. There was nothing that suggested that the Six Nations people *wanted* to take advantage of those provisions, though. Mr. Justice McLaren, who also wrote a judgement in the case, ironically described something much closer to what the Six Nations wanted, apparently unaware that anyone could possibly desire this:

If the claim be well founded...Indians...will not be able to claim any of the benefits or advantages conferred by such legislation, and will be relegated, save as to the few matters legislated upon by the Dominion, and any remnants of old legislation, to the condition and rights of their ancestors when this country was first discovered.²²³

In his judgement in the same case, Mr. Justice Meredith said that it was "difficult to take very seriously" Hill's contention that provincial laws didn't apply to him, and that "the good sense of the Indian has hitherto...prevented the serious making of it".

In 1951, in another case, also called *R. v. Hill*, a man was charged with possession of a seine net at the Mohawk Bay of Quinte Territory. The judge of the county court said that ...the Indian is subject to control and under the legislative authority of the Parliament of Canada.

There is also no question but that the Indian is subject to the laws of the province once he is off or out of the confines of the reservation.

...the accused here is not guilty by reason of the facts that the offence... would be a breach by an Indian upon a reservation of a provincial Act, and that the Parliament of Canada is the only competent legislative authority which can regulate the situation which is involved here.²²⁴

Parliament soon moved to close that door. The present section 88 of the *Indian Act*, passed in 1951, made provincial laws of general application apply to Indians on reserves as well as off. The only exceptions were situations where those laws were in conflict with the terms of treaties or the *Indian Act* itself.

Once again in the Bay of Quinte Territory, Canadian courts considered whether provincial laws governed Mohawks, in this case in the field of labour relations in a shoe factory. The Supreme Court of Canada rejected the 'enclave' theory, saying that provincial laws applied to Indians,

...as long as such laws do not single out Indians nor purport to regulate them *qua* Indians, and as long also as they are not superseded by valid federal law.²²⁵

No case has yet been decided on whether the application of provincial laws in areas other than hunting and fishing has been affected by the terms of the *Constitution Act, 1982*.

Erosion by Legislation: Taking over the Governments

Through the late 1700s and 1800s, each community of the Confederacy was governed by a local council that was a mirror of its involvement in the Grand Council. That is, a Mohawk community would have nine chiefs, one for each part of the three clans of the Mohawk Nation. The Oneidas on the Thames River also had nine chiefs, as provided for in the law. On the Grand River, because all six nations were present, the council consisted of the full fifty chiefs. At Akwesasne, until 1807, there had been nine chiefs for that mainly Mohawk community, but after the Onondagas of Oswegatchie merged with Akwesasne in 1807, there were twelve chiefs. In each place, the chiefs were appointed by, and subject to removal by, the clan mothers.

Canadian courts recognized the Crown's practices:

The Crown of England never attempted to interfere with the national affairs of the Indians further than to keep out the agents of foreign powers who might seduce them into foreign alliances.²²⁶

In the 1880s, the government of Canada decided that relatively sophisticated Indian communities deserved to have governments with slightly expanded powers, but that the governments should also be elected in a brown mirror of the Canadian way. The *Indian Advancement Act* allowed the minister responsible for Indian affairs unilaterally to declare that a 'band' had reached a state of such 'advancement' that its council should be elected from then on.

The government of Canada applied the terms of the Advancement Act to Kahnawake, the Bay of Quinte Territory and Akwesasne first. There were varying degrees of resistance ÿ but the resistance was consistent and clear.

In Akwesasne in the 1980s and '90s, divisions within the elected council have led repeatedly to paralysis and litigation.

At the Grand River Territory, there had been complaints after the First World War that the Confederacy chiefs had acted unfairly in some instances. The government of Canada had been embarrassed by the efforts of the Confederacy at Geneva and in London in the early 1920s, and sent a detachment of the Royal Canadian Mounted Police to be based in Ohsweken. People who denied the jurisdiction of the Indian agent and refused to get permits to cut wood on their own land were jailed and fined. In 1924, Canada appointed Major Andrew Thompson to inquire into the system of government at the Six Nations Grand River Territory. The Confederacy chiefs ordered the people to boycott the inquiry. As a result, Thompson could report that most of the

(few) people he heard from were in favour of a change in the system of government. The first election was ordered for October 1924. A total of 27 people voted for the 13 positions on the first 'elected' council. In every election and referendum at the Grand River Territory since then, there has never been a majority of the eligible people voting.

At Oneida, a dispute between two parts of the community led, in 1930, to the government of Canada unilaterally imposing the elected system of government on the entire community.

At Kanesatake, various incarnations of systems of government similar to the traditional systems gave way, after the crisis of 1990, to an elected system, though that system could not operate legally under the *Indian Act*, as Canada does not recognize Kanesatake lands as an 'Indian reserve'.

Canada's deliberate moves to destroy or remove traditional governments did not result in assimilation. They resulted in resentment, division, and weakened communities. Elections have never been the Haudenosaunee way. Band councils elected under *Indian Act* rules have not 'replaced' the traditional governments, but each system continues to weaken the other.

If any policy of the government of Canada violates the Kaswentha more than any other, it is this policy of refusing to recognize and work with traditional governments.

Erosion by Rewriting History and Law: Denial of Sovereignty

The theory that formal treaties and relationships can be 'reversed' simply by changes in the circumstances of the parties has been expressed by the government of Canada. A background paper on the history of Indian policy was issued under the authority of the minister of Indian affairs and northern development from 1968 to 1973, Jean Chrétien. That paper stated:

As long as the white population remained small and hence dependent on the natives, relations between Indian and white seemed to be between sovereign powers although all colonial and European governments held to the principle that the natives were, in fact, subject peoples, a principle that governed their colonial policies in many other parts of the world.

As the numbers of colonists increased, this assertion of European sovereignty over the Indians became overt...

On 14 July 1976, a letter from the office of the minister of Indian affairs and northern development, Warren Allmand, explained Canada's position with respect to treaties with the Iroquois Confederacy:

Most of the treaties with the Iroquois people...including the Treaty at Fort Albany in 1664, were agreements of peace and friendship, or were designed to maintain the neutrality of certain Indian groups in the colonial wars. On the other hand, some were trade and commerce agreements, but all were conducted with Indian groups resident in territories which became part of the United States in 1783. Subsequently, in order to accommodate their Iroquois and other Indian allies, the

British Crown set aside certain lands in Upper Canada for their exclusive use and benefit, and our Department today administers these as Indian reserves. I should add that many of these treaties with the Iroquois people were recorded on wampum belts.

...the Canadian Government has no active part to play in fulfilling treaties of peace and friendship conducted with Indian groups who had resided during colonial wars in what is now American territory.

In 1990 and 1991, the department of Indian affairs and northern development began a review of the Crown's treaties with the Haudenosaunee. The project was abandoned before it was completed, at the same time as the minister of Indian affairs decided to cancel his proposed meeting with representatives of the Confederacy.

The *rotiianeson* of the Haudenosaunee at the Grand River Territory wrote to the governor general in 1890, protesting the imposition of Canadian laws. The petition referred directly to the Covenant Chain, the Two Row Wampum and the wampum belt showing the circle of the law formed by the *rotiianeson* around the people.

We will address Your Excellency according to our ancient treaties as Brothers.

Brother, we will now let you know our way of thoughts. You are the Governor of Canada sent by the Queen our Mother to whom we the allies of to keep the Treaty the same as of whom our forefathers and Your forefathers made in the ancient time. The treaty made whenever we see anything wrong to tell once. And now We will tell you that We are disappointed because there was never yet any treaty made between You, and Us, the Five Nations Indians, that You would force any kind of your laws that we did not like. And now in some cases We see you are doing so.

Brother. We have kept patience for a long time, because, knowing the treaty of which our forefathers and your forefathers made in the year 1758 being durable to us. But in the way you have treated us thinking for to ask you if the sun and moon has gone out of your sight. But we see the sun and moon the same as when our forefathers and your forefathers made the agreement. The treaty whenever you or us the Indians see anything wrong or dissatisfaction, we are to renew brighten and strengthen the ancient Covenant.

And we want to be always free and satisfied to be governed by our own laws and customs. And those that are in favour of your laws and customs we have nothing to do with suppose they are to be governed by it. But we cannot help them in no way, for they broken our word rules and customs. Here is law of which our forefathers laid down for us.

The dark blue wampum twenty five courses mixed with white represents the figures of men, are Chiefs of the Five Nations Indians hands joined together, and the Union of the Five Nations. And if any Man or Child were to go through outside where these Men stands in the form of a circumference. Then the emblem of his Chiefship strikes on their arms and falls from him, thus it remains inside the circumference. So he is nothing but a man no more Chief any longer but how does

he goes through well that is if he receives the laws of other Nations to be governed by it accordingly.

Wampum belt having two white rows, parallel and represents the two Governments, namely the Five Nations and the British Government will exist and shall not interfere with each other. Of which the British made an illustration that the British will remain in their vessel that is their government. while the Five Nations will also abide in their birch bark canoe, meaning their Government. The British will never make compulsory, and door way laws for the Five Nations to enter in so that they should become a British subject.

Brother. Now you have seen our thoughts, and the way we want to be, not to be changed off from our rules and customs. And now we trust therefore that you will remember our Covenant and of which our forefathers and your forefathers made, and you will know that there is some remaining Indians, Hode noe shuen nee of people of Long House.

Brother. And we want you to answer us at once as soon as you receive our word and understand it. And not to do as it is usually done or said I will look after this question tomorrow. And then if you do not look after this affair and do not want to renew the Treaty and then we will pass off or appeal, and go across to Her Majesty the Queen.²²⁷

The Government of Canada rejected this completely:

...they refer to certain (so called) treaties as symbolized by Wampum Belts and describe what meaning the various colours and figures in the said Wampum Belts are intended to convey, all of which would appear, in their minds to indicate that there was an alliance formed between the British and the Six Nation Indians, and that the latter were not to be regarded as subjects but as allies of the Crown, and the petition in its body, as well as in the conclusion thereof asks that the Six Nations be allowed to be governed according to their own rules and customs, and that the alleged Covenant with their forefathers be kept.

The Superintendent General of Indian Affairs is unable to concur in the view put forward in this petition and he is of the opinion that there is no ground on which the same can be supported.

The Minister observes further that as far back as year 1839, the same claims were asserted by the Six Nation Indians, and were examined into and reported upon by the Hon. Mr. Justice Macaulay who reported that "it would be difficult to point out any tenable ground on which a claim to an exempt or distinctive character could be rested".

...The Minister therefore recommends that the petitioners be informed, that while the Government fully recognizes and appreciates the loyalty of their forefathers and the continued loyalty of the Six Nation Indians, it cannot sanction or hold as valid the claim put forth in the petition, on behalf of the Six Nation Indians, to special exemption from the effect of the laws of the land, nor to that community being recognized as other than subjects of Her Majesty the Queen.²²⁸

Erosion of Citizenship Rights: The *Indian Act* Membership Provisions

In 1869, the Parliament of Canada passed the first comprehensive *Indian Act*. Colonial laws concerning Indians had generally been designed to provide for the administration of Indian affairs and assets and to prevent non-Indians from trespassing on Indian lands. After instituting a federal government in 1867, Canada decided it was necessary to define who was an 'Indian'. Where previous laws and social reality had recognized people who lived in Indian communities, following the Indian way of life, or intermarried with Indians as Indians, the new *Indian Act* did not.

For the first time, the 1869 *Indian Act* decreed that Indian women who married non-Indian men lost their status as Indians; nor would their children have that status under Canadian law. They would have no right to live in Indian communities or to hold land there.

This was directly counter to the laws of the Iroquois Confederacy. Those laws provide that women are the landholders and that citizenship generally follows the women's line. The Haudenosaunee take their clans and their names from their mothers' families.

At their general meeting at Willow Grove in 1870, the chiefs of all the Iroquois and Ojibwa communities in southern Ontario and Quebec rejected the new Canadian laws:

...because it is unjust in depriving woman of her birthright, has a very immoral tendency for the Indian women, is inconsistent with the Act of 1868, and breaks through an ancient and acknowledged custom of the Indians.²²⁹

In 1985, recognizing that the *Indian Act* was in violation of international human rights statutes that Canada had ratified, the Parliament of Canada changed the act and restored status to Indian women who had lost it by marriage, reinstating them and their children. The law also restored Indian status to people who had been 'enfranchised', against their will, by becoming university graduates, doctors, lawyers or clergymen, and to their children.

The government of Canada did not make adequate provision for the problems that this sudden restoration of status would create. People who had been brought up in non-Haudenosaunee society, sometimes without strong connections to the land or to traditional values, came to demand participation in the benefits of their newly reacquired status, straining education, health and housing budgets.

The *Indian Act* still contains inequities and continues to be inconsistent with the laws of the Haudenosaunee. The post-1985 provisions recognize as Indians children of marriages between Indians and non-Indians, but they provide that children of those children's marriages to non-Indians will not have Indian status. Since Canadian laws do not recognize Haudenosaunee people living south of the Canada/U.S. border as 'Indians', this means that there will be people who are Haudenosaunee in every way but whom Canada will not recognize.

The *Indian Act* has eroded the rights of the Haudenosaunee in another, more fundamental way. It has been a great strength of the Confederacy that any person in the world could seek shelter under the Tree of Peace by following the Great White Roots of Peace to their source. That is, any person who was *of a mind to* could become a citizen of the Confederacy by choice. The laws of adoption of individuals, families and nations were part of what kept the Confederacy strong. These laws are based not on bloodlines but on the commitment of the people to shared ideals.

The *Indian Act* is different. Where Haudenosaunee law would absorb the spouse and children of a citizen of the Confederacy, Canada's laws excluded not only the spouse but also the woman and her children – regardless of their commitment to the laws and ideals of the Confederacy. Later amendments to the *Indian Act* would provide for compulsory enfranchisement of other classes of people, and by 1951 the so-called 'double mother clause' was based only on an intention to limit membership to people with 'Indian blood'. Blood – descent in the mother's line – had always been one aspect of citizenship for the Haudenosaunee. But the other side of citizenship – joining by adoption or naturalization, as a result of the will to come under the laws – was something that Canada would allow itself but was intent on prohibiting for the Haudenosaunee.

The insistence on 'bloodlines' and on limiting the people to the boundaries of the reserves has eroded the vision of many people, blinded them to the power of their own laws. It has created a 'reservation mentality'. Many people today believe in the *Indian Act*, believe that it provides protection – though in the matter of citizenship the protection has been illusory, and the real effects have been the splitting of families and the reduction of the potential of the people.

A confident, powerful people, the Haudenosaunee in the past would take in individuals, families and nations, asking only for commitment to the ideals and laws of the Confederacy, certain that the new people would become good citizens of the Confederacy. 'Indian Act' thinking has meant that some communities are not only reluctant to take in outsiders – they will exclude their own people for 'marrying out' rather than risk contamination.

One hundred and twenty five years after the first federal Indian laws, the matter of citizenship is an unhealed wound, as communities seek to come to grips with their rights and their relatives and the difference in spirit between Canadian and Haudenosaunee laws.

Erosion of Religious and Cultural Rights

Treaty councils of the seventeenth and eighteenth centuries contain several references to Haudenosaunee wishes to be instructed in the Christian religion. The 'praying Indian' communities of Kahnawake, Kanesatake, Akwesasne and Oswegatchie reflected French Catholic

influence in their founding, while many Mohawks adhered to the Church of England and its teachings.

The desire for learning led to the establishment of schools. By the late 1700s, there were schools, often taught by Haudenosaunee teachers, in several communities. By the 1800s, most of the schools were operated by Catholic or Protestant religious or missionary societies.

The government of Canada worked closely with the religious societies. It was following a deliberate policy of assimilation, and that included the destruction of traditional religions and languages.

The *Indian Act* was changed in 1906 to make many ceremonies illegal. Section 149 provided that

Every Indian or other person who engages in, or assists in celebrating or encourages either directly or indirectly another to celebrate any Indian festival, dance or other ceremony of which the giving away or paying or giving back of money, goods or articles of any sort forms a part, or is a feature...or who engages in any celebration or dance of which the wounding or mutilation of the dead or living body of any human being or animal forms a part or is a feature, is guilty of an indictable offence and is liable to imprisonment for a term not exceeding six months and not less than two months...

This section was designed to prohibit the Potlatch and Tamanawis ceremonies on the Pacific Coast and the Sun Dance and giveaways on the prairies ÿ but it would also likely have prohibited the White Dog ceremony and the Peach Stone Bowl Game of the Haudenosaunee at midwinter. There is no record of any prosecutions in Haudenosaunee country under this law, which was removed in 1951.

In residential schools run by religious orders and by the New England Company, children were beaten for speaking their languages; they were made to feel ashamed of their being and cultures; they often went without proper food or health care. Only today are experiences of sexual and physical abuse in the residential schools beginning to emerge. One of the most lasting forms of damage of these schools, though, was that they produced at least two generations of people who had not grown up in their own families and who then did not know how to *be* parents when they had children of their own.

Much of the blame for today's many dysfunctional families can be laid at the doorstep of the religious societies that ran the residential schools.

The government of Canada did more than facilitate these societies' taking the children. It worked actively to preserve their influence, against the wishes of the governments of the Haudenosaunee.

The schools at the Six Nations Grand River Territory had been operated through a combination of missionary society contributions and payments out of the funds of the Six Nations. There had been an agreement that representation on the Six Nations School Board would be directly proportional to the percentage of the annual school budget contributed by each party. When the New England Company sharply reduced its contributions, the government of Canada took Six Nations trust funds to make up the difference but kept the missionary representatives on the school board. In 1900, the *rotiianeson* demanded the right to appoint the board, since they were paying the entire cost. They pointed out that the only school they controlled completely was also the only school that "has prepared pupils to a standard which enabled them to pass the prescribed entrance examination into the Collegiate Institute". The department of Indian affairs refused the request. The Six Nations Council decided to hire fully qualified teachers; the department of Indian affairs blocked this, saying that those teachers would take other positions when they became available, while the underqualified 'Indian' teachers would tend to remain in their jobs. The council then decided to hire university graduates as teachers instead of high school and college graduates. This, too, was blocked by the department. The council decided to use the provincial curriculum instead of the 'Indian' curriculum. When the department blocked this, as well, the council moved its position, deciding to aim for the university preparatory curriculum rather than the 'Ontario rural' model it had decided on earlier. The department succeeded in preventing every advance sought by the council, even though it was Six Nations money that would have been used to pay the cost and the demands of the council were a factor in the department's takeover of the school board and its attitude toward the council itself.²³⁰

In the 1970s, Canada adopted a policy of 'Indian control of Indian education'. Simultaneously, the department of Indian affairs made a series of 'capital agreements' with provincial school boards committing federal funds to those boards in a way that ensured that true Indian control would not happen until the agreements expired 20 or 30 years later.

Erosion of Land

The Haudenosaunee began to complain of "great frauds and abuses" in the late 1600s, as the settlers began to move into Mohawk country. By 1763, the land issues had become serious enough to merit the attention of the King himself, though his royal proclamation that year did not rectify past abuses or create a fair forum in which to resolve them.

The land issues followed the Haudenosaunee to Canada: the controversy over the reduction of the Grand River Territory in the 1790s is matched by claims to land in Kahnawake and Kanesatake, in the Bay of Quinte and even in the relatively recently established Wahta territory.

Rather than deal directly with the claims, Canada deferred them and occasionally tried to suppress them. Section 141 of the *Indian Act*, in force from 1907 to 1951, provided that any person who solicited or collected money from Indians for the purpose of making claims on their behalf without the permission of the superintendent general of Indian affairs could receive a jail term.

When the Six Nations of the Grand River took their claims concerning the Grand River Navigation Company to court, Canada put every possible legal and technical obstacle in their way. Canada refused applications by the Six Nations band council to use part of the trust funds to pay legal fees in the case. The Supreme Court of Canada expressed scepticism that people with such limited civil rights as the Indians have their path to justice blocked by limitation periods, but the lawyer for the Six Nations died before the case could proceed further.

In court, Canada has consistently used every possible technical defence: limitation periods, laches, acquiescence. It has argued that there is no trust relationship, no fiduciary relationship, or (after the fiduciary relationship was found to exist) that any such relationship is narrow and not enforceable in court. Only recently have aboriginal people begun to succeed in Canadian courts, and those successes are uneven and sometimes unclear.

What Canada has chosen to call 'land claims' the Haudenosaunee have called 'land rights'. The distinction is important: Canada tends to view land issues as being based on a sense of grievance, while the Haudenosaunee see the same issues as arising from legitimate and legal rights.

Until 1973, the government of Canada essentially subscribed to the same theory of 'land claims' that guided Sir William Johnson – that is, that people who could, either directly or through their allies, cause significant damage should have their claims addressed on their merits, while people who were insignificant should take their chances in the Crown's courts, according to the laws of the nation against whom they were making the claim. In 1973, many more peoples had become insignificant, in Canada's view.

In 1973, as a result the Supreme Court of Canada decision in *Calder v. Attorney General of British Columbia*, the government of Canada announced that it was going to resolve Indian land claims. In a speech in August of that year, the minister of Indian affairs, Jean Chrétien, announced that there were three kinds of claims. 'Specific claims' involved breaches of the *Indian Act* or the treaties; Canada would resolve these where a 'lawful obligation' could be shown. 'Comprehensive claims' existed in northern Quebec, the Northwest Territories, the Yukon and northern British Columbia; where people could show that they had never surrendered their land and continued to use it in a traditional manner, Canada would negotiate the extinguishment of their Aboriginal title and its replacement with specific rights under a 'comprehensive claims settlement'. As for southern Quebec and the Maritimes, what existed

there were 'claims of a different nature'. Chrétien's 1973 speech did not explain how these were to be dealt with. Later policy papers stated that where Aboriginal title had never been surrendered, but where extensive settlement and legislation by non-Aboriginal people and governments had taken place, the Aboriginal title had been superseded by law, even without deliberate and clear acts of intentional extinguishment by the Crown.

Initially, the Office of Claims Negotiation in the Indian affairs department seemed to operate much more as if it were an Office of Claims Rejection. It rejected claims before seeing the research materials; in one instance, it rejected a claim that it had learned about only through a newspaper article. Most Aboriginal organizations avoided 'submitting' claims through the federal process, since it lacked even rudimentary fairness.

Canada's 'specific claims' policy perpetuates many of the unfairnesses of the courts. Without any clear reason for doing so, Canada announced that it would not accept for negotiation any specific claims based on facts that occurred before 1867, unless the federal government clearly accepted specific responsibility for the claim. In 1990, after the crisis in Mohawk country, Canada announced that pre-1867 claims would be accepted – without explaining why the shift had occurred. The policy as it is interpreted involves an unusual system of internal 'discounts', based partly on estimates of the likely success in court of the same technical defences that the policy prohibits analysts and lawyers from considering when judging the claim's validity. Department of justice lawyers would explain that compound interest, even at the relatively low rates of Indian affairs trust funds, was not possible because the *Federal Court Act* would not grant it to civil claimants without a clear contract providing for interest. When the act changed in 1990, other adjustments were brought to bear to reduce the impact of compound interest.

In 1991, Canada created an office to deal with claims of a 'third kind'. This poorly defined category would include situations in which the rights of one community were sold or surrendered by another, and possibly situations that could qualify as 'comprehensive claims' but were too far south to be politically acceptable as being unsurrendered Indian lands. Canada's policies continue to demand extinguishment of Aboriginal title as the price of any settlement.

Kahnawake

The Seigneury

In 1680, the Seigneury of the Sault St. Louis, three and a half leagues wide and two leagues deep, was granted by deed from King Louis XIV of France and Governor Frontenac of Quebec. While the Mohawks of Kahnawake consider that the deed was issued jointly to the Mohawks and the Jesuit Order, the Jesuits proceeded to make sub-concessions of the land to French settlers.

In 1762, after the 1760 capitulation of France and the 1760 Kahnawake Treaty, but before the *Royal Proclamation of 1763* created constitutional government in Quebec, the Mohawks instituted proceedings against the Jesuits. On 22 March 1762, the commander of the forces, General Gage, held that, according to the original deeds of concession, the Mohawks of Kahnawake and not the Jesuits should be the landholders.

Gage's judgement ordered that all Jesuit sub-concessions were invalid; that those not granted and settled before the capitulation in 1760 be vacated; but that the locations where the grantees had settled and made improvements should be granted anew by the British. The occupants of the validated sub-concessions would pay rent to a receiver appointed by the Crown.

In 1854 the seigniorial system was abolished by the province of Canada. The tenants of the Sault St. Louis became recognized by Canadian law as owners, and the Mohawks were regarded only as owners of the unconceded lands. The *Seigniorial Act* of 1854 purported to extinguish the Mohawks' ownership rights to the Sault St. Louis lands and leave the tenants in the position of owners, subject to nominal rents. The Mohawks of Kahnawake maintain that this is inconsistent with the *Royal Proclamation of 1763*.

In 1935 the Quebec legislature enacted a statute to abolish the remaining rents on lands held formerly under seigniorial tenure. The act provided for obligatory redemption of these constituted rents. No redemption took place concerning the Sault St. Louis lands.

The Mohawks of Kahnawake maintain that the 1854 and 1935 acts cannot apply to the Sault St. Louis lands, since General Gage had determined that these lands were not held under seigniorial tenure. They also state that the Mohawks have never surrendered their ownership and jurisdiction over the lands, so that the government of Quebec was at all times not competent at law to affect the title to the lands.

The position of the Mohawks of Kahnawake was clarified to the government of Quebec in 1988 during the proposed construction of a highway through the territory. Neither Quebec nor Canada has responded fully to the claim since that time.

St. Nicholas Island

St. Nicholas Island, in the St. Lawrence River beside Kahnawake, was granted by the province of Quebec. The attorney general of Canada brought action in the exchequer court to have the land declared part of the Caughnawaga Indian Reserve. The evidence was that, while the island was not mentioned in the original grant to the Jesuits from the French Crown,

the Indians of the Caughnawaga Reserve had always considered St. Nicholas Island as part of the reserve. The evidence discloses that some of the Indians residing on the reserve had at times a small shack and had sown patches of potatoes and corn on the island, and it is contended that they thereby acquired title

by possession. This contention must be dismissed from consideration, because possession of ungranted land by roaming Indians could not remove the fee from the hands of the Crown. There cannot be any ownership of any territory acquired by possession or prescription by Indians because les uns possèdent pour les autres...And I further find that no help could be found in favour of the plaintiff, in respect of the title to the said island in the Royal Proclamation of 1763,...because the lands therein referred to as reserved for the Indians are outside of Quebec, and the territory in question herein...Moreover, the Indians have not and never had any title to the public domain.²³¹

The St. Lawrence Seaway

The case of *Lazare v. St. Lawrence Seaway*²³² examined the taking of Kahnawake Mohawk lands for purposes of building the Seaway. The court concluded that the *Indian Act* was sufficient to authorize the expropriation. In doing so, the court said that:

...it is evident...that the rights of the Indians of Caughnawaga, in the Reserve of the same name, are not different from those conferred upon other Indians in this country and that this right consists of a right of occupation and possession but not of property, which right reposes in the Crown.²³³

In arriving at this conclusion, the Quebec court cited with approval some of the least enlightened U.S. cases about Aboriginal rights and title, in the following terms:

What is the Indian title? It is a mere occupancy for the purpose of hunting. It is not like our tenures; they have no idea of a title to the soil itself. It is overrun by them, rather than inhabited. It is not a true and legal possession. It is a right not to be transferred but extinguished. It is a right regulated by treaties, not by deeds of conveyance. It depends upon the law of nations, not upon municipal right.²³⁴

The Crown's assurances in the treaty at Kahnawake in September 1760 were not at issue in this case. The court decided that the main issue was whether the plaintiffs had established such a right that the Parliament of Canada could not expropriate their lands:

...contrary to their pretensions, the applicants have only a usufructuary right, a right accorded to them by the prince who had always reserved the right of property to himself.

Thus, if the State remained the incontestable master of the soil, if it has without interruption since the beginnings of the colony, exercised its powers as such and has even kept the absolute final control of the lands, it is beyond argument that it has the right to retake possession, subject, of course, to compensation for the loss of occupation.²³⁵

Akwesasne

The Thousand Islands (The Oswegatchie Islands)

The islands from Gananoque to the present town of Prescott were promised in 1791 and 1796 to the Onondaga community of Oswegatchie by the deputy superintendent of Indian affairs in formal councils, in exchange for giving up any claims on the mainland. From that time until the 1850s, Indian department officers assisted the chiefs in collecting rent from people living on the islands.

In 1807, after their land in New York state had been taken and promises to resettle them had fallen through, most of the Oswegatchie people moved to Akwesasne, and their rights to the islands merged with those of the Akwesasne people. The British Indian department continued to assist in administering the islands and their leasing.

In 1856, the Mississaugas of Alnwick, who had lived on Grape Island, west of Kingston, surrendered their rights to islands in Lake Ontario and in the St. Lawrence River. Though at the time Indian department officials warned that the Mississaugas had limited claims to the Thousand Islands, and in fact it was well known that their eastern boundary was the Gananoque River, the government of Canada sold off most of the Thousand Islands, transferring part of the money to the Mississaugas and none of it to Akwesasne. The last such sales were in the 1970s.

The boundary between Canada and the United States runs through the St. Lawrence River. At various times, Britain and Canada have transferred islands to the United States. Though the Crown was aware, after 1784, that the United States would not recognize Aboriginal title to lands in the same manner that British officials had promised, these islands were transferred without any form of consultation with Akwesasne or Oswegatchie, and in almost every case there has never been any compensation paid by the United States or by New York state for the islands.

The Thousand Islands (The St. Regis Islands)

At virtually the same time as the Oswegatchie people were being promised the islands west of Prescott, the people of Akwesasne were being promised the islands in the St. Lawrence east of Prescott as far as Île-au-Chat, in Lake St. Francis, as well as certain portions of the mainland.

These islands, too, were leased out directly by the chiefs, with the British Indian department acting as collector of the rents and administrator of the leases. By the 1880s the first 99-year terms were expiring, and the chiefs of St. Regis were asking that the leases not be renewed. The cases of *R. v. Lady McMaster* in 1926 and *R. v. Easterbrook* in 1929 confirmed that the islands had been set apart under the *Royal Proclamation of 1763* and that the leases

involved were void. The *St. Regis Islands Act* in 1930 put the islands once again under the control of the department of Indian affairs and out of the control of the people of Akwesasne.

Not all the islands that had originally been set apart in the councils in the 1790s were included in the St. Regis Islands, though. Claims to those islands have not been addressed by Canada and have become bound up in two other issues – the creation of the boundary between Canada and the United States, and the creation of the St. Lawrence Seaway, which flooded some islands, eroded others, and resulted in the taking of still others.

The Dundee Lands

The Dundee lands are near the existing Akwesasne reserve in the province of Quebec. The chiefs at Akwesasne had leased most of these lands, as they had leased the islands (and as similar leases had been made in Kahnawake and at the Grand River Territory). The Indian department was finding increasing difficulty in enforcing the collection of rents, and some of the occupiers of the land had no leases at all. The department's solution: to cause the Mohawks to surrender the territory, so that it could be sold to the lessees. Though the Mohawks had agreed to give up only the leased lands, the government of Canada sold those lands and others that had never been leased. Other, unoccupied lands had been included by Canada in the surrender, even though the Mohawks had never intended to give them up.

Though the Mohawks had expected compensation for the Dundee lands that would enable them to buy lands adjacent to the reserve, equivalent in value, the compensation received was not only insufficient for that but was also far less than the value of the Dundee lands. It is likely that at the time of the 'surrender', most of the people of Akwesasne were not present; in winter, after harvest, they would leave the reserve for the hunting grounds, for woodcutting, and for other work.

The government of Canada has accepted part of the Akwesasne claim for negotiation, but has rejected other aspects of the claim.

The Nutfield Tract

When Sir John Johnson arrived on the Canadian side of the St. Lawrence River, fleeing the U.S. army during and after the American Revolutionary War, he settled his regiment along the north shore of the river, with his central town, Johnstown, located where the city of Cornwall is today.

Johnson's negotiations with the chiefs of Akwesasne were conducted by his deputy superintendent general, with the help of Thayendenegea (Joseph Brant). Though there were no conflict of interest rules clearly set out at the time, he must have seen that it would be wrong for him to engage in land dealings as superintendent general of Indian affairs when he would benefit personally from the results.

The Nutfield Tract was two miles wide along the river and ran about 25 miles inland. It contained 30,690 acres, or about 47 square miles.

In 1797, the chiefs decided to lease part of these lands to settlers. They did so with the approval of Sir John Johnson. The leases were generally for 99 years, renewable to 999 years, essentially the same as the leases on the islands in the St. Lawrence River, which the Supreme Court of Canada found invalid in *R. v. Easterbrook* in 1930.

The land was resurveyed in 1809 and 1811: about 6000 acres 'went missing' as a result of the surveys.

By 1820, there were 158 settler families on the land. In the 1840s, the chiefs were having increasing problems collecting the rent. The Indian department suggested that the land should be surrendered, the leases cancelled, and the plots sold to the occupiers; Akwesasne would be paid a perpetual annuity from the resulting proceeds. The chiefs had asked several times for action, including the sale of the land, so that some benefit could be derived from it.

In June 1847, a surrender document was signed at St. Regis Village by 28 chiefs and principal men. It was a surrender in trust for sale. Most of the lands were sold and patented to former lessees after the surrender.

Aside from the 6000 acres that 'disappeared' after the 1810 survey, there are about 22 lots that are recorded as wholly or partly unsold. The total unsold lands, including the Raisin River bed and the roads in the area, amount to about 500 acres.

Another 19 lots had been sold before the surrender as a result of surveying errors. Compensation was paid for these in 1853, together with more than 50 years' back rent, an important precedent for other claims.

Negotiations involving the unsold surrendered lands would have to involve both Canada and Ontario, since as a result of the *Constitution Act, 1867*, the province has the Crown's title to Indian lands that have been surrendered but not sold.

Point v. Dibblee Construction

In 1932, the Crown arranged with the Cornwall-Northern New York International Bridge Corporation to have a road built across Cornwall Island, and by 1933 the work was nearly complete. The elected band council had approved the terms of the road construction, and the corporation was given a licence of occupation by the government of Canada. The plaintiff, a life chief, refused the compensation he was offered and brought the court action on the basis that the grant of the licence of occupation was improper.

The Ontario Supreme Court concluded that the action should have been brought in the exchequer court in any event, but also said that the amount he had been offered was fair

compensation, that the plaintiff had delayed too long in bringing the action, that the roadway would actually be a benefit to all the Indians on Cornwall Island and to the plaintiff, and that

The elective system by which chiefs and councillors are chosen was, many years ago, introduced as far as this band is concerned and the plaintiff, although he may be a life chief, cannot exercise any powers as he has not been elected under the provisions of the Act.²³⁶

The rest of the judgement was no surprise: the plaintiff, said the court, "had no possessory title to the land he occupied in the reserve". Without that title, the plaintiff could not succeed in an action against the Crown, which did hold title to the land.

The St. Lawrence Seaway

The taking of Akwesasne lands for the St. Lawrence Seaway remains a matter of bitterness in claims and litigation. The building of the Seaway involved the flooding of both islands and mainland, the expropriation of reserve lands, and the taking of land for a highway and customs and toll area on Cornwall Island.

Grand River Territory

The Haldimand Grant and the Simcoe Deed

In the American Revolutionary War, British officials made promises to the Haudenosaunee and especially to the Mohawks that if necessary they would be restored in lands to the position they were in before the war. When the British lost, Governor Sir Frederick Haldimand made a grant of the Grand River Valley, from the mouth to the source, six miles each side of the river. Though the land was within the territory placed under British protection by the 1701 Nanfan 'trust deed', the British purchased the land from the Mississaugas. In 1793, Lieutenant Governor Simcoe reduced the grant by about one-third, claiming that the true extent of the valley had not been known in 1784 and that the Crown could not grant to the Six Nations what the Mississaugas had not surrendered.

Oddly, though the Ottawa Valley has never been surrendered by the Algonquin Nation, who have occupied it since time immemorial, the Crown saw no such obstacle to the sale of the lands to thousands of Europeans.

The courts of Upper Canada later concluded that the 1784 Haldimand Deed was invalid, since Haldimand had attached his personal seal at arms rather than the great seal of the province to the deed.

In 1850, the Legislature of the United Province of Canada passed a law stating that no surrender from Indians would be valid unless the Great Seal was attached to it. Six weeks later, William Robinson accepted a surrender of the watersheds of

Lake Huron and Lake Superior from the Chiefs and Principal Men of the Ojibways inhabiting the area. The Great Seal was never attached to these treaties. When the issue was raised in the case of *The Bear Island Foundation v. The Attorney General of Ontario*, the trial court found that the lack of the seal was not an obstacle to the validity of the surrenders, since the Governor General was aware of them and could have put the seal to them had he wanted to.

The Six Nations elected council formally presented a 'specific claim' to the government of Canada about the lands to the source of the Grand River in April 1993.

The 1841 'Surrender'

The 1841 transaction was dubious from the start: it was signed by fewer people, and after less open discussion, than surrenders one one-thousandth its size. There were allegations of forgery of one signature, of bribery in connection with another. What had begun as an exercise in the removal of squatters ended as a termination of one-third of the Grand River Territory and the legitimization of the squatters. Even the lands that were supposed to be protected – those already occupied by individual Six Nations people – were often sold, giving rise more than a century later to a series of unresolved claims.

The Cockshutt Lands: Logan v. Styres

During the Second World War, the Six Nations, as allies of the Crown, consented to the use of just over three acres of land near Brantford by the Cockshutt Farm Equipment company, which was making armoured cars. When the lease expired, the company approached the Crown to buy the land, and the elected council accepted a purchase price of \$25,000. Two surrender votes were held pursuant to the *Indian Act*. In the first, 54 people voted – 37 for the surrender, 16 against it, with one spoiled ballot. In the second, only 53 votes were cast, 30 of which were in favour of the surrender – and this out of 3600 eligible voters. Fewer than 1 per cent of the eligible voters voted in favour of the surrender.

Mr. Justice King of the Ontario High Court wrote that

...it is still quite possible for the Governor in Council to take the position that the surrender of the land in question should be refused. From the evidence given at the trial it is difficult to see what advantage would accrue to the Six Nations Indians by surrendering the land in question.²³⁷

Nevertheless, he concluded that

...the Six Nations Indians are entitled to the protection of the laws of the land duly made by competent authority and at the same time are subject to such laws. While it might be unjust or unfair under the circumstances for the Parliament of Canada

to interfere with their system of internal Government by hereditary Chiefs, I am of the opinion that Parliament has the authority to provide for the surrender of Reserve land, as has been done herein...²³⁸

The governor general in council deemed the 30 people who voted in favour of the surrender to be a majority of the 3600 or so eligible voters and accepted the surrender. The land was patented to the Cockshutt Farm Equipment company.

The Grand River Navigation Company

In the early 1800s, a scheme to make the Grand River the hub of heavy transportation in southwestern Ontario gave birth to the Grand River Navigation Company. Barges would float down the river, carrying agricultural produce, and mules on tow paths would move the barges upstream. The Six Nations were persuaded to invest in this venture, and they placed both land and money at risk. The risk turned out not to have been a good one: the advent of railways made barge canals almost immediately obsolete. Though trustees had been appointed by the Crown to protect the Six Nations' interest in the company, the Indian department continued to invest Six Nations trust funds in what was clearly a failing venture, over the objections of the trustees and the chiefs. There were many allegations that both government officials and trustees were removing their personal investments in the dying company and replacing them with Six Nations money. About \$160,000 was so removed from the trust funds.

When a claim against the government of Canada was made concerning this money, the response was partly that the matter was not a federal government responsibility (since the acts had taken place before 1867) and partly that limitation periods prevented any further examination of the issue.

In the 1940s, issues related to the Grand River Navigation Company found their way into court. In addition to the taking of the trust funds, the case of *Miller v. The King* involved the flooding without compensation of 1827 acres of Six Nations lands for the Welland Canal in 1826 and the giving of 369 acres of Six Nations lands to the Navigation Company without compensation.

The elected council's first action, heard by the exchequer court in 1848, led to a refusal by the court of leave to amend the statement of claim and the court's refusal to allow a motion to examine an officer of the Crown. The matter then went to the Supreme Court of Canada in 1949. That court disposed of the claim to the flooded lands and the free grant first:

[These claims] arose before the *Act of Union, 1840*, Imp. c. 35, and there is no way in which the respondent can be held responsible. The respondent is His Majesty in the right or interest of the Dominion of Canada which, of course, came into existence in 1867.²³⁹

The appellant has not shown any basis of obligation resting upon His Majesty in right of the Dominion of Canada in respect of such a liability, although with respect to liabilities arising after that date [1840] s. 111 of the B.N.A. Act [1867] is relevant.²⁴⁰

As for the payment out of the trust funds, Canada argued (as it did in the *Guerin* case 30 years later) that "reference to the Crown as trustee for the Indians...is not a technical use of such terms but such references are merely descriptive of the general political relationship between His Majesty and the Indians".

The court had to deal with the payment of trust funds for what had become worthless shares of the company. There were three judgements. All three agreed that this last matter should be sent back to the lower court for trial. Kellock, J. noted that

This will raise the interesting question as to whether persons with the limited civil rights of the Indians can be barred by the statute [of limitations].²⁴¹

The case was never argued again in the exchequer court. The death of the lawyer for the council, combined with moves by Canada to discourage the litigation, meant that the matter ended in the Supreme Court of Canada – only to arise again as a claim three decades later.

The government of Canada's response to claims flowing from the Grand River Navigation Company had been to seek refuge behind the Supreme Court of Canada's decision – that the federal government was not liable for Crown acts before the Act of Union of the Canadas in 1840. That leaves Haudenosaunee claimants with a problem: there is no more Crown in right of the empire, and no Crown in right of the colonies of Upper and Lower Canada or the United Province of Canada. By splitting itself into successors and new manifestations, the Crown was able to avoid its old obligations while claiming all the benefits of agreements it had made as the empire or the colonies.

The Railway Lands: Longboat and Jamieson v. The Queen

The Six Nations elected council has 'resolved' one claim in more than twenty years of research and negotiation with the government of Canada. That is a claim involving 268 acres of land owned by the Canadian National Railway.

Though Canada considers the matter resolved, there remain several serious questions about the manner in which the negotiations were carried out and the settlement was declared. The Six Nations received substantially less money per acre for the claim than did the Mississaugas of New Credit for an adjacent claim based on the same facts. This is even more troublesome because the Six Nations hold underlying title to the New Credit lands.

When the settlement was taken to a referendum, fewer than 300 people voted. The voters list that was used contained more than 6000 names – that is, the turnout was less than 5 per cent. In the second referendum, the number of voters was equally low. The governor general in council accepted the 'surrender' of the land, deeming the 5 per cent of the people to be a 'majority' for purposes of Canadian law. At roughly the same time, the minister of external affairs, Joe Clark, declared a Haitian election in which about 25 per cent of the population voted to be "a fraud".

The Confederacy Council at the Grand River Territory has taken legal action against Canada, stating that there were irregularities in the manner in which the referenda were called and conducted, and that the acceptance of a surrender approved by such small numbers – at a time when Canada knew that there were more people opposed to the surrender than there were in favour of it – was a breach of its fiduciary obligation.

Other Grand River Territory Claims

Three claims made by the Six Nations elected council at the Grand River Territory have been accepted by Canada for negotiations. They are a claim to 900 acres in Innisfil Township, filed on 21 January 1982; a claim to 4000 acres in Hawkesbury Township, filed on 18 October 1984; and a claim to 30,800 acres in Block #5, Moulton Township, made on 18 October 1984. All three claims were accepted on 21 May 1993.

Twenty other 'specific claims' have been submitted by the elected council. They include the following:

Hamilton-Port Dover Plank Road, Seneca & Oneida Township, 7,680 acres, presented on 18 June 1987

Welland Canal (Feeder Dam), presented on 21 January 1988

Block #6, Canborough Township, 19,000 acres, presented on 20 September 1988

Johnson Settlement, Brantford Township, 7000 acres, presented on 19 January 1989

Burtch Tract, Brantford Township, 5,233 acres, presented on 2 April 1989

Ordnance Reserve, Lots 25 & 26, Concession 4, Port Maitland, Dunn Township, presented on 21 July 1989

Eagle's Nest Tract, Brantford Township, 1800 acres, presented on 28 September 1989

Onondaga Township, Lots 10-14, Concession II, and Lots 6-15, Concession III, 2000 acres, presented on 15 March 1990

Martins Tract, Brantford Township, 1500 acres, presented on 19 April 1990

Oxbow Bend, Brantford Township, 1200 acres, presented on 19 July 1990.

Oneida Township, presented on 20 September 1990

Canadian National Railway right of way, River Range, Onondaga Township, presented on 18 April 1991

Cayuga Township, south side of the Grand River, presented on 20 June 1991

Grand River Navigation Company (Land grants) 368 7/10 acres, presented on 16 April 1992

Bed of the Grand River and Islands thereon, presented on 16 July 1992

Grand River Navigation Company Tow Path lands, presented on 19 October 1992.

Exploration of oil and natural gas underlying the Six Nations Reserve, presented on 21 January 1993

The Source of the Grand River, presented on 2 April 1993

Six Nations investments in the custody of Coutts and Company, presented on 19 August 1993

The Six Nations Grand River research office is currently preparing claims related to approximately another 40 transactions.

Bay of Quinte Mohawk Territory

The Bay of Quinte Territory is the location of one of the few claims in Haudenosaunee territory that has been settled by the government of Canada. It involves an airfield that was taken for military purposes during the Second World War and not returned for several decades afterward. The land has been returned and compensation was paid.

Kanesatake Mohawk Territory

Karente v. Seminaire de St. Sulpice

The history of the establishment of the Mohawk settlement at the Lake of Two Mountains can be told from two widely divergent perspectives: the French legal view, which has been upheld by the courts of Canada, and the understanding of the Mohawk people when they settled there, which has been ignored by the courts.

The Mohawks understood that the Seigneurie of the Lake of Two Mountains was being set apart as Indian land. There were three villages – Iroquois, Algonquin and Nipissing. A wampum belt was made when the settlement was formed in the 1720s, depicting a dog at each end (to keep intruders off the land) as well as the involvement of the Seven Nations of Canada. The Sulpician priests who ran the mission had been given a grant by the King of France, as a result of their missionary work, and as the mission became less successful financially and the priests and the Mohawks became estranged, the priests began to lease and then to sell the land to French Canadians.

The Mohawks believed that they were the landowners, or at least that the only reason the Sulpicians had been given any land was so that they could hold it for the use of the Indians. While the General Gage judgement at Kahnawake in 1760 confirmed this interpretation, the courts in the case of Kanesatake did not. The highest courts confirmed that the Sulpicians had been given a free and clear grant of the land and could dispose of it as they wished.

The government of Canada attempted to salvage part of a bad situation by buying any remaining land from the Sulpicians in the 1940s. By then, Mohawks had lived on the land for

nearly two and a half centuries since the founding of the mission at the Lake of Two Mountains and claimed to have settled and used the area for centuries before that time.

When the Mohawks of Kanesatake brought their claims to the attention of the government of Canada, Canada rejected the claims on the basis that there was no 'lawful obligation', since the courts had already ruled on the main issues.

In 1990, when the minister of Indian affairs announced that Canada was now willing to negotiate a settlement of the Kanesatake claims, he explained that Canada now understood that there was an injustice that required resolution even where there was no strict legal obligation. Three years later, the Mohawks had not received either land or money, but their non-Mohawk neighbours had been compensated for 'loss of value' of the properties they continued to occupy.

Wahta Mohawk Territory

The situation in Kanesatake between the Sulpicians and the Mohawks had deteriorated so badly that several Mohawk families decided it would be better to leave and find a new place to live. They were offered Gibson Township in the Muskoka area of Ontario, and in 1881 32 families moved there. The place was named Wahta, for the great maple bush surrounding the settlement.

When the Mohawks arrived in the Wahta territory, they found less land than they expected. The governments of Canada and Ontario had agreed that the Mohawks would not need as much land as had been set aside for them originally. The resulting claim has been a matter of serious contention for more than two decades.

The lack of a fair and effective process for resolving land issues has allowed all of these issues to fester. Canada's present policies are restrictive, in both the nature of the issues that will be considered and the solutions that are available. Generally, Canada has no land, and offers cash only. Since the Haudenosaunee see the land, and the recovery of land, as the key to their survival, and the traditional people in particular see money as more harmful than beneficial in resolving land disputes, Canada's policies offer little hope of resolving the issues. Furthermore, Canada generally requires a 'surrender' or 'extinguishment' of rights in exchange for a settlement. The words and concepts are offensive to most Aboriginal people.

The Constitution of Canada

In 1992, an amendment to the Constitution of Canada was nearly made. It would have reflected the Charlottetown Accord.

Most Haudenosaunee did not vote in the referendum that accompanied the proposed constitutional changes. Both elected and traditional leaders explained that it would be inappropriate for Iroquois people to vote on other people's constitutions ÿ the Iroquois have a constitution of their own.

The proposed changes would have recognized the inherent right of self-government of the Aboriginal peoples of Canada. That right would have been subject to both federal and provincial laws made for peace, order and good government. Since peace, order and good government is an exclusively federal power in the present constitution, nobody could explain with any clarity which provincial laws – any or all of them – would override the laws of the Aboriginal peoples.

The use of the word 'inherent' in the proposed constitutional amendments became a legal battleground. The Assembly of First Nations explained:

Our Creator, Mother Earth, put First Nations on this land to care for and live in harmony with all her creation. We cared for our earth, our brothers and sisters in the animal world, and each other. These responsibilities gave us our inherent, continuing right to self-government. This right flows from our original occupation of this land from time immemorial.²⁴⁰

Ironically, the Assembly of First Nations' equivalent of a legislative body is made up of chiefs who are almost all elected under the *Indian Act*. Traditional governments are not represented in and not part of the Assembly of First Nations, which the government of Canada recognizes as the 'official' voice of 'status Indians' in Canada.

The government of Canada explained its point of view on the question of the inherent right of self-government quite clearly:

Our concern with that term is straightforward. We believe that the word – undefined or unmodified – would be used as the basis for a claim to international sovereignty or as the justification of a unilateral approach to deciding what laws did or did not apply to aboriginal peoples.

Our concern with inherency is not with the word but with the meaning. If we can be shown that an amendment can be drafted to ensure that an inherent right does not mean a right to sovereignty or separation, or the unilateral determination of powers, we will look at that. If Aboriginal Canadians can help define what inherency would mean in practical terms – in terms of authorities and jurisdictions and powers – in such a way that the integrity of this federation is not put in question, we would welcome that. We are not opposed to inherency.²⁴¹

As representatives of the Assembly of First Nations, the Inuit Tapirisat and the Native Council of Canada hurried to assure Canada that no form of international sovereignty was being claimed and that they were seeking recognition within the Canadian federation, the Haudenosaunee were concluding that precisely the issues that troubled Canada were those that accurately reflected the laws and rights of the Haudenosaunee.

In December 1991, the Haudenosaunee provided a position on the proposed changes to the Canadian constitution:

The Iroquois Confederacy believes that this is an appropriate time to provide Canada with some ideas for its constitutional reform. We have not made this decision lightly. We would not want our comments to be taken as an improper interference in Canada's internal affairs. We offer these thoughts respectfully, in the hope that they may contribute to peace and good will.

Our Confederacy also has a constitution, the *Kainerekowa* or Great Law of Peace, which has been our law since before the arrival of the Europeans. We also have to deal with the issues and problems common to all confederations, since we are composed of six nations, spread across fifteen communities. We have several centuries more experience with confederation than Canada. We believe that the ideas at the roots of our constitution have held us together.

We also believe that these fundamental concepts are the natural law of this land: we regret that they are not yet clearly expressed in Canada's constitution.

Our relationship with the Crown:

When we made our first agreement with the British Crown, in 1664, our relationship was symbolized by the Two Row Wampum, a belt with two parallel dark lines on a white field of peace. The two lines signified the Iroquois canoe and the British sailing ship, which would travel down the river of life side by side. Neither would interfere in the course or internal affairs of the other. The three rows of white wampum between the two lines stand for peace, respect and friendship, concepts that keep the two peoples close together as well as at a respectful distance.

The other important symbol of our relationship is the Silver Covenant Chain, which links the nations in mutual protection and respect. Both sides must be vigilant to keep the chain bright and binding.

This alliance with the Crown has held firm over three centuries. The Canada we know would not be here today if not for our help in times past.

Why we are doing this:

We see now that the sailing ship is having trouble holding its course because of its internal difficulties. It is not for us to interfere in its steering. Our nations have generally refrained from telling Canada or the provinces how to arrange relations between themselves, but have only commented on how proposed laws might affect us.

However, in this exceptional situation, we see a need to speak out. If the sailing ship is troubled, it may veer off course and injure our fragile canoe. If the ship sinks, the chain that attaches it to the canoe may cause the canoe to sink, too. In such time, the Confederacy has in the past decided to provide its thoughts to the settler governments.

In 1755, for example, at the "Albany Congress", we suggested to twelve British colonies that they should form a union, for strength and peace. Our

proposal took root: imitating the checks and balances contained in our Great Law, they formed the constitution of the United States of America.

What is missing from Canada's constitution:

We feel that Canada has much to learn from the ways of the people who have been here since the beginning. Our laws reflect the land and its values and spirit.

Our suggestions to Canada and the provinces have their roots in our Great Law of Peace.

Our law requires our Chiefs in their deliberations and their decisions to cast their thoughts seven generations ahead. Their thinking is not affected by the timing of their next election, or by the day-to-day opinions of the people. Decisions made by our government are not short-term in nature or vision. Canada's constitution fails to require lawmakers to consider the impact of legislation on future generations. We fear that the result has been harm to the quality of the world our grandchildren will live in.

Our law constantly reminds the Chiefs of their responsibility to the natural world. We are governments of people, but we are also responsible to the living things around us. Our duties extend to the whole environment. Nothing in the Canadian constitution requires lawmakers to think about the effects of their laws and decisions on the natural world. Part of the proposed "Canada clause" contain the seeds of this idea ÿ but it is not binding on the legislators.

Our law requires the lawmakers to concentrate their minds on peace. Their decisions must be made with peace in mind. In our law, peace is the duty of all Chiefs and all people. In the Canadian constitution, peace is a minor, residual federal jurisdiction. It has never been recognized as a fundamental value.

Our law tells us that we must always take the time to do things properly ÿ we must not be hurried into decisions that may be wrong, shortsighted or narrow. We do not allow artificial deadlines to impair our ability to decide clearly and wisely.

All our decisions are made with our spiritual obligations in mind. Our Chiefs are humble people, since they are servants of the law and the people and the Creator. We do not see, in the constitution of Canada, any law requiring either humility or spirituality from leaders. It is not how they are chosen.

Our law requires us to come to one mind about important decisions. We do not decide matters by majority rule, since in the long term this creates hard feelings on the part of those who "lose" the votes. Our law takes in all the people and all their views. It takes time to do so, but our law has been designed to seek, identify and maintain consensus.

We recommend that Canada should place these obligations in its constitution, as part of the rules which will guide its future. We have found ways to ensure that our lawmakers consider the effects of their decisions on future generations and on the natural world; to bind them to considering peace; to seek consensus and to pursue their duties in a humble and spiritual manner. We are willing to share our ideas with Canada: as the Spicer Report has stated, they might become not a moral challenge but rather a prominent part of the solution.

Canada's proposals concerning "Aboriginal Peoples":

The Iroquois Confederacy is not within the constitutional structure of Canada. Our three centuries of treaty relations with the Crown are extensive and well documented and confirm our independence. Canada has not yet formally accepted the Crown's responsibilities under the Treaties. Though we have never asked to become part of Canada, we do want to clarify our relationship with Canada, for now and for the future. We would not want our experiences of the summer of 1990 to be repeated ever again...

The government of Canada did not respond to these suggestions. The minister responsible for constitutional relations had indicated his willingness to meet with the Confederacy's external relations committee, but could not find any time to arrange the meeting itself.

In the Charlottetown round of constitutional talks, unlike the Meech Lake agreement before it, there was a degree of real consensus between the political leaders of Canada and the provinces. Having achieved that consensus (with the participation of Aboriginal organizations as well), the political leaders then demonstrated (in Haudenosaunee terms) that they had not learned from this lesson: they moved directly to a referendum that was a confrontation between the forces of yes and no. Under pressure, under deadlines, and in the confusion, the no side won.

The Governor General Has No Name: The Lack of Relations with the Government of Canada

When the federal government was established, the administration of Indian affairs was in the hands of a company of strangers. Neither the politicians nor the administrators were familiar with the languages and customs of the Haudenosaunee.

The prime minister of Canada was also the superintendent general of Indian affairs ÿ successor to Sir William Johnson. His attitude, on the record, was that no special status could be acknowledged for the Confederacy ÿ that since "Indians are inveterate grumblers", all the others would want the same treatment. The position was not based on a review of the historical commitments made by the Crown.

Though the government of Canada refused to allow the Confederacy chiefs to travel to England for the coronation of King George V and refused to permit the chiefs to meet with the governor general to remove the tarnish from the Covenant Chain, there were times when Canada did acknowledge the historical relationship. In May 1916, the governor general, the Duke of

Connaught, sent a letter to the Indian councils that had sent money to support the Patriotic Fund to support the war effort:

I am deeply touched by your loyal generosity. Reading the speeches made by former Governors to the Indian sachems and their replies, I find that there is constant reference to the silver chain which bound together their mutual interests, and each new meeting and renewal of friendship made the chain brighter and stronger. I find in your late action evidence that you wish the chain to be preserved, and, for my part, I accept your gifts and acknowledge that the chain has been brightened and strengthened by them.

In the tradition of British law, the Crown is not the same as the government. The Crown is a continuous entity. When a King of England dies, the announcement is, "The King is dead; long live the King!". In this continuity, the Crown is similar to Haudenosaunee *rotiianeson*, since the title remains alive when the individual who has held it dies. The government, in British law, is not continuous. Originally, the King held both the executive and the legislative powers. Over time, he gathered advisers ÿ his private council, or 'privy council' ÿ who today are called the 'cabinet', from the King's private room where they met. Meanwhile, the lawmakers in the House of Commons and House of Lords gradually increased their powers, to the point where the government is chosen on the basis of the party that has won the most seats in the House of Commons, and the monarch's advisers are the leaders of that government. Over time, the powers of the monarch and of her representative in Canada, the governor general, have declined.

The distance between the Crown and its government is acknowledged in British tradition in several ways. Courts of equity (as distinct from courts of law) were created to provide the subject with fairness, in the name of the Crown, in cases where the government's laws did not provide that fairness. An individual subject also always had the right to send the Crown a 'petition of right' seeking the Crown's protection against excesses or unfairnesses by the government.

Average Canadians today do not perceive a difference between the Crown and its government. The entity that affects their lives, that they elect, is the government. The Crown, as represented by the governor general, has become ceremonial and virtually irrelevant: there is a continuing debate about whether there is a need to continue the institution at all.

On the Haudenosaunee side, there was no similar difference between the head of state and the head of government. The *rotiianeson*, acting as one body with one mind, were and are both, under the *Kainerekowa*.

When the Haudenosaunee began relations with the British, it was clear that their relationship was with the Crown. From 1664 on, it was the governors of the several colonies who

met with the Confederacy, who renewed the commitments, who negotiated the treaties. They met with the *rotiianeson*, not with their delegates.

In colonial times, the governors had the real authority: the legislatures either did not exist or had limited, advisory authority. The nation-to-nation relationship existed and operated at the highest level available.

To achieve an existence in the world of the Haudenosaunee, the governors each received a name, a title. The governor of New York, who was the central British figure in the Covenant Chain, was and remains Corlaer. The governor of Quebec was and is Yonnondio; the governor of Pennsylvania, Onas; the governor of Virginia, Asharekowa. At the Treaty of Fort Stanwix in 1768 the governor of New Jersey was given a name by Canaquieson of Oneida, a step described as "necessary" before the main business of the council, "bestowing his own name upon him by the hand". It is possible that the granting of the name involved the same kind of naming ceremony that is used for a child or an adopted person ÿ with respected persons walking the newly named person up and down in front of the people, announcing the name while the people endorse it. Receiving a name provided the continuity of a Haudenosaunee title. It also established and acknowledged a relationship.

The governor general of Canada has no name.

His namelessness is an indicator of the gulf that exists between Canada and the Haudenosaunee. Though he is the Crown's personal and highest representative in Canada, and though the Haudenosaunee still address their communications directly to him, he has no name. His namelessness shows the extent to which Canada has not sought to find its way in the world of the Haudenosaunee, to acknowledge the needs of the Confederacy in renewing and maintaining the Covenant Chain.

For the Haudenosaunee to depart from their practice and communicate directly with the government of Canada, bypassing the Crown, would be to violate the principles established by the Two Row Wampum and the Covenant Chain. It would mean stepping into the sailing ship, stepping past the Crown's personal representative.

The Covenant Chain wampum belt sets out a single path between the Haudenosaunee and the Crown. The broad white path of peace runs between the Crown and the Confederacy and does not admit of any other ways of communication. The deliberate setting of a single path avoids the confusion that many channels between the two peoples would create.

Just as the Governor General's namelessness shows how "the brush has grown up" between the Crown and the Haudenosaunee, so, too, the Crown has lost its knowledge of the Confederacy. In the "crisis" of 1990, Canada's confusion about who really spoke for the Confederacy led it to avoid any formal contacts at all. Several groups claimed to speak for the Haudenosaunee and were issuing

statements on Haudenosaunee paper: Canada could not identify the real delegates of the Confederacy.

Though the relationship between the Haudenosaunee and the Crown has been allowed to become tarnished, it remains binding. At a time when the inherent right of Aboriginal self-government is receiving recognition in the politics of Canada, the simplest way for the government of Canada to show its commitment to the principles would be to resume a proper relationship with the Haudenosaunee, by repolishing the Covenant Chain.

The Power and Survival of the Confederacy

The Peacemaker who brought the Great Law of Peace to the original Five Nations was not a citizen of any of those nations. The confederation created by the law and by the unity of mind of the people was not restricted to those nations, either. The *Kainerekowa* itself provides for several different kinds of adoption of foreigners ÿ by an individual, by a clan or family, by a nation or by the Confederacy as a whole. It also provides that any person who is of a mind to can follow the Great White Roots of the Tree of Peace to their source and seek to be taken in ÿ adopted.

The taking in of entire nations, as well as of individuals, became an accepted way for the League to expand and survive. It was the way the Peace would spread.

Some people became Haudenosaunee by force ÿ like the remnants of the Wendats, Attiwandaronk and Tionontate peoples after the wars of the 1650s, or captives taken in during the wars against the French or the American colonies. Often a captive was declared to be put in the place of a person who had been killed. In those cases, the adoptee was treated exactly like a member of the family.

Others became Haudenosaunee as a means of seeking refuge: the Tuscaroras came from the eastern seaboard as an entire people, and have remained so, while others ÿ Tuteloos, Nanticokes, Abenakis, Delawares and many others ÿ eventually lost their separate identity within the Confederacy, entrusting their ceremonies and traditions to the communities they had joined. As settlement took over the lands to the east and disease struck peoples in the west, the Haudenosaunee welcomed refugees and immigrants alike.

Still others joined by marriage, by individual adoption, by simple naturalization. By the 1700s, there were more people who were adopted Senecas than there were who were born Senecas. A person's origin or race was not a barrier to being one of the Haudenosaunee. The essence of citizenship was the combination of the will or mind to come under the law, and the willingness of the community to accept such a person.

There are two safeguards against abuse in the Great Law itself. The name given to an individual upon adoption is said to be 'hung about the neck', so that if the person violates the law, the name is removed and the person is no longer held to be one of the People of the

Longhouse. The same rule applies to nations that have been taken in: after appropriate warnings, they can be asked to leave. The other protection is for the government: the fifty *rotiianeson* are members of the original families that first held those titles. No matter how many immigrants the Haudenosaunee accept, the 'new' people will not be able immediately to take over the council. While they can, though merit, become Pine Tree Chiefs (like Thayendenega, who had Huron ancestry, or Kiantwahke, whose father was European), they do not become *rotiianeson*.

Some historians suggest that the Haudenosaunee practice of adopting captives and nations was a deliberate strategy to provide fuel for a war machine, to bring new warriors to replace the old. While this may have been one of the effects of the practice, the explanation given by the people themselves – and confirmed by the fact that the practice is provided for in the law without reference to the usefulness of the adoptees in war, but rather in furthering peace, and by the fact that the adoptions continued long after the wars had ended – is that the spreading of the Great White Roots of the Tree of Peace invites every person who has the right mind to come under the shelter of the Tree, to come under the Law.

It has been suggested that there are two kinds of nationalism in the world – one, which has been called 'ethnic' nationalism, is based on blood, on all the people sharing a common ancestry; one, which is based on shared ideals, has been called 'civic' nationalism. Ethnic nationalism can sometimes contribute to bloody wars – as between the Tutsi and the Soto, or between the Serbs and the Croats. Civic nationalism transcends blood and bases loyalty on laws and goals that bind the people together. Thus, St. Paul, in what is now called the Middle East, was proud to say that he was a Roman citizen.

To some extent, the survival of the Haudenosaunee in an area and a time when other nations have been swept away can be attributed to this nationalism – to the devotion of the people to a system of law and thinking that bound them together and kept them whole and proud.

The Six Nations of the Grand River count Delaware, Nanticoke, Dutch, English, Montour, Mahican, and other people among their ancestors. At Akwesasne, the Mohawks and Onondagas also included Abenaki, French and Americans, while Kanesatake people took in Algonquins, Nipissings and others.

What all these people saw in the Confederacy was the power of the mind and the law – the ability of its people and institutions to steer the course of the canoe down the stream, keeping it at a distance from the sailing ship. Other nations 'put their minds' with the Haudenosaunee not out of respect or fear of military power, which was largely gone by the mid-1700s, but out of respect for the power of the law and the ability of the minds that carried it. The Haudenosaunee spoke for other nations in northeastern North America even after the tides of war and settlement passed westward. They remained the focus of relations with the Europeans and the focus of

councils of indigenous nations, because they were survivors ÿ in culture and land, government and law, where all other nations in the area had disappeared.

The struggle of Haudenosaunee ceremonies to survive under attack by both Canadian law and Christian religion; the struggle of Haudenosaunee law and government to survive under attack by the government, courts and police of Canada; the struggle of Haudenosaunee languages to survive under attack by English and French, powerful and voracious languages ÿ each of these fights has seen the ceremonies, governments, laws and languages survive where others would have been swept away.

It is not remarkable that Haudenosaunee languages are in trouble; that traditional Haudenosaunee governments have been weakened; that some parts of the ceremonies and religion have been lost. It is remarkable that they have survived as powerfully as they have.

Why have the Haudenosaunee survived?

Because there is something here that is strong. It does not depend on the people as a single blood. It depends instead on the people as a single mind, and that is far more viable, powerful, important and respectable.

Nor does their survival depend upon Canada ÿ though perhaps Canada's survival as a modern confederation might depend upon the lessons it can learn from the Haudenosaunee. ...The Indian said, "My boat is made of Gaswentah [the River of Life], which is very fast and will last as long as the world will last..."

The white man replied: "Now that we have agreed, what shall we do that will bind us to our agreement?"

The Indian answered: "We shall hold hands, and we will go by what our Creator has made. First, he has put the sun in the sky. We will hold our hands together as long as the sun shines. Second, our Creator has planted grass, and we will hold our hands as long as the grass grows. Third, our Creator has planted shrubs and trees, and he has made the rivers to travel downstream. We will hold our hands together as long as the rivers go downstream. Fourth, we do not know how long the earth will last, so we will hold our hands together and keep our agreement as long as the earth will last".²⁴²

Da neh to

NOTES

APPENDIX 1
Letter to Queen Elizabeth II
from the Grand Council of Chiefs of the Haudenosaunee

The Grand Council of the Haudenosaunee
The Six Nations Iroquois Confederacy
Onondaga Nation

November 29, 1981

Her Majesty, Queen Elizabeth II
Buckingham Palace
London, England

Your Majesty,

The Grand Council of Hoyaney of the Haudenosaunee (Iroquois Confederacy) wish to extend to you, and your people, a greeting and thanksgiving on behalf of our peoples. We have instructed our representative to hand carry this message to your governmental representative at the United Nations because of the urgency and seriousness of the matters facing our member nations and people.

For sometime we have watched with great concern the actions of your people living in the lands called "Canada" as they attempt to create a constitution for themselves. Our concerns have been heightened as the work on this constitution has deliberately set upon a course that seeks to destroy the long history of peace and friendship between our peoples.

The course that is being followed can only lead to the breaking of long standing international treaties between our two countries. If enacted, as proposed by the "Canadian" leadership, that have existed between our peoples.

We feel at this time that we must remind you of the longheld commitments our two countries have made to each other over several centuries and exemplified in such agreements as the Two Row Wampum and Silver Covenant Chain treaties.

For centuries, the principles of the Two Row Wampum have formed the substance of all of our mutual agreements. We remind you that each of us has pledged not to take actions that lead to the subjugation of either nation by one of the parties; that we live in peace and friendship and fully respect each other's right to exercise their sovereignty within their territories. Time and again, we have reaffirmed these principles in many other agreements and documents between our nations.

Ever since the time the Crown removed itself from direct control of affairs in North America, there has been constant strife between our nation and your colonial administrators. Under the "Indian Act", they have attempted to subjugate peoples through a system of indirect rule called the "Band Council System". They have sought to impose "Canadian" citizenship on our peoples, and have made numerous other attempts to denigrate our sovereign national status

and annex our homelands. The people of the Haudenosaunee have been, and continue to be firmly resolved not to allow themselves, or their nations, to be absorbed by any process of "Canadianization".

Therefore, we inform you that the "Canadian" constitution, if granted by your Parliament, will have no jurisdictional authority within our territories, or concerning our peoples. Again, we remind you that this is not a new position, but is one that we have held throughout our long mutual histories. Our people are citizens of our nations and do not seek citizenship within your colony.

Any effort to subjugate our people within "Canada" is a violation of our right of self-determination under international law, for which we will hold you responsible within the world community. We will resist any attempts to force jurisdiction or alienation of our lands upon us with all the means at our disposal.

Pursuant to our treaties, we formally request that your government delay any Parliamentary action on the proposed constitution until Great Britain is prepared to re-affirm our sovereign and territorial rights, independent of the "Canadian" entity.

We will be authorizing a delegation to travel to England, on passports issued by our government, to open discussions with your government on these issues. We wish to formally request a meeting with yourself, and the Foreign Secretary to address these matters. We respectfully request an appointment to be set by your office during a convenient time in January, 1982.

Daw nay toh,

The Grand Council of Chiefs
The Haudenosaunee
Six Nations Iroquois Confederacy

(original signed by)

Audrey Shenandoah
Secretary

(original signed by)
Tadodaho

APPENDIX 2

Statement concerning the Lands and Government of the Haudenosaunee by the Grand Council of Chiefs of the Haudenosaunee

Preamble

For some time we have watched with great concern the actions of the people of Canada as they created a new constitution for themselves, succeeded in patriating their constitution, and became a new emerging nation. Our concerns had been heightened as the work on the new constitution of Canada set a course toward the destruction of the long history of peace and friendship between

ourselves and Great Britain. The course that was followed led to the breaking of long-standing international treaties between the Haudenosaunee and Great Britain.

We feel at this time that we must remind Canada of the long-standing commitments that had been made between the Haudenosaunee and Great Britain over several centuries, and exemplified in such historic agreements and treaties as the Two Row Wampum and the Silver Covenant Chain. For centuries, the principles of the Two Row Wampum had formed the substance of all our mutual agreements with Great Britain. Each of us had pledged not to take actions that would lead to the subjugation of either nation by one of the parties.

We were to live in peace and friendship, fully respecting each other's rights to exercise one's sovereignty within one's territory. Time and again, we have reaffirmed these principles in many other agreements and documents between the Haudenosaunee and Great Britain.

Government

The Haudenosaunee, or the Six Nations Iroquois Confederacy, has existed in what is now known as southern Ontario, southern Quebec, and New York State since time immemorial.

Our name "Haudenosaunee" means People of the Longhouse. The Confederacy of the Haudenosaunee is made up of the Mohawk, Oneida, Onondaga, Cayuga, Seneca, and Tuscarora nations. The Confederacy is nationally governed by the Grand Council of Chiefs which meets at Onondaga, the central council fire or capital of the Confederacy. Onondaga has been the capital of the Confederacy since time immemorial. The Confederacy is governed in accordance with the Great Law of Peace, or Gayanerakowa. The Chiefs that sit at the Grand Council are selected by the clans of each nation according to the Great Law.

Since the formation of our Confederacy long before the European invasion, the member nations have functioned as a single Confederacy with regard to all matters of vital importance. Each nation in the Confederacy has maintained its own government or council fire, and each community within each nation has its own council fire; however, all matters of general importance are the exclusive responsibility of the Confederacy and the Grand Council of Chiefs.

Since the earliest years of contact with the Europeans, treaties and other relations between the Haudenosaunee and other nations have been the responsibility of the Haudenosaunee as a Confederacy. The Haudenosaunee has carried on formal diplomatic and trade relations with Great Britain, France, the Netherlands, and other nations for more than 250 years before the creation of the colony of the Dominion of Canada.

The Haudenosaunee and all of its constituent nations have continued to exist and to function as governments up to the present time. The nations, communities and people that make up the Haudenosaunee are still located in our original territory.

Imposition of band councils

However, after the creation of the Dominion of Canada in 1867, and the passage of the Indian Advancement Act of 1884, the Canadian government began to impose its own form of government upon Haudenosaunee communities on the "north side of the river." The Canadian form of "Indian government" called for the election of chiefs to band councils for the exercise of municipal powers. The clan mothers and people of various Haudenosaunee communities preferred to remain with their own traditional councils, and resisted the imposition of the Canadian band councils. The resistance was suppressed by the Canadian government with the

help of police forces. By 1934, Canadian band councils were forced upon all of the Haudenosaunee communities on the north side of what became to be known as the "border" between Canada and the United States.

Yet, the traditional councils continued to survive, and have continued to function to this day, despite the presence of the band councils. But, the existence of the Canadian band councils has caused hardship and division to this day.

Lands

Historically, the territory of the Haudenosaunee extended from the Richelieu Valley-Lake Champlain region of present day Quebec and Vermont, west to the Ohio Valley and the southwestern peninsula of present-day Ontario, and from the region along the north side of Lake Ontario and the St. Lawrence River valley, south to the Allegheny region of present day Pennsylvania. Historically, the Haudenosaunee extended its power over a vast area from James Bay to the present-day Carolinas, and from the Mississippi River valley to the Atlantic seaboard.

During the period before the creation of the colony of the Dominion of Canada, the Haudenosaunee entered into numerous treaties relating to lands and the growing settlements of Europeans. The last of these treaties was made with Great Britain in 1768 at Fort Stanwix, by which a line was established as the western boundary for European settlement. The line began near Fort Oswego at the bottom of Lake Ontario. The Treaty did not attempt to deal with any lands north of this point. This northern area remained exclusive Haudenosaunee land. And the Royal Proclamation of 1763 had provided for the non-disturbance of homelands on both east and west sides of the Proclamation line.

After the American Revolution, some members of each of the nations of the Haudenosaunee Confederacy moved northward to the southwestern peninsula of present-day Ontario, in territory that was in the possession of the Confederacy. However, long before the American Revolution, the Confederacy had communities on both the north and south shores of the St. Lawrence River.

By 1794, as a consequence of the American Revolution, a "border" was established between the United States and colonial British North America, now known as the Canadian-American border. Yet, the Haudenosaunee has never given up its lands on either side of the line; title to its lands on the "north side of the river" has never been extinguished.

The Haudenosaunee can never sell or give up the underlying title to these lands. But we have always been willing to share these lands on a reasonable basis, provided our people have lands sufficient for our needs and for our future generations.

Summary

The Haudenosaunee in recent months and years has observed the confusion that is evident among the Canadian people and the Canadian government, over the issues of sovereignty, government, and nationhood. There is discussion in the committees of the Parliament of Canada concerning sovereignty, constitutional arrangements, and "Indian self-government."

The Haudenosaunee Confederacy is sovereign in the international community, not within the Canadian (or American) context. The Haudenosaunee have no desire to separate from Canada, since the Haudenosaunee have never been part of Canada. We have always had our own country and our own government.

The Haudenosaunee Confederacy throughout its entire history of contact with the Europeans down to the nineteenth century has always declared itself to be independent of, and not subject to, other nations. This was made known to the Dutch, French, British, and other nations. Throughout the twentieth century, the Haudenosaunee have made it known to Canada and the United States that we are neither Canadian nor American; we are Haudenosaunee.

The Haudenosaunee have been, and continue to be firmly resolved not to allow themselves, or their nations, to be absorbed by any process Of "Canadianization."

Therefore, the new constitution that has been granted to the Parliament of Canada by Great Britain will have no jurisdictional authority within our territories or over our peoples. Again, we remind Canada that this is not a new position, but is one that we have held throughout our long history with Great Britain (and with Canada as one of its Dominions). Our people are citizens of our nations, and do not seek citizenship within the nation of "Canada."

Any effort to subjugate our people under "Canada" is a violation of our right to self-determination under international law, for which we will hold Canada responsible within the world community. We will resist any attempts to force jurisdiction or alienation of our lands upon us with all the means at our disposal.

Passed by the
Grand Council of Chiefs
of the Haudenosaunee
December 26th, 1982

APPENDIX 3
Presentation of the Haudenosaunee
to the Special Committee on Indian Self-Government

House of Commons
Issue No. 31
Tuesday, May 31, 1983
Wednesday, June 1, 1983
Chairman Mr. Keith Penner

Minutes of Proceedings and Evidence of the Special Committee on

Indian Self-Government

RESPECTING:

The status, development and responsibilities of Band governments on Indian reserves, as well as the financial relationships between the Government of Canada and Indian bands

WITNESSES:

From Thalassa Research Associates:
Dr. Dan Gottesman, Partner.

Mr. Rob Egan, Partner.
Mr. Harold Wilson, Consultant.

From the Haudenosaunee Confederacy
Mr. Bob Antone.
Mr. Venus Walker.
Mr. Bruce Elijah.
Mr. Loran Thompson.
Mr. Mike Myers.
Mr. Robert Jamieson.

First Session of the Thirty-second Parliament, 1980-81-82-83

WEDNESDAY, JUNE 1, 1983

The Special Committee on Indian Self-Government met at 3:58 o'clock p.m., this day, the Chairman, Mr. Penner, presiding.

Members of the Committee present: Messrs. Allmand, Chenier, Manly, Oberle, Penner, Schellenberger and Tousignant.

Ex-officio member present: From the Assembly of First Nations: Ms. Roberta Jamieson.

Liaison member present: From the Native Women's Association of Canada: Ms. Sandra Isaac.

In attendance: From the Research Branch of the Library of Parliament: Mrs. Barbara Reynolds and Mrs. Katherine Dunkley, Research Officers. From the Parliamentary Centre for Foreign affairs and Foreign Trade: Mr. P.C. Dobell, Policy Co-ordinator.

Witnesses: From the Haudenosaunee Confederacy: Mr. Bob Antone; Mr. Venus Walker; Mr. Bruce Elijah; Mr. Loran Thompson; Mr. Mike Myers and Mr. Robert Jamieson.

The Committee resumed consideration of its Order of Reference dated Wednesday, December 22, 1982. (See Minutes of Proceedings, Wednesday, December 22, 1982, Issue No. 1.)

Mr. Antone made a statement.

Mr. Walker recited a prayer and made a statement in his native language.

Mr. Elijah interpreted Mr. Walker's prayer and statement.

Mr. Thompson and Mr. Myers each made a statement.

On motion of Mr. Allmand, it was agreed, That the following documents tabled by the Haudenosaunee Confederacy be printed as appendices to this day's Minutes of Proceedings and Evidence:

1. Statement of the Haudenosaunee concerning the Constitutional Framework and International Position of the Haudenosaunee Confederacy (See Appendix "SEND-36")
2. Declaration of Principles for the Defence of the Indigenous Nations and Peoples of the Western Hemisphere (See Appendix "SEND-37")
3. Statement concerning the Lands and Government of the Haudenosaunee (Appendix "SEND-38")
4. Appendix: Letter to Her Majesty, Queen Elizabeth II from the Grand Council of Chiefs of the Haudenosaunee, November 29, 1981 (See Appendix "Send-39")
5. Excerpts from Special Joint Committee of the Senate and the House of Commons appointed to continue and complete the examination and consideration of the Indian Act (See Appendix "SEND-40")

Mr. Myers, Mr. Antone and Mr. Jamieson answered questions.

Mr. Jamieson and Mr. Antone each made a statement.

Mr. Walker recited a prayer in his native language.

At 7:29 o'clock p.m., the Committee adjourned to the call of the Chair.

EVIDENCE

Wednesday, June 1, 1983

The Chairman: Today's session of the Special Committee on Indian Self-Government is in order.

We welcome to Parliament Hill and to the special committee the delegation from the Haudenosaunee Confederacy. The spokesman for the confederacy is Mr. Bob Antone.

Mr. Antone, I would ask if you would introduce to the members of the special committee the delegation that is with you, and then if you would let us know the manner in which you would like to proceed. I note that you have several documents that have been tabled with the members. We would like to know whether you wish to summarize your statement or whether you want it read into the record; whatever is best for you. We will certainly accommodate your interests.

Mr. Antone, please.

Mr. Bob Antone (Haudenosaunee Confederacy): Before we proceed with the introductions, we have a certain procedure that we have to follow, in accordance with our traditions. I would like to table the introductions until the formalities of our traditions are carried out.

To begin with, we would like to open our presentation with a thanksgiving and greetings. We will begin that with Mr. Walker. Also, there will be an interpretation of this presentation.

The Chairman: Thank you very much.

Mr. Venus Walker (Haudenosaunee Confederacy) (translation): The first thing we do with our people when two people come together and they meet is to give a thanksgiving for all the things the Creator has put here on earth. So at this time, as our people come together, we would like to say we hope that in our homes and the places we come from everything is well with our families

and there is nothing too serious or too bad in the news. So with that, we bring our minds together and give a thanksgiving.

Then we mention the ground we walk on, our sacred Mother Earth, the importance of what the Creator has given to our people, to acknowledge the very basic things here ÿ and we have been given the mandate to look after these things. So we look to the earth as a sacred mother who holds everything in the palm of her hand to give us things so that every day and every night our families are in good health. So at this time we will bring our own minds together and give a thanksgiving to our mother the earth.

Then we mention the strawberries, the first berries to give fruit when the warm winds come. We were told of the importance of that; that there will come a day when we will not see strawberries any more and all the rest of the foods will die away. We were told what to do at that time. So come spring, almost at the time that we see the strawberries bloom again and give berries, we put our minds together and give a thanksgiving to all the berries of the world that came to us from the Creator's land. We put our minds together and give a thanksgiving for that.

Then we mention all the medicines. When we come out of our homes, when we come out of that door, the medicines are there; they start from there. There are people amongst us who are given the right to have the ability to help our people with medicines. It is in the grass, it is in the shrubs, it is in the trees; it is all around us. Only a chosen few know what that is and how it is supposed to be used. So at this time we bring our minds together and give a thanksgiving for those things that are still being carried out to this day. So be it in our minds.

We mention all the trees that are around us; and again we see the leaves coming forth. We say that the head one of those trees is the maple tree, because it gives us sugar at a certain time when the sap runs, and we set a day aside and there are ceremonies that we do in thanksgiving. Those things are still carried on. All the other trees in the world ÿ we put our minds together and we give a thanksgiving for all those things that are still alive to this day; all the trees.

Then the animals. They say that they are our brothers and our sisters ÿ the animal world, the four leggeds ÿ and they say that they are put here for a purpose and we are supposed to live in harmony with our brothers and sisters of the animal world, the four leggeds. So at this time again, we bring all our minds together and give a thanksgiving for all those animals that still exist, and we know that there are some that are gone, that have become extinct. We still mention them and we still give a thanksgiving for all the animals of the world.

We mention the bird life. They say that the eagle is the most important to our people, it is a symbol, the tree of peace that was given to us...a great law of how we are supposed to conduct ourselves with one another. The eagle at the top of that tree is supposed to look far into the distance and he will give a cry when he sees danger approaching our people. So again at this time we put our minds together and give a thanksgiving for all the bird life in the world. We know too that some have become extinct, but we still mention them in our ceremonies. We have never forgotten them. So we give thanksgiving for that. So be it in our minds.

Then we say that there will be two suns in the heavens, the first one is "wasekwatiha"; that is the man, the male, the sun. He is given a purpose never to remove himself or be late at any time. He still functions in the way that was given to him for us to see on the horizon and around us all the beautiful things the creator has given us. At this time we put our minds together and give a thanksgiving for the most beautiful thing, which was put there for a reason, and we still acknowledge it and give thanksgiving to our eldest brother, the sun.

At night we give a thanksgiving to our grandmother, the moon. In everything we have mentioned there is a male and a female in plant life, in the animal world, in the tree life, even in the fish life. Grandmother Moon was given a purpose, that she would control all that, all the female life in the world, what we look at and how we understand what surrounds us. She is in control of the future generations of all these species, and so are women. That is how we look at the months, as to when to conceive, to give birth, to give life, to continue. So it is time to bring all our minds together and give a thanksgiving to our grandmother, the moon.

And at this time we also mention the stars in the heavens, for there is our history written, in the stars in the heavens. Our old people say that if we look at the stars, they will tell us when to conduct our ceremonies, when it is time. And still to this day our people carry this on. Still to this day we have people who can tell you what that means and what it says. Our history is recorded there; it is given to us in that way.

So again we bring our minds together and we give a thanksgiving to the stars, for they still continue in the ways that were given to them, in the order that was given to them to bring our minds together and give a thanksgiving. So be it in our minds.

We also give a thanksgiving to the thunder-makers who come from the setting sun. They bring the rains to quench the earth, for all the things to make life possible.

We have been given a great responsibility. They say there were huge animals at one time on this earth, that roamed this earth, and we our people asked the grandfathers to put them down into the earth, and so they did. There will come a time when we will not be able to give a thanksgiving to the thunder-makers, and they say that the earth will open up and those huge animals will surface again. And the dangers that we talk about today in the world that we live in are nothing compared to what will come. So there is a reason why we exist today. We have never forgotten that. We still carry out the ceremonies, and we still give a thanksgiving to the first thunders that we hear. So bring all our minds together and give thanksgiving. So be it in our minds.

We asked the four beings who come from the Creator's land, who say they come to us at this level ÿ they do not touch the earth ÿ where we see, where we hear, where we speak from, where our minds are. They come to us in our dreams. They tell us of the things that need to be done, what needs to be said...concerns that we have for our people. So we give a thanksgiving for those that are still carried out to this day. Our ceremonies are still being conducted, in ways as far back as we can go in our language.

So at this time we would like to thank those four beings, because we asked them when we left our homes that we get here safely, to protect us, and that we go back to our families, back to our homes safely. So we give a thanksgiving, bring our minds as one, give a thanksgiving for those. So be it in our minds.

Then we come to the Creator himself. He has put himself in a place where we say that we do not know his face. We will never know his face, but all those things of what is possible for us, he gave us a responsibility to look after.

So to this day we carry that out to the best of our ability. So we bring all our minds together as one, giving thanks to the Creator for making all these things possible. So be it in our minds.

At this time we would like to express that our leaders and chiefs, the traditional chiefs of our people, when they heard that there was a possibility of coming here to give a presentation, had a great meeting for all the people. So the leaders and chiefs said they would like to send their greetings to the people we were going to meet. They sent good wishes and good health and good

spirit to put our minds together. They said, when you get there, we hope they will be able to hear our voice and our concerns for their health. So at this time that is the message that we bring from our elders.

Also, our clan mothers, who are the head ones of our nations, are the ones that pick out the chiefs. When they heard we were coming here, they too said, we would like to send our greetings of good health and good wishes to the women of their people. So today their message comes to you in that way.

And also amongst our people, in our ceremonies and in our ways, we have what are called the faith-keepers, who see to it that the ceremonies are carried on and are reminders to us of all the important things we should look at. They consist of both the men and women of all ages. They too, when they heard we were coming here, said, we too would like to send our message and our greetings of good health and good wishes to the people here who may have positions, both the men and the women. So at this time it is possible that you hear the message they send.

Also, our people who have no positions, again of all age groups, men and women ÿ some people never attain a position, but they are the backbone of our nation ÿ when they heard that we were coming here they too said, we would like to send our greetings. So again, this day we have people here who may have no positions, both men and women of all age groups. So you can hear the message they send of good health and good wishes.

And our children who run about, who crawl on the earth and who are on the cradle boards, they too when they heard we were coming here said, we could send our greetings of good health and good wishes, for we are sure the people you will talk to have children and grandchildren; we hope that their concerns will be the same; we talk with those in mind, for future generations to come. So at this time you hear the message they send.

There is a symbol of our people that we use at a time when there would be a setting-up of chiefs and maybe a death among our people and we have a condolence. We use the first three; we take out the first three wampums at this time. Again, when our leaders heard that when we were coming here, it was told to us that we would relate this message to you to say that their leaders go after water ÿ cold, clear, spring water...and they give you a drink to quench your thirst so that we can speak clearly. Our throats are clear, so we can talk of the things the Creator has given to us. We can talk proud and in a very clear and honest way. That is the symbol we give at this time.

We say that we take the softest white leather that we can find and we cleanse your eyes, we wipe your eyes so that you can see into the future, so you can see the concerns of our people. So again at this time we hope we will be able, and we will be able, and we will encourage that we talk; we use soft words, good words, for no one can argue about what the Creator has given us. If we take those symbols, we hope we will be able to understand and we will be able to hear the concerns we have.

At this time, those are the messages that we bring from our people.

Mr. Antone: We are prepared at this time to answer any questions you have.

Mr. Allmand: Mr. Chairman, first on a point of order.

The Chairman: Mr. Allmand, on a point of order.

Mr. Allmand: I just wanted to make certain that we attach the right documents to the record of today's meeting. We first have Statement of the Haudenosaunee Concerning the Constitutional Framework and International Position of the Haudenosaunee Confederacy. I understand that that should be printed in its entirety.

Mr. Antone: Yes.

Mr. Allmand: Then there is Declaration of Principles for the Defence of the Indigenous Nations and Peoples of the Western Hemisphere. Did you want that tabled as well?

Mr. Antone: Yes.

Mr. Allmand: Then we have Statement Concerning the Lands and Government of the Haudenosaunee, passed by the Grand Council of Chiefs of the Haudenosaunee, November 29, 1981.

Mr. Antone: Yes.

Mr. Allmand: They want that tabled as well. Then there is Appendix, Letter to Her Majesty, Queen Elizabeth II, from the Grand Council of Chiefs of the Haudenosaunee, November 29, 1981.

Mr. Antone: Yes.

Mr. Allmand: They want that tabled as well. And excerpts from the special joint committee of the Senate and House of Commons appointed to continue and complete the examination and consideration of the Indian Act. These are from the meeting of June 12, 1947. If I understand correctly, these are extracts from...

Mr. Antone: From your own records.

Mr. Allmand: ...a previous committee. It was a special committee set up in 1947, representing the Senate and House, and you have taken these from their proceedings. Do you want those tabled as well?

Mr. Antone: Yes.

Mr. Allmand: Have we missed anything?

A witness: That's it.

Mr. Allmand: Mr. Chairman, if it is in order, I would like to make sure that the documents I have mentioned will be attached.

The Chairman: You are so moving?

Mr. Allmand: Yes. I would just point out that the one document, Statement of Haudenosaunee Concerning the Constitutional Framework, from page 13, at the bottom, to the end, was read into the record, so the remaining part will be appended. Fine.

The Chairman: All right, you have heard Mr. Allmand's motion.

Motion agreed to.

The Chairman: We are ready now for questions. Mr. Manly, would you like to begin?

Mr. Manly: Thank you, Mr. Chairman. I would like to thank the representatives from the Haudenosaunee for a very impressive appearance before us. It raises a lot of questions. I think the whole concept of the two row is something that we as a committee are going to have to wrestle with. It is a different concept from what we have been used to working with in terms of most of our hearings.

We begin with the understanding that you have a government that has existed before the coming of European people to this continent, that the government has been in continuous existence but it has not been recognized by the Canadian government. What would you say needs to be done by the Canadian government? What should this committee recommend to the Canadian government to be done in order to have a proper recognition of your government?

Mr. Myers: On page 17 of the main paper, the first paper ÿ the statement ÿ we begin to make a series of conclusions. One of the points is on the imposition on the band council system and the interjection of external laws. As far as our government has always been concerned, and we have repeatedly tried to tell Parliament and the Queen, etc., those laws do not apply in our country.

In terms of our country, the rollback of those laws, the hands off to allow the political processes that we have going on inside our communities to resolve our initial strife that has existed in the past, must not be tampered with. Now, we have not enjoyed that in the past. We have always kind of lived under the threat, and we have seen it in some of our communities, that when power shifted back to the original government in some of our communities we found ourselves occupied by the RCMP or by some other paramilitary force or at least a threatening of that.

If we knew that threat were not there and that we were able to continue to pursue a peaceful course of resolving what are not our differences I think this is an important point to understand that our important communities have begun to realize that these differences that we thought we had in the past are not our differences, they are differences brought to us by Canada and the colonial system of managing Indians and Indian rights. And now that we have got clear about that, we are now in the phase of working that out of our system and coming back to a new reality which will be most appropriate for us, in which all views are represented, in which all of our people participate fully in the development of our country.

Mr. Manly: Is there some mechanism that you could suggest that would satisfy the Canadian government, for example, that a majority of your people wanted to do away with the system of band councils and accept a traditional form of government?

Mr. Myers: Why do we need to satisfy the Canadian government's curiosity?

Mr. Manly: Well I suppose because it feels as if it has a vestigial responsibility over the last many hundred years.

Mr. Myers: What are they afraid of?

Mr. Manly: Pardon?

Mr. Myers: What else are they afraid of losing? It is not just a question of vestigial responsibility. What else are they afraid of losing, that they must have some kind of indication from us that a government is a popular government in our country? What concern is that to the Canadian government, except for continuing to manage our lives or figure out how the managerial relationship between us is going to be? We will work that out after our country is reunified. We will work out what that relationship, based on the two-row, is between us. But in the meantime, it is really none of Canada's business how we work these things out inside of our country, and inside of our communities.

Mr. Manly: But in the meantime, in many of your communities there are also two governments: one that you would say is legitimate, and one that you would say is not legitimate, but that has perhaps with a little bit of juggling here and there, more or less fallen within the legislation established by Canada. So up until now we have, as a government, recognized the legitimacy of some of those councils; to suddenly say that they have no further legitimacy I think there has to be some basis for the government to be able to say that.

Mr. Myers: Is Canada not already raising some questions about the legality of band councils? Is there not already some very serious question about whether there is a legal basis for the existence of band councils at all, even within the framework of Canadian law? Did not Minister Munro start raising some questions about that?

Mr. Manly: My understanding is that the question is whether or not band councils are legal entities and a level of government that can enter into specific contracts and so on, but not whether they exist under Canadian law. But that is a quibble that I do not really understand, because I am not a lawyer.

Mr. Myers: You see, we are at a point where we are working things out among ourselves, and it is a very ticklish time to be doing that. We are beginning to understand where some of these so-called animosities that used to exist among ourselves come from, how they got there, how they were implanted into our communities, and that they are not genuine to us. We are working it out on the basis that we are a family and that the family will have its arguments within itself.

The overall commitment in the seven communities is to move toward a reunification of our communities, a reunification that satisfies all the needs. That is going to take us some time. How we arrive at that – I cannot even forecast what that is going to look like, what different styles it is going to take. I do not think any of us can, because it is a very, very organic kind of thing.

The major thing we have is that Canada will move ahead with something such as this alternative of optional Indian band government legislation. If we remember, back in 1884 the Indian Advancement Act was supposed to be optional; and whether Indians wanted to opt into that or not, it became mandatory, in a sense. What we are afraid of is that something like this is optional Indian band government legislation, which theoretically we can buy into if we want or do not want, will suddenly become the norm; if whatever we work out among ourselves does not conform to this, then Canada is going to go on a rampage, calling us illegitimate and saying we must conform to do this.

Canada has no business telling us that. Whatever we create in our communities, as long as it is genuinely from the people, is none of Canada's business whatsoever. What form that takes and how it elects itself, or what its membership rules are, or anything – none of that whatsoever is any of Canada's business.

Mr. Manly: Could I move on to a slightly different question? It is very closely related.

You pointed out that you have a population of about 100,000 people and a very restricted land base, at least as recognized by Canadian and American governments. You pointed out that the fundamental problem is economic. So there has to be some recognition of this fact. Along with the recognition of your rights as a government, there has to be some recognition of your economic right. What mechanism has to be put in place to make that possible?

Mr. Myers: We have to create that. Our government and Canada have to create that mechanism. What we are saying is there is to be a third party that takes part in the creation of that mechanism. To us that third party has to be the United Nations, whether it is the International Office of Trust Responsibility or the UN Working Group on Indigenous Peoples or the UN Human Rights Commission or persons from each of those kinds of offices, fine; but we cannot trust Canada to sit down at the same table with us and say, oh yes, we are going to create this wonderful mechanism – and actually believe that in the future that is the way it is going to be. There has to be some international supervision of these relations between us. The record shows us we cannot just expect one side to trust the other side.

Mr. Manly: You cannot trust Canada; and that is a legitimate thing for you to say, I suppose, in view of your history. But can you give Canada some idea of the kind of mechanism you would like to see?

Mr. Myers: Face-to-face negotiations; government-to-government negotiations.

Mr. Manly: You objected to the whole imposition of laws regarding membership. Does that mean your confederacy does not recognize, for example, Section 12(b) of the Indian Act? You have never accepted those as being valid determinations of your membership?

Mr. Myers: No, they have not.

Mr. Manly: But they have affected the rights of some of your people to have access to certain programs offered by the Canadian government.

Mr. Myers: It is not just a question of having access to government programs. It has been a severe cultural disruption. We are a matriarchy, based on the mother; who the mother is determines us. We also base it on a cultural definition of how a person exists, in the context of that circle. How that person performs within our communities is another determining factor for who that person is. The imposition of external membership laws has severely disrupted our way of life, has had deep ramifications through the whole culture and at levels about which I think a lot of our people are not even conscious. We are just becoming conscious of how deep that runs and how much we have to work out of our system, how much disruption that has caused.

We have heard discussion in the past, in your hearings talk about blood quantum and stuff like that. This whole thing is a fiasco in the States, this whole concept of blood quantum. Each nation, each culture has a definition of who its people are, and that is the only valid definition that exists. No settler state like Canada, the United States, or Guatemala has the right to make that determination of who is Indian and who is not.

Mr. Manly: But perhaps it is important for the nation of Canada to understand who you would say was not in. Would you agree that is a valid concern, that other Canadian people know who is not included in your people?

Mr. Myers: That would be a determination of our government at the time we were determining the individual's status.

Mr. Manly: A woman who married a man who was not a member of your confederacy, would you say that woman would still be entitled to be a member of your confederacy?

Mr. Myers: Not under the original government.

Mr. Manly: One final question. As I hear your presentation, I get a different sense of what you see as the resolution of your problem than I do when I hear from other Indian people across Canada. It seems to me that you want to see the confederacy as a nation in the international community rather than a nation within the structure of Canadian federalism. Am I wrong in seeing it that way or not?

Mr. Myers: No you are correct. We are not part of Canada. We have never desired to be a part of Canada, and we have no future plans to be a part of Canada.

Mr. Manly : Would you want to see an independent land base with clearly defined international borders?

Mr. Myers: We already have that. We need to expand it.

Mr. Manly: Thank you very much.

Thank you Mr. Chairman.

The Chairman: Before I call on Mr. Allmand, I wonder if I could just get a point of clarification on one of Mr. Manly's questions. Your response was about blood quantum formulae in the United States. It is not the case that this is only used with respect to federal government services and access to them, that it has nothing to do with membership in a tribe? Is my understanding incorrect on that?

Mr. Myers: No, it also determines membership. It depends on what department you are talking about. Now, the department of health and human services in the United States does not even go by blood quantum. If a person can round up 10 other people to say they recognize that person as an Indian, then that person is eligible for health and human services moneys that are allocated to Indian people. The Indian Claims Commission, the Bureau of Indian Affairs, and the Department of the Interior are the guys who started tinkering with quantum over the settlement of the title,

and specifically in establishing how large a membership a nation has, so that they finally pay off everybody who could possibly ever make a claim against them – get them all paid off and get them all out of their hair.

Mr. Antone: Before we move on, Mr. Jamieson from Grand River would like to make a statement on some of the questions that were asked by Mr. Manly.

The Chairman: Thank you very much.

Mr. Robert Jamieson (Haudenosaunee Confederacy): I know quite a few of the people who are here.

The question you have been asking, the question you want to know about Grand River: What had happened to us prior to 1860...? Well, prior to 1924, I would like to say, when the government was changed by Colonel Cecil Morgan... we will go back a little further. The confederacy has governed the people way back, even in the Grand River area. Nine years later, from 1784, the chiefs were invited to come and sit down with the government. They came from Buffalo Creek after the revolution. They settled there. At that time there was an agreement – what Great Britain calls a treaty. There was a treaty presented to the Mohawks and such others of the Six Nations who wished to settle in that quarter. So everything was fine right up until I guess 1924.

Prior to that in 1860, Queen Victoria transferred our moneys over here, all our business over here for the Imperial Government of Upper Canada to look after our moneys. In her statement, the Six Nations of Grand River form no part of the subjects in Canada. So what did they do two years later? The Canadian imperial government, let us say, formed a policy to govern the Six Nations in 1869. They had a meeting in Sarnia in 1869.

Well, when the Six Nations Confederacy chiefs went there and found out what the meeting was all about, they were going to introduce the policy and have all the other nations... There were 21...well, that is a year later.

At that time, the Six Nations returned as soon as they found out what this meeting was all about in Sarnia. In 1870, there were 21 different tribes gathered in Ohsweken. They had a 10 day conference on this Indian Advancement Act. Every section of that act was read out and translated. Every tribe had a translator who translated to the language they spoke, explaining what the sections were, one section at a time. I think the minister at that time was T.N. Gibbs.

So everything was rejected. Every tribe, at that time – 21 different tribes rejected that policy. That is 1870. Whatever happened...it seems to me that it went through the House of Commons without the Six Nations knowing of the fact that it had gone through the first reading.

So what happened in 1890? The minister at the time – I think it was Cameron – came down to the council, he sat in the chair. He said that he was going to put that policy in second reading in the House of Commons. Again, the confederacy rejected everything. They contacted William Paterson – he was an MP for Brant County – to give them a little help in the House of Commons. That second reading was never passed, nor was the third reading.

So what happened in 1924? They came there with the Mounties, and the Superintendent at the time, Colonel Cecil Morgan, presented a proclamation dissolving the confederacy and put up an elective system. That was 1924. They were renovating the council house at the time. That council house was built in 1863. Because of the renovations to the council house, they had their council at the agriculture hall, and they had taken only a scribbler for a minute book. They left everything in this little box – a chest box they had – under lock and key. They had their wampums and their mace in there and all their documents.

What happens when the colonel sees some work and returns from the agricultural hall? We got the Mounties to bust that lock and took everything out, everything out. I am only talking about what happened to us at Six Nations and in Grand River.

Well, from there on we set up an elective system of 12 councillors and a chief, chief councillor. The first chief councillor was Calvin Hill, and they had 27 people changing this year like the majority of people used to call the Mohawk workers or the confederacy. Out of the 27 people, this was formed ÿ an elective band council. From then on we have been struggling; every year with that. They went to England, they went to The Hague.

In 1921 to 1923, our old chief at the time, Levi General...his title in the confederacy was as a title-holder of a chief. And Canada sends Senator Dandurand to represent Canada at the world's court at the Hague. What was said in there, he says: There was no such thing as an army down there or police dragging the confederacy out; there was nothing around down there.

I have a statement in my collection from what they call the League of Nations' official journal. In that statement of Senator Dandurand, it says that the ultimate aim of the Canadian government is to put the Indians into full citizenship; that is the ultimate aim under this Indian Advancement Act. So they came back, there was nothing done, and we were beaten. They enticed other governments at the courts at the time to agree that there was nothing wrong.

Again in 1930, a delegation of chiefs went to England. They made their own passports, the confederacy; they went to England, which they always do ÿ they still do. They went to England as a delegation of I forget now how many people; I can recall, let us see, Chancy Garlow, Arthur Anderson, Jake Lewis, Joseph Logan, David Thomas, Emile General, Dora Jamieson ÿ I think that is the lot that went over. Well they took the treaty of 1784 with them, they took the wampums, they took the silver covenant chain and the pipe of peace ÿ in fact, the House of Commons in England had a smoke all the way around, had a good puff out of it. I have the pictures of that too.

So what happens, they have to decide in the Commons in England what is the best thing to do after they put all their complaints in there about what happened in 1924. One man had to wait ÿ I do not know just how long he had to wait for the answer before he could come home ÿ the rest came home. When he got back, the message he brought back ÿ I think it was Winston Churchill ÿ his statement was that it was within the competency of the Canadian government to deal with the Six Nations. So from there on we have been trying to deal with the Canadian government having that in mind, but we are not getting anywhere. Instead of that, they asked him: What is wrong here; what is the matter here anyway?

I guess Mr. Garlow was the speaker, and whether he was shaky just like I am now, the secretary at time says: They want to put us under subjection. That is the very aim of the Indian Advancement Act. It deals with that all the way through. You read the section; it deals with subjection. Here we are supposed to be allies, just as Frank Oliver's statement in the House of Commons, 1914 ÿ I forget the month and date; I have it there.

Our secretary at the present time of the confederacy has the statement of Frank Oliver. He says that the Six Nations came to Canada after the revolution lost their domain in New York State. They were granted lands, came here on a special treaty, not as subjects of Great Britain but as allies of Great Britain. Those are the very words, and it is the policy of this government to have that in mind at all times. It is for the Canadian government to have that in view at all times.

I could read that statement if Mr. Longboat will give me that. I will read it properly to you. Frank Oliver stated in the House of Commons of Canada.

There are a band of Six Nations located in the Grand River in Ontario, who, I maintain, are in a different legal position from any Indian bands who are native of the country. These Indian bands on the Grand River had their original home in the United States. At the close of the War of the Revolution, they immigrated to Canada and were given lands under a special treaty, not as subjects of Great Britain but as allies of Great Britain, and I maintain that the holding of these Six Nations on Grand River is of such a kind that this Parliament has no right to interfere with it. I admit that Parliament has the Power to interfere with the rights of Indians under treaty made with this government, but I say that this government has no right to interfere with a treaty made between the imperial Government and the Six Nations. (House of Commons, May 11, 1914, Hansard, pages 35 to 37.)

This statement was quoted with approval by Blackmore in the House of Commons Debates, May 17, 1951, page 3111.

On April 5, 1939, the Minister of Interior of Canada wrote the following letter to Chief Johnson, Deputy Speaker of the Six Nations Council. Chief Jacob Johnson lived right in the village in Ohsweken and he was a chief. I forget the title he held, but he is the one who wrote this letter to the Minister of the interior. I knew him from when I was a little boy because he used to be an undertaker and a postmaster.

Dear Sir:

The letter of the Council of the Six Nations dated February 23, 1909, which was read to me in the presence of the Deputy Superintendent General on March 25 by Chief A. G. Smith, is before me, and I beg to reply in terms of our conversation so that my reply may be on record. It is the policy of the Canadian government, as I understand it, to recognize the relations with the Six Nations as being on a different footing from those of other Indians of Canada. The Six Nation Indians of Grand River came to Canada under a special treaty as allies of Great Britain, and the policy of the Canadian government is to deal with them having that fact always in view. It is no part of the intentions of the Department to take any official action except through recognized tribal authority of the Six Nations.

So here you are.

What this Indian Advancement Act places in all the tribes across Canada really, especially the Six Nations, is put us under subjection, and an Indian advancement act will put you there in due time. This is what is bothering us.

We have our own government, the Six Nations Confederacy, and we have our own constitution, made from time immemorial, they called it. Now even in 1867, the men of those days seemed to recognize our status. Colonel William Claus when he presented the wampum ÿ a token of regard, to the Six Nations ÿ he said that the Six Nations were a nation within a nation, and that bugger over there says there can never be a nation within a nation. Well, that is the truth. It was even so when Queen Victoria was alive. She appreciated the help and the alliance of our people, the Six Nations. She used to send her own currency on her birthday, to Canada, to buy us bread and cheese, on her birthday, May 24. Now since she is dead, we have to buy our own. So for all these things, here, you want an answer to what is the matter, what is wrong.

Now, in 1959, we had a little uprising. It was not an uprising. We wanted our government back in, but not by taking votes of the people. When you take votes of the people, you just spread the people apart. Some like the Indian Act. If they like it why do they not go, why does the government not place them under the Indian Act? They were told, by H. F. Jones, the Minister at

the time, that every band council was not a legal entity and it had no legal status. They were told again in the 1970s, that they have no legal status. Now, they are giving us cards at the Indian Office ÿ status ÿ with your picture on it, under the Indian Act. That is one thing I will never accept. We have a status card of our own, not under the Indian Act. It is a policy to subject us into the policy you have made for us. You understand that do you not.

Mr. Manly: I am slow but I am getting it.

Mr. Jamieson: So there you are. I guess I could go over a lot more, even Arthur Meighen when he was a minister. For a little while he was the prime minister and then he was the Minister of Indian Affairs. Gosh, I wish you would bring that up, too. I could read it to you, Arthur Meighen, 1921. Is that your briefcase or mine? I think this is the one. Following is a speech made by the Hon. Mr. Meighen. Arthur Meighen his name was. In March, 1921, Mr. Meighen, being the Superintendent General of Indian Affairs, at that time, said:

The policy of the Canadian government towards the Six Nations, since assuming guardianship in the 1860...

As I said, Queen Victoria sent all our annuities and moneys over here for the imperial government to look after the money

...and has followed the well known manner of home authorities, one of the tender solicitude, in respect to their welfare and of preserving absolute good faith with them. In a very brief way, it may be stated that it is claimed, on their behalf, that the power of Parliament, to deal with the Six Nations, is limited to the International obligations between them and the British Crown. In other words, by virtue of treaty rights, extending as far back as 1664...

That is that wampum you see there, 1664.

...specially recognized, lately, at intervals.

Well, I've said this before, 1860, Queen Victoria transferred business, finances. Superintendent General of Indian Affairs, Canada stated that Six Nations in Grand River form no part of British subjects in Canada.

That is enough on that, I guess. And there is another thing I wanted to bring to bring up, it just slipped my mind. Anyway, this is the struggle we have been having. Oh yes, one more thing. In 1889 Chief William Smith was delegated out to England to see if the Haldimand Treaty was still good from the day it was made. According to ÿ was it Edward? I forget now who was King at that time ÿ he said it is as good as the day it was made and it is good as long as the British government is in existence. That is the very words, the letter he brought back from Buckingham Palace. And that letter was in that strongbox that Colonel Cecil Morgan wrapped and took it. I guess it was locked up somewhere, whether it is in Brantford, yet or something, but we could never get a hold of it. The elected system just would not give us a chance to look on those records, but I say again the Six Nations have their original treaty.

The court case you had here, the Supreme Court, how many years ago? It was 75 or 76 I forget. I heard the lawyer there say the great seal could never be found. I guess he did not look hard enough because King George III himself had that treaty registered under the Imperial Seal of Upper Canada. And the Six Nations today has that document, which we very much treasure.

I guess I have said enough now. Whether you are going to get that into your head, what has happened and what the government is trying to do under this policy, the Indian Advancement Act... I have a book which says the Indian Act says "office use only"!

Thank you very much, I think I have said enough.

Mr. Antone: Thank you, Mr. Jamieson. As you can see, that is just a brief bit of evidence from only one of our communities. There is much more of that that is alive in the minds of many of our elders in our communities. And you can see why the position that this committee, the lands rights committee, has taken is because of that strength and because of that belief in ourselves as Haudenosaunee and not being subject to anyone, except to the Creator Himself. We believe that very strongly.

We can spend hours here presenting evidence. We can bring many of the elders here to explain the history of our relationship, one that has caused many problems. And hopefully this is a new era, that we can resolve some of that so that maybe some of these elders can see a resolution in the near future to what has taken place, the historical, colonial history of this country.

So I will turn it back over to you, Mr. Chairman, for your questions.

The Chairman: Mr. Oberle.

Mr. Oberle: Thank you, Mr. Chairman. I have no difficulty comprehending in my head what your position is...

Mr. Jamieson: Can I mention one more item? In 1792 they sent Lieutenant Governor John Graves Simcoe out here and he made another treaty. It was similar. He included one thing and another, women and children and kings and all that, in this treaty curtailing some of our lands. That there, we find out when they went to England, that treaty never existed over there. In, I think it is 1889, from records, a third search was made in Toronto, in the archives. The Simcoe document could never be found, but the Haldimand was found..., and it says there that the Simcoe document was put as an escrow for some time for the government to use. I think they are using it now. Thank you.

Mr. Oberle: From what you have said, there is no doubt that you have no intention or you do not wish to participate in the affairs of Canada, the affairs of the institutions of Canada. Do your people participate at all in federal, provincial elections?

Mr. Myers: On a very limited level. There are very, very few people who do. According to our law, participation in such an election, in such a process, automatically takes the person outside that circle and outside our government. They have participated in another government in another country and so their rights go into suspension in terms of our system if they choose to go that route.

Mr. Oberle: Do you see any obligation on the Canadian government to fulfil the treaties you made with Queen Victoria, or with the Crown of England?

Mr. Myers: The obligation that Canada has is found in, I guess, what is called the International Rules for the Succession of Treaties. Those rules prescribe three steps that are in front of Canada now to carry that out.

They are to indicate to the various nations that the treaties exist from the former colonial era, or whatever the era was before the change in circumstances; whether they wish to continue that treaty relationship, to discontinue and abrogate that treaty relationship, or to negotiate a new relationship. Those are the three options that are in front of Canada. Now that is what we are waiting to hear from Canada, which of the three options Canada is going to exercise. Each has its own set of circumstances and changed reality, however you move with any one of them.

Preferably, we would like to see ongoing negotiations; we would like to see talks open up between our government and Canada to see where we are going to go. If it is Canada's desire to continue the treaties, all right, then we are still going to need talks to bring those treaties to 1983 and beyond and to address the violations of those treaties that have occurred; and there are major

violations that have occurred and have to be, in our eyes, adequately and justly addressed. That is going to take us some time to do that.

What we are worried about, quite frankly, has been the historical patterns of settler countries to create supposedly indigenous representation for all indigenous nations and use that representation as a vehicle for abrogating any responsibilities that it has to be those nations. Any kind of dialogue that is happening around the question of the Constitution, and whatever indigenous organizations, the Native Council of Canada, whoever, are participating in that dialogue, that is their option, but it does not apply to us and we will not be bound by whatever they strike with the Canadian government. That is up to them, and if their people, their constituencies, believe they got a good deal, fine for them, but we will not be bound by that. Mr. Oberle: You see, I think that in a sense what this committee is doing is really exercising the third option you have mentioned. I certainly, as one member of this committee, feel that I am involved in a process of working out the third option, a new arrangement. There is no doubt that terrible, terrible sins have been committed in the past – acts of genocide, at least in a cultural sense. There is no question about that. I am convinced that no amount of money, nothing that anyone can do – even a nation as economically strong as Canada – could ever redress or remedy the sins of the past. What we can do together is to work out a new relationship.

So what you are really saying is that you are prepared to negotiate a new type of relationship. Are you foreclosing forever the notion that in some way, with total sovereignty in all areas of culture, economy, religion, you would become a partner in confederation? Do you think there can be an accommodation within confederation which would permit you to retain your sovereignty and your nationhood.

Mr. Myers: The Creator made us and put us on the earth, and chose that we would be in this particular part of the universe. The language we speak is specific to northeast North America; you cannot take our language out of here and put it down to the Amazon, it will not make sense down there. We cannot go to the southwest deserts; we cannot talk about that environment except specifically. All of our way of life, all of our existence, our ceremonies, the way our councils operate, the whole basis of our existence, is placed here. That is what the Creator gave to us. Canada is not the Creator. So we cannot join that; we cannot become a part of that.

Mr. Oberle: Look, could we talk about that for a moment? I have some very deep religious beliefs myself. I believe that the Creator made me too. I even believe it was the same Creator. Now then, do you think that the Creator made one continent for one people and another continent for another people?

Mr. Myers: It certainly looks like that. If you look at the globe, one whole half of the world, this hemisphere, is one kind of people. The other side of the world has three kinds of people. The other side of the world has come here. We have not invaded anywhere else. One half of the world was one kind of people – and that was us.

Mr. Oberle: Yes, but you know when you look back in terms of how the earth was created, certain continents were joined.

Mr. Myers: Maybe.

Mr. Oberle: Well, not maybe, we know that now. They were joined. There is the theory that the North American Indian people may have been... the Creator may have put them in Asia. We do not know that; we say, maybe. But would you hold the belief that the Creator created certain continents and intended them to be for special people?

Mr. Myers: It sure looks like that to us when we look at the world, I mean, Aryans once popped up in the middle of Africa. They are there now, sure. But they certainly did not start out there.

They are there through a process. Now, what we have to be clear about is what, in some cases, has become a religious explanation for the subjugation and the exploitation of other peoples. It is being put out as religious "truth" nowadays by some institutions y that it is appropriate. We could never find any number of right wing religions like say, the government in Guatemala, which bases all its theory for the eradication of Indians on the Bible. The early Pilgrims, the early puritans, when they got here called us "redskins" because they fervently believed we were the children of the devil. The devil is red, and so we were redskins.

There has always been a racist assumption, but the racist assumption could find itself in some kind of spiritual basis, some kind of spiritual imperialism upon the people. It is not just a political question for us. It is also a spiritual question. The beliefs are integrated into this particular part of the universe. Now, whatever part of the universe your people originated from, they had their own beliefs. And their language used to be specific to that part of the universe. Your beliefs were specific to that part. You gave thanks to the trees, the waters, the fish and those beings that were created with your people back in those places.

We have all been victims of the same kind of imperialism. The same kind of destruction to the small nations of Europe swept across the European continent that swept across our continent. We have all been victims of the same process. But there is no reason in the world for you to continue to perpetuate that same kind of destruction among other people, whether it is here in Canada, in the Fiji Islands or wherever it is.

Mr. Oberle: The question is on the kind of interchange, the kind of membership. What you are telling me is that we never had any right to visit one another or to mingle with one another. I knew a fellow who was the leader of the country in which I grew up, who believed very much in what you are saying: that you should not have racial integration under any circumstances. His name was Adolf Hitler. That is why I am in Canada today, because I did not believe in this kind of thing.

Mr. Myers: If there are those of our people who want to have racial integration, they are free to. We have explained that. If they want to go under the arms of the chiefs to the other people, they can do that, but by our law. What we said is that they go naked. They leave behind their clan, their language, their government, their ways, all that; and they fully join and fully participate in that other way of life.

That law is the same in reverse, if someone wants to come into our circle. They come into the circle naked: they bring none of the other things of theirs into it.

We will look y and when we do y at the technologies; we look at the institutions; we look at the philosophies of peoples from throughout the world, and we are finally at a point in our development, under the oppression, where we can pick and choose now. We are not just blindly inundated or invaded with the technologies or the philosophies or the institutions.

Now, it is going to come in your relations. That is an extreme. Adolf Hitler was an extreme, and he did try to draw certain kinds of things out of what used to be the spiritual past of Germany: and this story goes into a mythology about world domination. We are not talking about world domination; we are trying to resist domination and continue an existence, a special existence.

The reverse of that question is: Why can we not have our own languages? Why can we not have our own government, our own ways? Why can we not have that? Why will Canada not let us have that? What is wrong with it?

Mr. Oberle: I asked that question myself; and I do not think there is anyone in this room, certainly among these committee members, who would see the right or would not be prepared to

fight to help you preserve the right to your own language, to your own culture, to all things that are dear, that you believe to be spiritual and matters of the soul. But the question I am asking you is: Do you think there is the possibility of developing a co-existence which would...

Mr. Myers: Oh yes definitely

Mr. Oberle: But I am further: co-existence in a political, North American or Canadian territorial sense. Do you believe, through negotiation, through evolution, your system could be integrated into confederation; totally realizing, of course, that it would take fundamental changes to our Constitution, to the institutions that presently govern the relationship between Canada and the Indian people? Do you see any hope for that at all?

Mr. Antone: I think one of the things you are doing is creating a theoretical argument over the idea of partnership. If you take a look at the idea of partnership, the foundation of partnership is trust; and it is one that we have not witnessed in our history, that whole concept of trust.

Now, if we were able to talk about what is going to take place 50 years from now, we may be able to work for a partnership, but it must be a clear partnership that is going to enhance the circle of our life.

It must address not only the political, social, and cultural issues that reflect our lives and our existence as Haudenosaunee, but it also has to address the environmental impact your society is having in the destruction of the natural world. There are so many questions that need to be addressed in terms of partnership or in terms of co-existence. How are we going to eliminate the current problem with acid rain that is destroying our country as well as yours? There are many of those kinds of issues that have a spiritual significance to our people because of our spiritual relationship with their land. We would like to talk about those issues; but we would like to talk about them as equals, as brother to brother, as nation to nation, and see whether or not we can bring about a resolution to the destruction of this world that is taking place. We are all victims of what is taking place today.

We need to find a way to build on that trust, to establish the peace and friendship that our treaties are based on, so we can begin to establish the peace and friendship that our treaties are based on, so we can begin to establish that. That will only come through dialogue such as now. Hopefully, the door will be open for ongoing discussions in this arena; this kind of thinking that is taking place today. But I think to ask us at this point to trust you, which is what you are asking is asking us to have a partnership with you ÿ we would have to say no at this time, because of historical evidence that has been presented. But if we can work for it as an objective for the future, then let us take a look at it; let us begin striving for and see where it takes us.

Mr. Oberle: One other area, just briefly. Obviously your government ÿ we are well versed now, having travelled throughout the country and having listened to many, many brilliant, deep, emotional speeches on the relationship of aboriginal people to the land, to the Creator, and the harmonious relationship with nature, is providing food not only for the spirit but for the body as well, the economy ÿ how closely are you tied to ÿ recognizing your tradition in law and convention, in your structure of government ÿ but what about the economy? Do you see a transition, an evolution away from the economy of the land, of the resource-based...

Mr. Myers: That has become apparent.

Mr. Oberle: Are you not afraid of that?

Mr. Myers: No, what we are seeing is reversal of that. We have experimented with industrialization. We have gone out and worked in a whole variety of areas, etc. In the home lands what we are seeing is a reversal of that. The younger ones are the ones who are getting

more back to the land and we are looking more back to agricultural development and preserving what we have.

There are some dangerous tendencies out there. Some of our people's thinking has shifted radically, and they have been trying to make arguments for things like private land ownership and the ability to use our lands as collateral so they can bring in urban-style development and things like that into our communities.

No, we do not envision a pattern of urban industrialization in our home lands at all. Small cottage industries, land-based development: yes, that is happening; that is going on. We have a broad number of projects happening in that area. Again, given the past history, and since non-Indian people can understand Indians who talk about urban industrialization and the need for capitalization of their development programs and stuff like that, there may be a tendency to want to pass legislation or pass enabling policies or to allow that kind of person to do those kinds of things in our homelands. Then, we are going to have a conflict; because of your belief in the individual, our belief in the group, we have a problem. The mass is more important than the individual on a lot of different levels. The individual is also very important as long as they stay within the context of what that circle says. If they go outside that circle and try to start bringing in another thing, we have trouble. Then we find invariably, whether it is the U.S. or Canada, government suddenly rushing to protect the individual through the courts or through their policies or through their acts. That individual belongs more properly in Canada or in the United States and not in our country, doing that kind of activity.

Mr. Oberle: The problem I see, and it is a problem that will undoubtedly will affect us all in the future, is that the population of the world is increasing at an accelerating pace, even though western civilization – so called – has brought some controls; it has brought population growth under control. By the year 2000 the population of the world will have increased from 4.5 billion to 6 billion people, and land and resources are becoming an ever-increasing precious commodity, particularly if you do not learn to get off the resource-based economy. That is why there is this terrible pressure toward the information based society and economy. You would obviously want to participate in this new thing, would you not? You would want to do it on your terms, surely. I see the dangers. I starved. I was a child who experienced starvation. It is such an incredibly thin line between human dignity and bestiality when you are hungry, and a hungry world will take from those who have plenty.

Mr. Myers: The hungry world is hungry because of the policies of the west and the manipulations of the west in those countries. There are people growing crops in central America that they do not even eat themselves; grown primarily for export. The majority of their best agricultural land is used for export purposes.

Mr. Oberle: I do not wish to go into that kind of international problem; that is the challenge of the next century – certainly we have to find a solution to the Third World problems. I am talking about you now, your nation, sitting there with their own land, which you do not wish to share with anyone, insisting on a traditional land-based economy, and the whole world around you starving. Do you really believe that if you refuse to make accommodations and share you would be able to do that forever? The answer to that, of course is no. That has been the problem in Europe – space and land – and that is what created most of the wars and human conflict.

Mr. Myers: It is an incredibly complex question because it takes in many factors. I mean, we are in the midst of North America; we are in the midst of an entity called Canada and an entity called the United States. For the starving millions of the world to get to us and to our land, they have to invade the United States and Canada and have a war with them, and they probably would get

annihilated by the bombs that the United States has. But when we are talking about starvation, whether there is going to be starvation, say in Indian country, because of a lack of a land base or because of government interference and manipulations of economics... I look at some of the examples of mega-development that is going on in Indian country. It used to support a lot of people until the United States government aided and abetted the multinationals to go in there for coal. Now, the first water table is disappearing; the whole area will become an absolute desert. You know, we are willing to share, but there is a framework of our sharing, in terms of environmental considerations, it's something that both Canadian development and American development really needs, at this point to think about. You just cannot roll into some of these ecosystems that we have been a part of for thousands of years and do what is being done there. You cannot. The local folks, our culture, who have been here for a long time, can explain that, if they are listened to and if they are treated equally and as nations in that area.

We are already sharing we shared Toronto with you. You are on our land in Toronto. You are on our land here. You are on our land in Montreal. We are already sharing that. Yes, we need more area for our expanding populations; we are going to have to get that. How do we build that? How do we build that relationship between us? How do we build it based on the three principles of peace, friendship and respect, and continue an ongoing process in which we maintain those three principles between us, that we agree to have third parties or whatever help us in our most disputes between ourselves?

If Canada has a really sincere willingness to go that route, to really work this out and not just ramrod it down the native nations' throats, fine, I think you will find that the native nations are more than willing to sit down and work at this, put a lot of energy, a lot of people and a lot of time into making it happen. If you are not and our experience is the occupation of Grand River by the RCMP and the assassination of chiefs at Akwesasne by the RCMP and if that pattern is going to continue, then you will find that we will put just as much energy into defending ourselves.

So we have two roads in front of us. We are hoping that it will go for the long process of discussion and not be overruled by political or economical expediency, that we can work these things out, that we can make some of this stuff happen. Now, if it is real that Canada is a new country with its own constitution, then Canada has a chance to demonstrate to the entire world a whole new era of settler-indigenous relations that does not exist anywhere else in the world. Canada will be able to go to the UN and other places and really pat itself on the back and say, look, we have hammered out something that can be a model. That is the challenge in front of Canada, and we are willing to work through that challenge.

Mr. Oberle: As I said at the outset, I believe this committee to be very sincere and genuine in its attempt to begin ever so slowly this process. I certainly would like to be your friend; you certainly have a lot of my respect. I am just overwhelmed with your testimony. It is very moving in a lot of ways.

This committee is beginning this process, so I guess my final question is germane to our work in what we will be recommending in our report. In terms of how Indian self-government should evolve, I think you are telling us that you want us to be flexible, not to arrive at any fixed positions, and to accommodate the native people, wherever they live, within the kind of framework from which these negotiations can progress and conclude. Thank you very much. Mr. Chairman.

The Chairman: Thank you, Mr. Oberle. Our next questioner is Roberta Jamieson.

Ms. Jamieson: Thank you, Mr. Chairman. I think it is significant for me, and I hope for the rest of the committee members – those who are left – that the Haudenosaunee Confederacy has sent the land rights committee to meet with this special committee. I think it is important that we understand the principles that have been outlined, the Two Row Wampum, the Covenant Chain and much more. I know that is just scratching the surface, but at least that is the beginning.

One thing I think extremely clear to the committee members is that Canada or Britain has dealt with Indian nations across the country in different ways and has different agreements and different treaties and stands to have different obligations towards different Indian nations across the country. But one thing that has been very clear to me as we go across the country, a very common thing I have heard, is that government-to-government relations did exist and must continue to exist, that it is an evolutionary relationship. There is no finality; you do not pay the bill and be done with us.

The other thing is that co-existence is definitely on, as it always has been. No one is talking about cutting up the country or throwing everyone into a boat and setting them adrift. But in that fashion many people try to characterize what Indian witnesses are saying to this committee. So I wanted to say that.

One thing that this committee has had its attention focused on everywhere in the country is the contents, the elements of a document that I shared with the witnesses just before we began, and that is the Declaration of First Nations and the treaty and aboriginal rights principles. This has been cited by almost every Indian witness before this committee. I wonder if you have had an opportunity to review that, if you could speak to the elements of that document in terms of whether or not it is appropriate to the whole Haudenosaunee Confederacy.

Mr. Antone: I believe this is the document you are talking about. I think everyone should be very clear that the Haudenosaunee did not participate in the drafting of this declaration simply because many of the organizations and entities that were a part of that declaration were actually governments that were created by Canadian law and because of that we felt that we would be destroying our own status whether as allies or as non-subjects of the British or Canadian government. We could not participate with the other Indian nations who signed this document because of that.

I think it is very clear that the treaties and aboriginal rights that we have and that we envision as the Haudenosaunee lie very clearly in the Two Row Wampum and in the covenant of the Haudenosaunee. That is where the origins of aboriginal rights are. In many cases that we have seen with Indian nations in this country they have begun to say that treaties gave Indians rights. That is not true. If treaties gave Indians rights, what did we have before there were treaties? Did we have nothing? Treaties might have given us benefits for us to enjoy, but our rights as the Haudenosaunee lie within the covenant of the Haudenosaunee. That is where our rights come from. Our rights are in there and our gifts from the Creator.

We keep stressing the importance of the Creator because in these woven strands the spiritual and political nature of our societies are bound together. The spiritual beliefs are the foundations of our political decisions and so it is very important.

There are some things in here we might not agree with, but at this time we cannot question this document because we are not a part of this document. This document belongs to the other Indian nations in this country. If that is their wish then we wish them the best that they can get in terms of their declaration. But at this time we are not a part of it, and if we were to be a part of it we would not be talking to Canada about it but we would be talking to the other Indian nations about our participation in this declaration.

Ms: Jamieson: Thank you.

You have made reference today to governments that are existing on Indian lands throughout the country that have been created by Canadian law, and you have also at the beginning, said that is going full circle now. I agree with you: it is going full circle now.

I will share with you something that happened a couple of weeks ago. I was out at a meeting of what is known as the Assembly of First Nations. It is a group that has one person representing each band in the country and they passed a resolution there that indicated that they would establish a type of confederacy that would have a representative from each Indian nation in Canada, however the people chose to determine what that was.

So I see things moving full circle away from the Indian Act. I sat in Kahnawake a few days ago and heard from an elected council that we were the wrong council; we are the wrong people here; what we are doing is divesting ourselves of the power we are exercising and turning it over to someone else in some fashion. Without getting into that kind of internal struggle, which I agree with you is a matter we have to sort out ourselves, do you see that there is room ÿ for instance, there is the Dakota Confederacy, there are the Dakota Nations, there are others ÿ and several that span the borders: the Haida and others. Do you see room for a negotiated relationship among Indian nations in Canada?

Mr. Myers: The confederacy currently has a number of active treaties, one with the Hopi Nation, the Seminoles, the Lakota, the Creek; we have been developing a treaty relationship between ourselves and the Navaho. Again, it becomes a question of how you perceive who you are; how you will move in the world. A band is not a nation. A band may be a community of a nation. When that nation is in a position to relate to our country and to our government, then we open up those kinds of dialogues. We have had a dialogue with the Ojibway in western Ontario, and there is an old treaty relationship that goes back, I think, to the 1700s between us and them. There is a wampum belt between the two countries. Recently they asked to reactivate that belt and to begin to look at that again. The eastern nations... there is an old time relationship between our government and what was their confederacy, and there is a wampum belt for that one too. They too have remembered that wampum belt and they have looked it up and they brought it back out and they are talking about, well, how do we move ahead with this.

To me at this moment Canada is doing a massive injustice to Indians, because Canada is prodding Indians on to talk in national terms, when it has been years and years of Canadian policy never to deal with national entities but to deal with these things they call "bands"; constantly to demote the psychological reality, the psychological basis, of national identity; constantly to denigrate it and demote it down to this minuscule band level, always referring to the band; always referring to the band. It is almost like talking about the individual in society, to talk about the band inside the nation and refer always to the band in the nation and not deal with the nation; not to deal with the Cree nation or whatever nations existed in this country.

So now it looks to us as if Canada is attempting to strike while the iron is hot and while there is an identity crisis in Indian country about their national existence, to co-opt them all into participating in Canada, without ever adjusting ÿ not historic problems. When we say "historic", we are talking about last week; we are talking about yesterday. That is history to us, because we know somewhere in Canada somebody just got ripped off, probably an hour ago, by a Department of Indian Affairs official, or by a Health and Welfare Canada official, or by somebody in the Canadian or provincial governments. Some Indian somewhere just got ripped off; and is continuing to be ripped off.

We do not have to go back 20 years, 40 years, to talk about this. And unless we deal with how Indian nations have been deliberately and systemically destabilized and oppressed, then all the rest of this dialogue is garbage: because a new reality will not emerge. A neo-colonial reality will emerge, in which Canada maintains its colonial administration over Indians and their resources. That all has to be dealt with; and the time has to be allowed – not two years from now; a whole lot more than that – for the Indian nations to reconstruct themselves and to pull themselves back together. For the Canadian government to be putting those kinds of deadlines and those kinds of pressures on the Indian people is just unrealistic; totally unrealistic.

Ms. Jamieson: Thank you.

Time has been the subject of much of what we have heard. All across the country people have said, we will develop and exercise the governmental powers we think are appropriate and we will determine the pace – that is what is lacking. I agree very much with your comments on the optional Indian band government legislation. I trust that is dead. I fear it is not, but I hope it is, and any other movements in that area. As we have been told, this committee commissioned four research projects and I will tell you that consistently the message has been that if you are seriously talking about – I think our job is not to go around telling Indians what government is or telling them how to run their affairs. Our job is to tell Canada what it must do to alter its laws, its institutions, to allow Indian government in whatever form to coexist.

I will tell you that all of our research projects, in my view, have come back and said to us, if you are serious, what that means is fundamental change, basic change. And I have argued for a long time that that means the kind of Indian self-government that I hear being discussed, and has existed in this country for hundreds of years, requires power-sharing.

I think it was put very well by Richard White the other day when he said that Canada, or Britain, came over here and at the time entered into relations with First Nations, assumed responsibilities and obligations and decided to exercise jurisdiction.

I think those points were very well made. I think you have challenged this committee today, and I agree with you that there is much work that needs to be done in our own communities. Living in Grand River as I do, I am well aware of that. I hope that when this committee provides whatever report, whatever fashion that we do in the fall, that the Haudenosaunee Confederacy will see fit to make its views known on the contents of that report, because that is very important.

Unless we make it known across the country, as Indian people, how we view the report or moves that the federal government is considering making... granted, they will only be recommendations that we make – then things will go forward like the Indian Advancement Act.

Mind you there is no guarantee that even if we say we do not want it, it will not happen. We have learned that. But I think it is important now to make our views known. It is my own personal view that there is no more room, that Indian people have had it – whether you're talking about band councils or confederacy or whoever you are talking about, there is no more room for Canada to dictate.

Thank you, Mr. Chairman. I would like to provide you an opportunity or the other members an opportunity, to dialogue with the witnesses. Those are all my comments.

The Chairman: Okay. Any further questions? Sandra.

Ms. Isaac: Thank you Mr. Chairman. Throughout our hearings we have heard a lot of the whole concept of collective versus individual rights. Our society stresses the collective concept, but individuals have freedoms as well. Could you elaborate or define individual freedoms in your society or nation and, if so, how do they fit into the collective? Could you respond to that please.

Mr. Myers: The individual always has the full freedom to develop, to the best possible potential, the gifts he has been given, whether it is an artist or a construction person or a planner; in the spiritual areas, or the medicine areas or whatever. But, as with any other government in the world, the citizens of our country, in the free development of their individual self, are bound to a responsibility to the whole. And their individual activity cannot happen in a way that is going to jeopardize the benefit of the whole. I think, when Mr. Jamieson was talking about how the elective system came, he said 27 people participated in the election, out of how many possible people, 27 people decided to participate in the overthrow of one of our communities, one of our governments. Those 27 people do not have the right to overthrow our government. They have the right to come to the council and to argue if they think their individual rights are being trampled upon, or something, but they do not have the right to overthrow our government. We will do to them what any other government would do to traitors, in any of our communities where that happens.

The individual does not have the right to overthrow our way of life or to bring about its destruction. That is the same under Canadian law or American law. But there is the full democratic system through the clans, through the families, through the local councils, through the national councils, through the confederacy council for someone to present his case if he thinks he is being wronged within our government, within our country. It is fully available to them to participate, if they choose to participate.

Ms. Isaac: That leads me to my second question. Are there examples of where your traditional government has developed a harmonious working relationship with other Indian Act governments? There are examples, then, where you work together?

Mr. Myers: Oh yes. We are developing fine relationships with most of the Indian Act governments. But the reason why it is happening is because the people in the band councils are suddenly realizing that to perpetuate the band council system in our communities is going to spell the destruction of our communities and the destruction of our way of life. That is dawning on them. Now they are saying: Wait a minute, we do not want to be any part of that. They do not want to repeat what the original 27 did or the 16, or 18, or however many it was that began the process of overthrow. Let us return power where it properly belongs, let us return it to the original governments. The original governments have opened a dialogue and are working alone in the local communities, through local committees, or whatever, to make that happen. We are very happy with the direction in which it is going.

Ms. Isaac: Okay, thank you very much. I would also like to thank you for your very valuable testimony today.

If we are going on a second round. I will wait for my last question.

Mr. Chairman: Go ahead, Sandra, there is no second round.

Ms. Isaac: There is not?

You were speaking earlier of these rights, in response to Mr. Manly's question. Could you expand on your definition of rights vis-à-vis the benefits derived for Indians through the Indian Act? Is that what you mean, or the program projects?

Mr. Myers: No rights come from the Indian Act. Let us start with that premise. The Indian Act is the management of Indians, it has nothing to do with rights whatsoever. Every nation in the world has the right, by the fact of its existence, to full unhindered control of the five broad areas that constitute a nation: the ability to govern themselves; the ability to have an economy; the right to production, the right to reproduction, not only in the human sense but in the environmental sense, the right of our forests to continue and the animals and the waters and all

those things to continue to reproduce; the right of education, the right to educate our own citizens, our own members; and, lastly, the fifth element, which we call in English the psycho-religious element, but what is really one's control of one's identity, one's purpose on earth and being able to perpetuate and continue that. All nations of people have the right to control those five things.

We also meet the four-part definition that the international community has come up with of what is a nation. We have a permanent population; we have a defined territory; we have the ability to govern ourselves; and we have the ability to enter into international relations. Those are rights that come from the Creator. They do not come from an Indian Act, they do not come from any settled regime in the western hemisphere. Those are inherent, those were here before the settlers got here. Those belong to us and no one else.

The settlers assumed that they had those kinds of rights because of their arriving as collectives of people. Then they bonded themselves together into what they now call the United States, or Bolivia, or Canada, or whatever and decided that we do not have those rights any more and decided to come up with elaborate, and now very sophisticated, processes abrogating and trying to wipe out those rights. But no human has the right to do that to another. We have a right to free existence, and we have a right also to work out a co-existence between each other. That is what We have been trying to promote.

Ms. Isaac: Thank you very much. Thank you, Mr. Chairman.

The Chairman: Thank you, Sandra.

I think my colleagues on the committee have expressed much better than I could the appreciation we feel for your presence here today. We are delighted not only with those who are at the table giving testimony, but we are also pleased that so many of your people came along with you to hear this exchange among us. I certainly do appreciate the special emphasis you have brought to this committee, important testimony in my view. There is much that I like in your tradition. I particularly noted the emphasis you place on respect, calling for our respect of you and your leaders and your people. I think that by appearing before us today, you have shown that respect for our traditions. That is very gratifying for us.

On behalf of the members of the committee, let me say we are genuinely delighted and pleased that you have taken a lot of time, travelled some distance, done a lot of preparation, and have been very forthright and pointed in the message you had to deliver to us. I do not want to repeat what my colleagues said, but certainly our report does not intend in any way to design systems for other people. Our emphasis, as Roberta Jamieson said, will be to give some instruction to the Government of Canada through Parliament as to what we can do to achieve this co-existence to which you refer.

That is all I want to say. I do want to turn it back now to the Haudenosaunee Confederacy and ask if they have some concluding comments they would like to make.

Mr. Antone: At this point, Mr. Jamieson has requested a few more minutes of your time to present some more evidence that he has missed during his first presentation. So we would like to give him a few more minutes, then we also have the traditional closing we would like to do, and maybe an overview.

Mr. Jamieson: I guess I will stand up again, because I will have to sit down for quite a while going home.

Talking about the Two Row Wampum that you have just mentioned, the Covenant Chain and our circle of 50 chiefs, there is one thing here, you see... I do not have the letter here, but I have one at home, a letter from Buckingham Palace ÿ stating that if there are any problems...

Excuse my English: I am not too good in English. I am fluent in my own language, so you will have to excuse my broken English. Concerning this re-polishing ÿ I overheard a while ago ÿ the wampums, friendship treaty, the Two Row Wampum. I thought I neglected to mention this letter I have at home from Buckingham Palace. It stated that for any problems of the Six Nations the proper channel is through the government as Her Majesty's representative in Canada. That would be the Governor General, as I understand it. This is kind of a sticky question. If we are told to have our problems presented to Her Majesty's representative in Canada, then why did Great Britain or the Prime Minister, Winston Churchill at the time, say that it was in the competency of the Canadian government to deal with the Six Nations? So here is one that I thought I would remind you of. The last time the covenant was re-polished was January 4, 1918, and this is the statement of the Speaker-in-Chief of the Six Nations Indians:

I have heard with pleasure the address which you have just presented. I am glad to note your response for former times when the negotiation between the Six Nations Indians and the representatives of His Majesty in Canada was as cordial as it is at the present time. Although customs have changed, there is still, I am pleased to say, the mutual feeling of confidence and loyalty that has existed for so many years. In the language of old times, we now uncover the Council fire and build it up new, restoring its vigour, brighten the silver links of the ancient chain. (Copy of an address by the Governor General, Duke of Devonshire to a deputation of Six Nations Chiefs, January 4, 1918.)

So it is really puzzling. In some of our statements, you know, we say, well, the proper channel is through the Governor General and Her Majesty, or His Majesty. We think this is the fountain of justice. Great Britain. We are allied with them. It is supposed to be the fountain of justice.

So then, after they made an agreement, a treaty with the Six Nations after the revolution, and then there were some blocks sold, Grand River Tract. Also what SINCO has cut off at the end of what you call nickel line. Our length of the river here states 160 miles, through the records in the archives. There is a stretch of 40 miles past the nickel line which was never surrendered. But the government has used it and, I suppose, drawn revenue from it. For how many years now? That would be 199 years during which they have been drawing revenue from it, and these other six blocks which were supposed to have been surrendered to the Crown, I will just read part of that. I dug this up in some old books.

Block 1, 1798; 94,305 acres. The price was 8,841 pounds sterling; paid not a cent cash. Fortunate to secure a mortgage for the full amount. Deed shows fingerprints of 41 chiefs and Captain Brant.

Block 2; 94,012 acres. Only 600 pounds sterling paid. Balance never collected.

Block 3; to William Wallace: 86,078 acres. Price was 16,364 pounds sterling. No down payment made, or ever.

Block 4; 28,512 acres; Colonel Thomas Claus is supposed to have promised to be bound of 4,564 pounds sterling, due in 1000 years with annual pay of interest.

Is that not awful?

Block 5: 30,800 acres: price was 5,775 pounds sterling; 600 pounds sterling payment; forgot to make any further payment.

Block 6: 19,000 acres. Price 5,000 pounds sterling. Colonel Claus. Never collected a penny ÿ neither cash nor mortgage.

Forty miles past the nickel line was never surrendered or the source of the Grand River. And the record I have here ÿ the map of what was found in the archives, is 160 miles. So it is only 140

miles to nickel line. So there is 40 miles that has never been surrendered, but they are using it. And it has never been paid.

Now, in that time there were 10 military men. Out of the 10, there were three selections to look after the interests, to collect the unpaid surrenders and the interest and the leases. Out of those 10 men, there were three appointed: Alexander Stewart, for one: David William Smith was another: and Colonel William Claus was the third one selected to collect these unpaid surrenders, the interest and the leases and send it over to England. Our money went to England, every cent of it that was collected.

Alexander Stewart went back to England right after. David William Smith, it says in the records, went to the land of no return, wherever that is; I do not know. It left Colonel William Claus with sole control of everything. It mentions in there he never collected one penny of the unpaid surrenders nor the interest. He was taken over the carpets of the confederacy consul at the time with Brant, and Colonel Claus would never show up to give a record of what had been collected. He never showed up.

So there you are. So how much interest would that accumulate? Now, under the Indian Act, the Superintendent General of Indian Affairs has sole control of all moneys and lands. You cannot do anything unless he okays it. This is what I am talking about, this policy that you have to do what he says. Even if you make a decision your band council, they call it. There are some subjects they cannot get through; he will reject them. He has to okay everything. He has sole control of all land and moneys.

What was done in 1940? Colonel Randall was the superintendent at the time. He instigated what they called the location ticket and made everything Crown land, with the help of 10 councillors. One objected. A month later, at the next council, they were supposed to rescind the motion, and he told the councillors that it had already gone to Ottawa; they would not rescind it.

Why is it that the Indian Affairs superintendent has so much control that he made this Crown land? This is not Crown land; it is Six Nations land. We have a treaty for it. Why? This is what I would like to find out. Why is it?

All these other tribes across the country, in United States and Canada... They are trying to put us all in one pile under this proposed Indian Advancement Act. In Sections 82 and 83, they are going to tell the council that now we will put assessment on your property and your people. What does that mean? We tax your people. They are always asking for grants, core funding, education, welfare, road subsidies, everything. It is going to be just like any other municipality. In any other municipality, they get the grant from the federal and provincial governments. We will go easy on those Indians. We will give them about 90% of what they ask for for core funding for the coming year. Get the 10% from your people.

Now, that is what I have been wondering. Is that fair? I would like to hear some answers, too. We have been giving you what has happened. We have been telling you what has happened here and what the Two Row Wampum is all about, the Silver Covenant Chain, the circle.

I know the Two Row Wampum; it is my canoe, your ship. If I have one foot in my canoe and one foot in your ship, suppose a high wind comes. Waves will spread the ships and down I go. That is the interpretation of that Two Row Wampum.

You see it is a big question. But there is time to negotiate, as Mr. ...What is his name?

I have got good English there really. And I said, it is time, you can sit down and negotiate sure. We do not hate anybody. Let us play fair. Do not try to govern us. We can govern our own but do not make a policy that we are going to have to under the law, Canadian law. Our

confederacy dealt with Great Britain. There are no dealings at the Six Nations with the Canadian government. Never. Never any dealings with them. Our dealings were with the Great Britain. Our treaty.

So that is the same with the immigration law. Here is a true copy from the Treasury Department. Washington, D.C.:

Referring to the eleventh instant, addressed to the Secretary of the Interior, and by leave referred to this Department, in which you ask, in behalf of the Iroquois and other Indians in Canada, that they be relieved from all taxes, or duties in their trade and in intercourse with the people of the United States. I enclose herewith for your information that all Indians are free of duties passing or repassing the boundary lines of the United States and Canada, and also free of taxes, license in trading and selling beadwork, barkwork, baskets, snowshoes, moccasins, medicines, etc., etc., of their own manufacturing in premises. A copy of department reply thereto.

I am very respectfully,

J. F. Horthy. Assistant.

Here is another one. Our late Secretary of the time. He is dead now. This, is from Blackburn:

Dear Mr. Anderson:

Please find enclosed a copy of letter I received from Judd Buchanan, Minister of Indian and Northern Affairs. According to the Indian Affairs Department the Six Nation Reserve is in a special category as distinguished from other reserves and treaties. I trust this is satisfactory.

Sincerely,

Derek Blackburn.

Here is his reply:

Thank you for the letter of May 31 concerning one you received from Mr. Arthur Anderson, Senior, requesting certain information about the Six Nation tribe of Indians. The policy of the Canadian government is to honour all its continued lawful obligations arising from treaty or other form of agreement with the Indian people or Canada. A treaty signed with the Iroquois Confederacy, however, were agreements of peace and friendship, as well as trade and commerce, prior to 1783, and involved people of the Six Nations, the area comprising present day Pennsylvania, upper New York State, and the Ohio Valley region. The Canadian government does not have any active role to play in their local government or application in this respect, as this responsibility was assumed by the American authorities after 1783.

To accommodate their Iroquois allies who had fought in the British side during their American revolution, the British Crown set aside certain lands in Upper Canada for their exclusive use and benefit, first, in 1784, with the Six Nations reserve located at present day Brantford, Ontario. I am enclosing a copy of this land grant. I hope this will assist you in replying to Mr. Anderson.

There are a lot of things that have happened. Here is the deed for Manhattan, 1649: 6 fathom cloth for jackets, 6 do servant (wampum), 6 kettles, 10 knives, 6 addices, 6 axes, 10 bells, 10 corals or beads, 10 harrow teeth, 2 lbs. lead, 2 lbs. powder, 2 cloth coats, 1 gun. Deed for Manhattan 1649.

Here is a picture of the Confederacy Council as we sit. This was taken in 1898.

Another one here, pretty nearly the same. We have the Union Jack on there. Here is the pipe of peace, a photograph of it. Here is the friendship treaty, joining hands, our white brother and our red-skinned and the Two Row Wampum. That is an original photograph up there. Here is the registration of the Haldimand Treaty on March 5, 1795. Here is the reading of the length of the Grand River: that is in 1882: Chief A.G. Smith, Esq., Brantford, 160 miles.

Here is a notice of 1896:

To the People of the Iroquois Confederacy, residing on the Grand River Reservation in the Township of Tuscarora, Oneida and Onondaga, Province of Ontario:

That a General Council will be held in the Council House of the Six Nations, at Ohsweken, at 10 o'clock, a.m., sharp, November 23, 1896.

The firekeepers will promptly open the Council at this hour in due form.

The chief question to be submitted to the Council is whether it is the intention and purpose of those invited to maintain, or not, the ancient system of Constitutional Government which was formally recorded by means of wampum, strings and belts, but which has now been committed to writing, and which will be read to the people at the aforesaid Council.

The invitation is extended strictly to those Iroquois people who did not exercise the privilege of the Enfranchisement Act extended to the Indians by the Government of Canada, and the call is extended, in particular, to the women, who are by the said ancient Constitution made heirs and custodians of the Lordship titles, the ka-ya-ne'-da'-o-kouh.

And take you due notice that those Indians who have voted will not be permitted to take any part in aforesaid Council.

By order of the Iroquois People.

Here is another one in 1940. I remember so well ÿ I was a little bigger than a kid: of course, I am only 39. There was a notice at all the stores and corners, I guess.

NOTICE!

Owing to bills posted by Major E.P. Randall that Six Nations are required to register at the Council House, Ohsweken, on September 25th and 26th. Failure to do so subject to penalties.

At a duly called meeting of the Hereditary Chiefs, holders and Legal heirs of the Haldimand Treaty of 1784, Notice is hereby given to members of the Six Nations of Grand River not to register as Subjects, by reason of the following letter:

Department of National War Services

Ottawa, August 15th, 1940.

Arthur Anderson, Esq.,

Ohsweken, Ontario

Dear sir:

Your letter of August 12, addressed to the Prime Minister has been referred to this office for attention.

Treaty Indians are not required to register in connection with the national registration.

Yours truly,

(signed)

T.C. Davis

Associate Deputy Minister.

Done at the Onondaga Longhouse on September 22, 1940, Under the Seal of the Council.

I think that is about enough. I am talking too much now.

Mr. Antone: Thank you, Mr. Jamieson.

Before we close, I have three points I wanted to express. There was a point raised by one of the committee members about the flexibility of Canada in dealing with native people. I think also in that flexibility you have to recognize the diversity of native people in Canada and realize that the Haudenosaunee will hold fast to its diversity to other Indian nations. Some other areas that we did not talk about that are raised in some of the evidence that has been presented by Mr. Jamieson are in regard to land: the damages to the land, the land seizures, the illegal land transactions; the process of compensation for that, whether it is through your mother country or whether it is through your own country of Canada.

The other point that, I think, should be raised as an act of good faith to the Haudenosaunee if we are going to deal and build upon a trust between one another as nation to nation is the return of the wampum belts that have been seized by your government and by officers of your government, the return of religious items and of documents that have been seized in the illegal occupation of our country and of our governments. We would like included as a recommendation that, as an act of good faith, those things be returned to the Haudenosaunee and to their rightful owners of that material.

So in closing, on behalf of the Land Rights Committee and as citizens of the Haudenosaunee who are present here, we would like to thank you for the time that you have spent with us and the opportunity to express our concerns to the committee. We hope that in light of all the evidence that has been presented, there can be an ongoing relationship, whether it is in existence or not. But you must realize that there is going to be a relationship because we are going to always be here; we are going to always exist in the northeast of North America. Regardless of whether Canada or Great Britain recognizes us we will always be here. So we would like to share that and express that the discussions that were carried out were meaningful. There were no hard feelings expressed, and we hope we were able to help you understand our situation and what the future looks like as we see it in terms of our own development and our continuing existence as the Haudenosaunee.

So at this time we would like to traditionally close this meeting, which is our way.

The Chairman: Thank you.

Mr. Manly: Just on a point of order before that. Mr. Chairman, could we ask the Haudenosaunee to furnish us with an inventory of the wampum belts, the religious objects and the documents they would like to have returned.

Mr. Antone: Do you want that list today, or could we...?

Mr. Manly: No, that could be forwarded.

Mr. Antone: Forwarded to you. Okay.

The Chairman: At your convenience, yes.

Mr. Antone: We will do that.

The Chairman: If you would forward it to our clerk. Thank you very much.

Elder Venus Walker: (speaking in his native language)

The Chairman: The meeting is adjourned.