Conflicting Iroquois Governments and the Casino Issue

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The Constitution of the Iroquois Confederacy, the Kaienere'ko:wa, was ratified on August 31, 1142, at a sacred place in the village of Ganondagan, now the site of a football field in Victor, New York. Europeans living in North America learned about this the world's oldest living constitution when negotiating the Treaty of Lancaster in 1774, and Benjamin Franklin, who took notes on the proceedings, brought many of its tenets to his fellow Founding Fathers when they began to compose the United States Constitution. James Madison also was impressed with the Kaienere'ko:wa, and John Rutledge of South Carolina read lengthy portions of it to the other Founding Fathers. In October 1988 the Congress of the United States specifically recognized the influence of the Iroquois Constitution on the United States Constitution and the Bill of Rights.[1]

The ratification of this Constitution brought together under one government, the Rotinoshon:ni[2] (Iroquois Confederacy), five sovereign nations known in English, from west to east, as Seneca, Cayuga, Onondaga, Oneida, and Mohawk. They were joined in 1720 by the Tuscarora. To this day, under this living Constitution, all decisions are made not by voting but by discussion until consensus is reached – and, through the clan system, that discussion involves every citizen of the Confederacy. No action is taken by chiefs (equivalent to state governors) or nation councils (equivalent to state legislators) or the Tadodaho (equivalent to the President) or Grand Council (equivalent to the Congress) until and unless there is a clear consensus from the people.

This Iroquois Constitution and government, like those of many other Native nations, remain viable today. This government was recognized as the legitimate authority of a sovereign people by the United States under several treaties[3], treaties which the United States Constitution deems the "highest law of the land".

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[1] Concurrent Resolution 331.

[2] This is the Mohawk term; the Confederacy is also known by the Seneca term, Haudenosaunee.

[3] The 1794 Treaty of Canandaigua, for instance, ratified by the Senate and signed by President Washington, remains to this day relevant and operative in defining the territories of the six nations of the Iroquois Confederacy, as well as in specifically acknowledging the sovereignty of the Iroquois nations and committing the United States to relating with these nations on an equal-to-equal, government-to-government basis. Article III of the Treaty of Canandaigua acknowledges full sovereignty over the territorial holdings of the Iroquois nations: "Now, the United States acknowledge all the land within the aforementioned boundaries, to be the property of the Seneka [*sic*] nation; and the United States will never claim the same, nor disturb the Seneka Nation, nor any of the Six Nations, or of their Indian friends residing thereon and united with them in the free use and enjoyment thereof". Similarly, the Six Nations promise in Article IV not to claim any territories beyond these thus jointly recognized as their own. In no way is this treaty relegated to the dustbin of history. These are not a conquered people who lost their treaty rights; while most Iroquois remained neutral during the Revolutionary War, others, including the Oneida, were at Valley Forge as allies of General George Washington. To this day, under terms specified in Canandaigua, the United States continues annually to send $4,500 worth of treaty cloth (no attention being paid to the staggering diminution in real value of the dollar between 1794 and today). More tellingly, Canandaigua has been cited in recent case law, such as *Bowen v. Doyle* [No. 95-CV-00438, W.D.N.Y. (1995), Index No. 1994-12582]. That decision declared that "the New York State Courts lack jurisdiction to adjudicate a civil controversy ... that solely concerns issues of tribal self-governance as recognized and protected by the Treaty of November 11, 1794, 7 Stat. 44 [the Treaty of Canandaigua], and the Supremacy

Nevertheless, the United States has undermined this sovereign constitutional government and its recognition thereof in five significant ways: 1) By forcibly relocating large groups of Iroquois citizens, as well as others, far to the West in a bloody action known as the Trail of Tears; as a result, communities of Iroquois people severed from participation in the citizen-government of the Rotinoshon:ni are to be found in Oklahoma and Wisconsin and elsewhere. 2) By unilaterally abrograting its treaty responsibilities to them.[4] 3) By forcibly arrogating large tracts of sovereign territory – in New York state alone tens of millions of acres were seized after the Revolutionary War so they could be awarded to veterans at a time when the federal treasury was depleted by war, an action that has been repeatedly condemned as illegal by the Supreme Court of the United States.[5] 4) By forcing upon them a second governmental entity unrecognized by the sovereign nation, deliberately created as subject to the laws of New York and the United States, and dealing only with it, and not the legitimate, constitutional, treaty-recognized government of the sovereign Iroquois Confederacy.[6] 5) By conferring to states the right to negotiate casino agreements with sovereign Native American nations despite clear Constitutional impediments.[7]

Clause of the United States Constitution, and which is subject to adjudication in the courts of the Seneca Nation".

[4] Although in the late 19th century, most tellingly in the General Allotment Act or Dawes Act of 1887 [25 U.S.C. §§ 331-338], the Congress unconstitutionally awarded itself the power to unilaterally abrogate treaties through legislation alone and forcibly remove Native American peoples from their own land – without proper negotiation between equals, between sovereign nations – treaty relationships remain according to the U. S. Constitution "the supreme Law of the Land.

[5] The Supreme Court has on at least three separate occasions ruled that New York State violated the Trade and Intercourse Act of 1790 [1 Stat. 137] in illegally obtaining territory from the Six Nations of the Iroquois Confederacy without the required authorization by an act of Congress. These decisions include *United States v. Boylan*, of 1920, and *Oneida Nation v. County of Oneida*, in 1974 and again in 1985.

[6] The Mohawk Nation, for example, has its constitutional Mohawk Nation Council of Chiefs, authorized under the Kaienere'ko:wa. However, on the United States side of the border-straddling Akwesasne (St. Regis) Reservation there is also the so-called St. Regis Tribal Council, created by New York State in 1892 as the legal equivalent to a county government – and it is exclusively with this state-imposed non-sovereign entity that the state negotiates its casino deals. A similar forcibly imposed non-sovereign tribal council exists on the Canadian side of Akwesasne. New York State justifies its recognition of these pseudo-governments by pointing to the 1934 Indian Reorganization Act, or Wheeler-Howard Act [25 U.S.C. §§ 461-479], which repealed the devastating Dawes Act but authorized an almost equally injurious action: requiring all Native nations to elect a one-size-fits-all tribal council form of government, notwithstanding the assurances of recognized sovereignty made in many treaties. Elections staged by this St. Regis Tribal Council usually tally only a few hundred votes, even though there are several thousand potential voters.

[7] Article I, § 8, par. 3, of the United States Constitution reserves to the Congress the power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes". Article II, § 2, par. 2, reserves to the President, with the advice and consent of the Senate, and subject to ratification by a two-thirds majority in the Senate, the power to negotiate treaties with sovereign nations. Article I, § 10, par. 1, expressly forbids states from entering into any treaties with another government. Yet the Indian Gaming Regulatory Act specifically requires states to "negotiate with the Indian tribe [that applies for authorization of a Class III gambling facility] in good faith to enter into ... a Tribal-State compact governing the conduct of [Class III] gaming activities."

The government of the Rotinoshon:ni is politically and constitutionally opposed to casino gambling.[8] Given that this government is consensus-based, it is evident that many Iroquois people oppose gambling. The exceptions are: 1) The U.S.-imposed pseudogovernments of the Mohawk, Oneida, and Cayuga, and their supporters. 2) The leadership of the Seneca Nation, which separated itself from the Iroquois Confederacy in 1848. 3) The leadership of the Oneida of Wisconsin and the Seneca-Cayuga of Oklahoma, Iroquois communities separated by the Trail of Tears from the Rotinoshon:ni.

[8] The summary of the Grand Council's (federal government's) position on casino gambling, as written by Tadodaho (chief executive) Sidney Hill, is found at www.onondaganation.org/gov/policy_gambling.html