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ESSAY

The Haudenosaunee, Yesterday and Today: A Conflict of Concepts and Laws

CHIEF IRVING POWLESS JR.†

When the Creator sent the Peacemaker to us and he formed the Haudenosaunee he did not define sovereignty to our ancestors. I will not attempt to define sovereignty at this time either. I will state that the Haudenosaunee have always conducted themselves in a sovereign manner and that we are sovereign. The Peacemaker gave to the Haudenosaunee a way of putting leaders into place. He gave us Clan Mothers who would have special duties. One of these duties was to keep the positions of the leaders filled. We were given fifty positions among the various nations and these positions are still here today. Once they were established, these leaders were to look after the people and make decisions that would protect the people into the seventh generation.

The process of policy and procedure set in place by the Peacemaker for our people gave us the opportunity to conduct ourselves as a sovereign nation. This process set the ways for us to meet and interact with the various

† This Essay was originally delivered as a speech on March 21, 1998 at the *Buffalo Law Review* Symposium on Law, Sovereignty and Tribal Governance: the Iroquois Confederacy. As one of fourteen traditional chiefs of the Onondaga nation since 1964, I have been educated in the oral traditions of the Haudenosaunee.

I wish to thank the University at Buffalo Law School for this symposium on law. It is not very often that we get the chance to explain our position on the laws of the nation and the impact they have upon our people.

foreign nations that dealt with us at that time. This process is the same process we used to deal with the Europeans when they came into our territories. These people very quickly learned our process, and whenever they wanted to meet with the nations or the Haudenosaunee they sent a runner with wampum. When they gave their speeches, they used wampum to carry their words to us. We can read about these meetings and the speeches made to these people in the history books and journals of those who met with our ancestors.

The first treaty between the Haudenosaunee and Europeans was made with the Dutch. This treaty set the mode for all future meetings, interactions and treaties. We have followed the principles of this agreement to this day and will continue to follow the mandates of that agreement in the future. After this agreement and up until the Revolutionary War we made about fifty treaties with the Dutch, English and the French governments. All of these treaties are acts of sovereignty. We did not use the word sovereignty at that time and may not have realized that we were acting like a sovereign nation.

After the Revolutionary War there was much turmoil in the territories and it became necessary for us to make treaties with the newly formed United States. The three treaties that we made with the United States in 1784,¹ 1789² and 1794³ were acts of sovereignty. The treaties were made between two sovereign nations: the United States of America and the Haudenosaunee. We have continued to conduct ourselves as sovereign people from our very beginning up to today. We will continue to conduct ourselves as a sovereign nation in the future.

We have had many conflicts with the state and federal governments on issues that we interpret as violating our sovereignty and our treaties. One act of the federal government was the passage of a 1924 law that made the Indians United States citizens. A reading of the law mandates that in order for the Indian to become a citizen, he or she would have to apply for that right. It has come to be

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

2. Treaty With The Six Nations at Fort Harmar, Jan. 9, 1789, 7 Stat. 33 [hereinafter Treaty of Fort Harmar].

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

understood today that when this law was passed all Indians became citizens. The Haudenosaunee have never accepted this law. We do not consider ourselves citizens of the United States. This law is a violation of the treaties that we signed that prove that we are sovereign. Because we are a sovereign people, the United States cannot make us citizens of their nation against our will. We have not accepted the fact that the United States has that kind of authority over our people. I have never voted in any election of the United States, and I do not intend to vote in any coming elections. Most of our people have never voted in your elections. A few have, but there are not that many that have moved in that direction.

In 1942, there was a court case in the land of the Senecas: *United States v. Forness*.⁴ Forness lost this case and the Court ruled that the treaties of the Haudenosaunee are still valid. This, of course, upset the State of New York. In 1942 and every year thereafter the State of New York was in Washington, D.C. trying to get a law passed that would supersede that court decision. In 1948, the state finally succeeded in the quest for jurisdiction and the federal government passed 25 U.S.C. § 232 giving criminal jurisdiction over the New York Indians to the State of New York. They didn't even call us Haudenosaunee, the Iroquois, the Six Nations or the Six Nations Iroquois Confederacy. These are the names that we were known by. They called us the New York Indians. We have never given our criminal jurisdiction to the United States and therefore the United States could not give criminal jurisdiction to the State of New York. They cannot give something away when they did not have it in the first place. The State of New York continued to go to Washington, D.C., and in 1950 they got the United States to pass another law. This law is cited as 25 U.S.C.A. § 233. This law gave civil jurisdiction over the New York Indians to the State of New York. Both of these laws are violations of our sovereignty and our treaties.

Our leaders went to Washington, D.C. and protested the passage of these laws. We told the Senators and Congressmen that if they passed these laws the State of New York would tax us. The Senators told our leaders that this was not about taxation. It was only a means by which

4. 125 F.2d 928 (2d Cir. 1942).

we could use the courts of New York if we chose to do so.

In 1958, in some room, somewhere in Albany, New York, Edward Best, the Attorney General for the State of New York, rendered an opinion. He stated that it was his opinion that the New York State Indians should pay taxes. He rendered this opinion based upon the fact that he had criminal and civil jurisdiction over the New York Indians. So began the fight over taxes between the Haudenosaunee and the State of New York.

One of the first things that happened was the State of New York decided to collect its income tax the same way as the federal government. They would take the tax out of the workers' pay. When this happened, our people found themselves paying state income tax for the first time in their lives. We had never had to file before but now we had to file if we were to get any money refunded when they took too much out of our pay. Many people would not file for the refund because they felt that they did not have to pay taxes because of our treaties. The state then started to fine our people who did not file an income tax form. My father was one of those people who was fined. The Onondaga Nation decided to fight the income tax issue and my father agreed to be the one who would go to court. There is a court decision on this case. *Powless v. State Tax Comm'n.*⁵ The court ruled that Irving Powless Sr. was earning his money off of the reservation and therefore had to pay the income tax.⁶ My wife was working for the school here on the Onondaga territory and I was working for the railroad. We filed a joint return and I stated that my wife worked on the territory and did not have to pay income tax. The state agreed and they sent all of the money that they had taken out of my wife's pay back to us. The next year we did the same thing. This time they said that they made a mistake the year before, and I would have to send back to them the money that they had refunded to us. I said that I could not do that because I had spent the money. My wife and I did not make much money and we had no other taxes to pay because we lived on the Onondaga Nation Territory. We do not pay road taxes, water taxes, sales tax, nor do we pay school and property taxes. Because of this we filed the short

5. *Powless v. State Tax Comm'n.*, 22 A.D.2d 746 (N.Y. App. Div. 1964), *aff'd* 16 N.Y.2d 946 (N.Y. 1965)

6. *Id.*

form. Only a few lines were filed out. How much we made, how much they took out and how many dependents. We were audited eight years in a row. If I had money coming back it never came back until November. Not only did the state audit our returns but the federal tax department, the IRS, also got into the act and audited our federal returns for eight years. I wrote a three page letter to the tax department and explained that because of some recent court cases, the state could not tax the income earned by Indians on their territories. The tax department wrote back and said that these court decisions did not apply in New York. The Onondaga Nation then wrote a letter to President Nixon and requested the removal of the New York Taxation Department from our territory under Article 7 of the Treaty of Canandaigua of 1794.⁷ Three years later, the United States wrote a letter to the State of New York and informed the state that they could not tax the income of Indians working on their territories. The federal government noted the same cases that I had mentioned in my letter to the tax department as the reason they could not tax us. They asked the state how many years they would go back to return the money that they took from us. The state said that they would go back three years. Then the Attorney General of New York State wrote a letter to the Tax Department and informed them that they could not tax our income. The action by the Onondaga Nation was an act of sovereignty and was done to protect the people of the Onondaga Nation and the Haudenosaunee from paying state income tax.

The income tax case was in the 1960s, and since the state won this case they then came to Onondaga and informed our little grocery stores that they had to collect sales tax. Our people said "No. We do not pay taxes." The state even went to the New York State Fairgrounds and told our crafts people that they would have to pay sales tax on their sales of beadwork and crafts that they sold to the people. I had been asked to be one of the leaders of the Onondaga Nation and one of my first jobs was to go to New York City and talk to Omar Ghobashy, an international lawyer, to ask him to help us. Omar agreed and he talked to Louis Lefkowitz, the Attorney General for the State of New York. They agreed to settle the tax issue in the courts. We

7. *Supra* note 3.

picked Andrew Pierce as our champion and he agreed. We went into court in Syracuse and there, in 1966, we won our case on the sales tax. Judge Gorman ruled that the New York State tax usage laws 28 and 29 were "unconstitutional, illegal, invalid."⁸ This was in 1966. I have been fighting the State of New York taxation department since 1965. The number of the Pierce case was 3323 and so when our people asked for a tax number we made one up. The number was 663323. The 66 is for the year and 3323 is the case number. The State of New York says that this is a invalid number for tax-exempt sales but nevertheless it is the number that we use when we purchase items in the stores throughout the state. We have been able to do this by spreading the word of our position of being non-taxable people.

In 1971, the State of New York Transportation Department was putting a third lane along Route 81 for the slow traffic such as heavy trucks. They came to Onondaga to do the same thing on our territory. We told them that they could not do this because they did not have the authority to do this on our land. The Onondaga Nation and its supporters were on Route 81 for a period of six months. We would not allow our lands to be taken. We had a lot of support from the general public. We had people from California here at Onondaga. A sheriff nailed an injunction on the door of our Longhouse which prohibited the Onondagas from protecting their land. We ignored the injunction and went onto the highway anyway. The state took us to court and the court ruled against us. I went to New York City and talked to our lawyer Omar, and explained what the state had done. He said that he would talk to Judge James O'Donnell. The judge reopened the case and Omar presented our position. The Judge reversed his former decision and ruled in favor of the Onondagas. The Judge ruled that the Department of Transportation did not have the absolute right of eminent domain in the territory of the Onondaga and that they were to cease their work on Route 81 and remove themselves from our territory. This action by the Onondaga Nation was an act of its sovereignty to defend its territory. The court decision also proves that the land of the Onondaga Nation is not

8. *Pierce v. State Tax Comm'n.*, 274 N.Y.S.2d 959, 964 (Albany Co. Sup. Ct. 1966), *aff'd*, 29 A.D. 2d 124 (N.Y. App. Div. 1966).

part of the State of New York and that the state does not have total jurisdiction. On the day that the transportation department was to put the blacktop down on the third lane we had a number of trucks full of blacktop arrive at Onondaga. Also we had many troopers lined up on the highway. We heard later that it was their duty to kill the Onondagas and put the third lane in place. As we waited for the action to begin, the troopers suddenly left Onondaga and never returned. We did not know where they went. The asphalt in the trucks was starting to solidify so the truck drivers asked if they could leave. We removed the logs that we had placed in front of and in back of the trucks and then the trucks left. We stayed on the highway for the rest of the day but nothing happened. We finally went home and we turned on our TV sets and then we found out where the troopers went. The troopers had been sent to kill the Onondagas and put in the third lane. The troopers were called away and no one debriefed the troopers from their mission of destruction. These troopers that were at Onondaga were called to the riot at the Attica Prison. What happened at Attica Prison could have happened at Onondaga. The riot saved the Onondaga people who were acting as a sovereign nation.

We do have other court decisions like the three that I have just informed you about, but I will not refer to them at this time. In 1993, the Onondaga Nation closed the businesses that were not complying with the laws of the Onondaga Nation. When we did this the business owners sued the sheriff of Onondaga County. They claimed that the policy of the sheriff was in violation of their civil rights and they filed their case as citizens of the United States. The United States Justice Department was asked if they would comment on the policy. The United States Justice Department stated in its briefs that the jurisdiction of the State of New York was *not absolute but instead was concurrent*. This again confirms our position as sovereign. Rufus King, one of the founders of this country, in his notes at the time of the formation of the United States observed that the sovereignty of the United States is not absolute. He realized that there were sovereign Native Nations in the United States that America would have to deal with, and they would have to deal with these nations as equals, as sovereigns.

New York State has laws that violate our treaties and

our status as sovereign nations. They seem to ignore the obligations of the treaties signed by the United States, passed and ratified through acts of Congress, which are still in effect. We were told in 1954 by the Department of the Interior that the treaties of the Six Nations are as good today as the day that they were made. The state and federal governments seem to forget that we exist and so they pass laws that violate our status as sovereign nations. The Onondagas set out to change the sales tax laws that were in place in 1965. I made many trips to Albany on my days off from work. I worked for the railroad so I could travel on the train for free. I would travel to Albany and talk to the Tax Commissioner about our position. During this time, as I have mentioned, we were in the courts of New York arguing our rights. I explained our position on taxation to the tax department and after sixteen years of meetings the state finally changed their laws. They changed Chapter 530 of the tax laws and they made the Native Nation tax-exempt. They put us in the same category as a non-profit organization and they gave us tax-exempt numbers if we made an application for a tax-exempt number. The Onondaga Nation would not apply for a number. If we applied for a number, then the state could say, "No." We would not give them that opportunity. I convinced the tax department to assign a tax number to the Onondaga Nation. We did not apply for this number. This is again an action of a sovereign nation negotiating on behalf of and for benefit of its people. I continued to travel to Albany to explain that they were violating their own laws when they made us pay the sales tax on items delivered to our territories. Such items included cars, televisions, kerosene and even include services to our people such as electricity and telephones. I showed them how the state forms that they used for sales tax on cars would exempt us from paying the sales tax if they followed the procedure described on the form. The State finally agreed with me and we now have a form (DTS 801) that allows items to be delivered to our territories and we do not pay any sales tax on these items. This form has saved our people millions of dollars. I have been arguing with the State of New York as a member of a sovereign nation since 1965, and I have been able to negotiate and change the laws of the state for the benefit of our people. I will continue to fight the state as long as they try to tax our people, change our status as a

sovereign people or violate our treaties. Under Article 6 of the United States Constitution, our treaties are the supreme law of the land and no court can change our treaties.⁹

New York in its effort to collect the sales tax, then changed its laws on the sale of gas and cigarettes on our territories. This was done in 1989. It took until 1994 before the United State Supreme Court ruled in favor of the State of New York. Since that time the Governor of New York has been trying to find a way to collect the taxes. The Haudenosaunee as a sovereign entity met with the State of New York in order to make a trade and commerce agreement that would keep the sales tax out of our territories. This again was the action of a sovereign nation. We were doing the same thing that our ancestors did in the 1600s when they met with the Dutch, the English and the French. The Haudenosaunee made trade agreements. They made treaties. We have always had treaty-making powers and we still have the same powers as our ancestors. We succeeded in negotiating a trade agreement with the Governors' lawyers. This agreement allowed the nations to sell cigarettes without paying one red penny to the State of New York. This was a great victory for the Haudenosaunee. Before the agreement could be approved by the various nations in their Longhouses and finally adopted by the Haudenosaunee sitting in Grand Council, Governor Pataki announced to the public that he was amending the tax laws. He put this amendment before the Senate and the Assembly. The amendment would exempt from taxation all sales of cigarettes and gasoline made within the territories of the Haudenosaunee. This is exactly what we told Governor Pataki on the very first day that we met him. We explained to him that we were non-taxable people because we were sovereign nations. Our lands are not a part of the State of New York and that we have treaties with the United States. Because of this status, the laws of New York State do not enter into our territory. We would be willing to sit with him or his representatives to resolve the issues that exist between us.

Because we are sovereign nations with treaties with the United States, whenever we have an argument with the state or federal government over treaty obligations, the

9. U.S. CONST. art. VI.

courts must rule in favor of the Indians and must interpret the treaties as we understand the treaty, and not as the treaty is written.¹⁰

I thank the Law School again for this brief opportunity to explain some of the issues of the Haudenosaunee. I hope that we have been able to enlighten the students about a different concept of the laws and a different perception of the laws. It must be remembered that the territory of the Haudenosaunee is neither a part of the United States nor is it a part of the State of New York. Our territories are not held in trust by the United States like our brothers in the west. We have always expressed ourselves as sovereign people and we are not subject to the laws of the United States or the State of New York. History clearly defines our position and we continue today to express the same views expressed by our ancestors. We travel to foreign countries on our own passports. We still make treaties with the foreign nations here on Turtle Island and we can make treaties with the foreign nations of the world just as our ancestors did in the Seventeenth and Eighteenth centuries

We are a sovereign people. In *Pierce v. State Tax Comm* the court stated: "Legislation affecting Indians is to be construed in their interest."¹¹ It also stated "[s]eemingly, the Onondaga Nation, as an Indian Nation duly recognized by the United States Government, has the power of self government."¹² The court stated further that "[a] tribe has the ordinary powers of taxation over persons and property within its limits."¹³

We, the various nations of the Haudenosaunee, thank you.

Dawnaytoh.

10. *Jones v. Meehan* 175 U.S. 1, 11 (1899) (mandating that "[a] treaty [with Indians] must . . . be construed, not according to the technical meaning of its words to learned lawyers, but in the sense that they would naturally be understood by the Indians.>").

11. *Pierce*, 274 N.Y.S.2d at 961.

12. *Pierce*, 274 N.Y.S.2d at 962.

13. *Pierce*, 274 N.Y.S.2d at 963.