

# Decolonizing Indigenous Governance: Observations on Restoring Greater Faith and Legitimacy in the Government of the Seneca Nation

Robert B. Porter

## I. Introduction

Before the White Man arrived in our lands, we Indigenous people had our own ways of governing our societies. Unfortunately, the first explorers, missionaries, and settlers encountered by our ancestors had a difficult time observing, much less understanding, these forms and methods of government. After all, there were no written laws, courts, or other institutions with which they were familiar. But even in those cases when they could understand how we governed ourselves, they often consciously denied it when they reported back to their people. This was done to better demonstrate our lack of "civilization" and thus our ripeness for subjugation and exploitation. As a result, it was established early on in the colonial mindset — a mindset that still exists today — that "Indian" society was primitive and based upon mere "customs" and "practices" rather than the rule of law.<sup>1</sup> Law, because it could only be utilized by "civilized" peoples, simply was found not to exist.

Indigenous law and government did exist, of course, before the White Man came. Some Indigenous governments were simple, with extremely decentralized decision making processes and a minimum of formality and procedure.<sup>2</sup> Life in these societies, which may have involved a relatively few number of people, often dictated that government be flexible and exert minimal influence in lives of their citizens. Other Indigenous governments were complex and hierarchical with considerable formality in the collective decision making

process.<sup>3</sup> As a result, these relatively sophisticated governments allowed for greater organization and thus, greater capacity to exercise governmental authority over their own people, the land, and, sometimes, other peoples.

With the rapid ascendancy of the United States following its Revolutionary War, our nations began to feel the full impact of colonization's destructive influence. Military defeat, the loss of land, and the forced herding of our ancestors onto small reservations precipitated the breakdown of the traditional legal system and forms of government.<sup>4</sup> This transformation occurred at an even greater rate by the late nineteenth century with the imposition of colonial laws — such as the Code of Indian Offenses<sup>5</sup> — that made illegal much of our social activity, including some of our most sacred religious ceremonies.<sup>6</sup> In addition, the colonial overseer — the Bureau of Indian Affairs ("BIA") — co-opted our men to serve as the police, judges, and jailers for the enforcement of these colonial laws and the strengthening of the colonial regime.<sup>7</sup>

When one factors in the corrosive effect of America's various policies designed to ensure our eradication as distinct peoples — land allotment, forced "education" in the White Man's social and cultural ways, Christianization, and the granting of American citizenship<sup>8</sup> — by the beginning of the twentieth century, the trad-

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tional governing process within most of our nations had been virtually destroyed. In less than 100 years, our nations were transformed from vibrant societies able to address the needs of our people to remnants of their former selves heavily dependent upon the federal, and sometimes state, governments and their Indian affairs bureaucracies.

With the result painfully obvious, and with some political pressure to take action, federal officials came to the conclusion that 50 years of forced assimilation policies had been a failure.<sup>9</sup> In stark contrast to its prior policy, some federal officials, led by Indian Affairs Commissioner John Collier, began an effort to restore Indigenous self-government.<sup>10</sup> At his urging, Congress in 1934 enacted the Indian Reorganization Act ("IRA").<sup>11</sup> While the IRA officially ended the land allotment process, its most central provisions "allowed" an Indian nation to establish a constitutional form of government and to obtain a corporate charter for conducting business activities. This move furthered American colonial objectives because the Indian nations could have taken such actions unilaterally as an exercise of their inherent sovereignty. Moreover, the IRA was controversial because BIA officials often coerced many of the nearly 200 Indian nations that eventually availed itself of its provisions. Nonetheless, on the heels of the genocidal allotment policy, the IRA was an important tool for revitalizing Indigenous self government. Unfortunately, this revitalization effort reflected the vision of the White Man, not the Indigenous peoples who were affected by it.

Perhaps the biggest problem with tribal reorganization under the IRA was the fact that the constitutions recommended by BIA officials for adoption were fundamentally identical and explicitly preserved BIA oversight.<sup>12</sup> These constitutions provided for an elected form of government with only one branch — the council.<sup>13</sup> While the advising process engaged in by BIA officials produced modifications to the general constitutional form, for the most part, the unique governing traditions and structures of the Indian nation under "consultation" were ignored. Not all Indian nations, however, organized under the IRA. Some Indian nations formally rejected it and others simply chose not to take advantage of its provisions.<sup>14</sup>

As a result of the IRA's influence, as well as the other ways in which American colonialism has affected Indigenous governance, Indigenous nations within the United States today reflect a wide variety of governmental forms. These governments fall into three primary classifications, each differing in the degree to which colonization has transformed its aboriginal form.<sup>15</sup>

First, there are the *traditional governments*, which have not undergone significant formal changes as a result of American colonial influence. Second, there are the *autonomous constitutional governments*, which have undergone some changes as the result of colonization, but which have done so fundamentally as the result of internal processes of change. And third, there are the *dependent constitutional or corporate governments*, which were formed in reliance upon federal or state laws such as the IRA or the Alaska Native Claims Settlement Act ("ANCSA").<sup>16</sup>

Not surprisingly, the transformation of Indigenous tribal government as a result of American colonization has had a number of effects on the manner in which contemporary

tribal governments function. One of the most critical changes, in my view, is the manner in which power has been redistributed within Indigenous societies through the disruption of the traditional method of checks and balances. For some Indigenous nations, there was a radical transformation from a decentralized form of government where power was widely shared, and thus inherently checked, to one in which power was concentrated in a handful of individuals with little or no accountability to their people.

One of my primary concerns is whether this governmental transformation is the cause of the crippling division and distrust of tribal government now observed in many Indian nations. It seems perfectly reasonable to conclude that one of colonization's most damaging effects has been to a delegitimize and weaken tribal government and thus, to undermine governmental effectiveness, sovereignty, and maybe even the future existence of the tribe itself.<sup>17</sup> Because this outcome seems likely to me, I believe that almost all Indian nations would be well served by restructuring their governments. Given the way in which most of these governments were forced upon their Indigenous hosts, it is hard to imagine that many of them are widely perceived by their people as legitimate.

Legitimacy is a terribly important requirement for governmental effectiveness. As Russel Barsh has explained, for any government to be effective — that is, "to make things happen" — it must have adequate power, resources, and legitimacy.<sup>18</sup> Legitimacy is defined as "public confidence in and support for the government" that "can arise from the way leaders are chosen, the extent to which

they respond to public wishes, whether they succeed in satisfying public expectations, and whether they respect human rights."<sup>19</sup> With legitimacy, resources and power are enhanced; without it, "leaders must work against public resistance, and expend more power and resources to get things done, if at all."<sup>20</sup>

One way in which to approach the issue of promoting greater legitimacy in tribal government is to consider reincorporating notions of the aboriginal governing process into modern governmental institutions.<sup>21</sup> In this article, I plan to discuss this proposition, but not against a general backdrop of what might be good for all Indian nations. With hundreds of different Indigenous nations to deal with, it would not be appropriate to paint with too broad a brush and draw conclusions that might be relevant for one particular Indian nation but not another. Accuracy would require a great deal of study and investigation within a particular Indian nation to know exactly what kind of action should be taken to reincorporate traditional governing concepts. Thus, in this article I will focus attention on the government of only one specific Indian nation — the Seneca Nation of Indians. In doing so, my objective is to develop an analytical approach that might be useful to others looking to initiate a governmental reform process within their own Indigenous nations.

Part I of this article will set forth a conceptual model for the analysis that follows. Because the history of Seneca governmental development is considerably different from that described above, Part II will describe the historic governing traditions of the Seneca People under the *Gayonzhagowa*, or Great Law of Peace, and how power was distributed and

checked under that form of government. Part III will describe the governmental transformation that occurred within the Seneca Nation during the nineteenth and twentieth centuries. Part IV will highlight the primary effects of this governmental transformation on Seneca society and Part V will set forth recommendations for restoring greater faith and legitimacy in Seneca Nation government.

## II. Conceptual Model

Indigenous societies, as with all human societies, have a particular manner in which they are structured. Fundamentally, this social structure is determined by the behavioral patterns, or social formations, that exist within the population. In a naturally evolving society, these social formations flow from the basic activities engaged in by members of the society to survive and thrive. Thus, for example, how basic needs are distributed, how those needs are satisfied, who has the power to make decisions and take action, and how competing interests and disputes are redressed all shape the behavior engaged in by individuals. When viewed cumulatively, these social formations reveal certain natural "cleavages" within the society, or, in other words, the points at which members of the society negotiate and compromise with one another in order to accomplish important societal objectives. Cleavages may thus be represented by such things as age, kinship, gender, and duty.

For a society to avoid internal fragmentation and decay, and thus ensure its long term survival, the political infrastructure of the society must be in accord with the natural cleavages that exist within it. Or put another way, the formal system of distributing power and imposing "checks and balances" on that power must be

based upon the actual cleavages that arise out of its social formations. Failure to do so not only will result in conflict amongst the cleavages and within them, but can also lead to the destruction of the society itself. What is most damaging in this process is the fact that the resulting conflict is not of the ordinary variety and thus may not be effectively handled and redressed by the society itself.

Colonization is the involuntary exploitation of or annexation of lands and resources belonging to another people of different race or ethnicity and the involuntary expansion of political power over them with the partial or complete displacement of their prior political organization.<sup>22</sup> By design, colonization has the effect of disrupting the underlying social formations and affecting the cleavages that exist within the target society. Naturally, the degree to which this disruption occurs is a reflection of the intensity and direction of the colonial activity itself. Aggressive, direct efforts at transforming the target society's social formations will naturally have a greater disruptive impact than passive, indirect efforts.

Viewed this way, the efforts taken by the United States to transform Indigenous governance have misaligned the cleavages that exist within Indigenous societies. In the most dramatic instances, such as the imposition of constitutional governments under the IKA or the imposition of corporate governments under ANCSA, the distribution of power and the system of checks and balances that previously existed has been disrupted by the superimposed colonial superstructure. The establishment of these new and foreign governmental processes—primarily "statism" enhanced by "centralism" (majority rule)—has changed the

alignment of the cleavages that existed within the affected societies. Not only has this realignment induced conflict within the society, but it has also initiated a process of transforming underlying social formations. While it is possible that this transformation might have been so complete as to totally eliminate the traditional cleavages in a particular indigenous society, to the extent that this transformation has been incomplete, there should remain some aspect of that society's pre-colonial social structure.

Restoring greater legitimacy in Indigenous government requires that the distribution of power and the checks and balances on that power be realigned with the cleavages that now exist within the Indigenous society. To be sure, these cleavages would unlikely be the same as those that existed prior to colonization. The natural process of societal change, as well as the generations of colonial influence would have had a considerable transformative impact on those cleavages. But for an Indigenous society to be strong and immune from inordinate conflict and thus put in the best position to survive colonization, it must be made more legitimate through a process of redeveloping its governmental institutions in a way that forces the underlying quasi-colonized social formations to negotiate and compromise with one another. Foremost, this will require that the traditional cleavages—like age, kinship, gender, and duty—be reconciled with the statism and electoralism that has emerged in the twentieth century. The following is an analysis of how this process might occur within the Seneca Nation of Indians.

### III. Seneca Government Under the Gayanashgowa

#### A. An Overview of Seneca Government

The Seneca Nation has existed as a separate sovereign nation for over 500 years.<sup>23</sup> During 350 of those years, the entirety of the *Ondowaga*<sup>24</sup>—the Seneca People—were organized as a member nation of the historic Six Nations of the *Haudenosaunee*, or Iroquois Confederacy.<sup>25</sup> Since 1848, however, the Seneca People have been split into two distinct political entities—the Seneca Nation of Indians and the Tonawanda Band of Senecas. This separation originated with the Senecas living at the Allegany and Cattaraugus Territories establishing a constitutional republic in 1848 and the Senecas living at the Tonawanda Territory retaining the traditional form of government. As a result, the Seneca Nation of Indians is a nation separate and apart from the Confederacy, while the Tonawanda Band of Senecas remains a member nation.

Most of what is known today about pre-colonial Seneca Nation government relates to Seneca involvement in *Haudenosaunee* confederate affairs and not from conceptions of pre-colonial Seneca national and village government. The *Gayanashgowa* was as much a philosophy as it was law and its sophisticated governing apparatus affected not just the political, but also the social and cultural life of all *Haudenosaunee* people.<sup>26</sup> As a reflection of this influence, the *Gayanashgowa* required that each of the Confederacy's component nations comply with its provisions not just in confederate relations, but also with regard to internal governmental affairs.<sup>27</sup> As a result, an analysis of the *Gayanashgowa* and its impact on *Haudenosaunee* life should be particularly helpful in understanding Seneca political philosophy, the way in which Senecas governed

for hundreds of years prior to the revolution in 1848, and the establishment of the Seneca constitutional republic.

#### B. *Origins of the Gayanashagowa.*<sup>28</sup>

According to *Haudenosaunee history*, the *Gayanashagowa* was a gift from the Creator for the purpose of saving the people of the Six Nations from destroying themselves. As the story of the Confederacy's founding is told:

[W]hen the Confederacy was formed, it was a time of great sorrow and terror for the Haudenosaunee. All order and safety had broken down completely and the rule of the headhunter dominated the culture. When a man or woman died . . . [t]he aggrieved family then sought vengeance and a member set forth with the purpose of finding [an] unsuspecting and arguably innocent offender and exacting revenge. That killing sparked a spiral of vengeance and reprisal which found assassins stalking the Northeastern woodlands in a never ending senseless bloodletting.<sup>29</sup>

Against the grisly backdrop of cannibalism and civil war, a young man, born of mysterious circumstances and known outside of Iroquois ceremonies only as the "Peacemaker," brought a powerful message to the survivors of this tribal warfare: "all peoples shall love one another and live together in peace."<sup>30</sup> Under the *Gayanashagowa*, then, peace "was the law" and the affirmative objective of government.<sup>31</sup> So dominant was this philosophy that its pursuit affected the entire range of *Haudenosaunee*

international, domestic, clan, and interpersonal relationships. After years of effort, the Peacemaker eventually brought together the leadership of what was to become the Mohawk, Oneida, Onondaga, Cayuga, and Seneca nations. Solely on the basis of his teachings, these five nations formed a great alliance that was dedicated to perpetuating the message of peace through unity and strength.

Peace was relevant not just to the establishment of the *Haudenosaunee*, but also to its perpetuation. Foremost, the *Gayanashagowa* was a tool of government and frequently has been referred to as the *Haudenosaunee* Constitution.<sup>32</sup> As such, it sets forth a variety of mechanical rules governing the process by which the member nations address confederate affairs, including the management of diplomatic and military relations with the other continental powers, trade relations with governmental and private interests, and colonial relationships with client tribes.

Thus, the Peacemaker also defined a governmental process through which this message of peace could be brought into practice.<sup>33</sup> The Longhouse, which was the traditional *Haudenosaunee* dwelling, had many fires and was designed to ensure that those residing within it could "live together as one household in peace."<sup>34</sup> This structure was borrowed as the model for the governing process to ensure that the *Haudenosaunee* would "have one mind and live under one law" and to continually reaffirm that "thinking shall replace killing, and [that] there shall be one commonwealth."<sup>35</sup>

#### C. *Governmental Structure and Procedure Under the Gayanashagowa.*

*Haudenosaunee* confederate government is comprised of a council — called the Grand Council — having as its members 50 chiefs, or *royaneh*.<sup>36</sup> The leader of the Grand Council is the *Tadadaho*, who is an Onondaga. Each of the *royaneh* has a predecessor. The *royaneh* are all men, but are selected by the women from his nation whose family "holds" the particular title.<sup>37</sup> Once selected, he must go through a condolence ceremony to be properly seated in the Grand Council. Each nation is represented in the Grand Council, but in differing numbers.<sup>38</sup> This discrepancy in the number of *royaneh* from each nation has little practical effect as decisions are made collectively with each national delegation having but one vote.

In addition to the *royaneh*, each nation may also be represented by "pine tree chiefs," who are non-hereditary officials selected by the Grand Council to assist the *royaneh* in carrying out Confederacy affairs.<sup>39</sup> In addition, each nation has one war chief who is responsible for carrying messages to the Grand Council and to conduct war in cases of emergency, but who otherwise do not participate in the deliberations of the Council.<sup>40</sup>

Consistent with the symbolism of the Longhouse, the Mohawks — as the easternmost nation — are known as the "Keepers of the Eastern Door" and an "Older Brother." The Onondagas, also an "Older Brother," are known as the "Keepers of the Fire." And the third "Older Brother," the Senecas, are also known as the "Keepers of the Western Door." Each of these nations has special roles by virtue of their status within the Confederacy. The Mohawks are the leaders of the Confederate Council and are required to attend all meetings and to initi-

ate all deliberations. The Onondagas, in particular the *Tadadaho*, have special responsibilities as the final arbiter of Grand Council decisions. The Senecas have the power to declare war on behalf of the Confederacy.

In addition to the structure of the Grand Council, the manner in which decisions are arrived at reflects a commitment to peace. Unlike the system of majority-rule utilized by Euro-Americans,<sup>41</sup> the *Haudenosaunee* have relied upon a governing process that is both dependent upon and designed to achieve consensus. Actions cannot be taken unless there is unanimity amongst the national delegations and its leaders of "one mind."<sup>42</sup>

In order to facilitate the development of consensus, the Longhouse, the location at which Confederate Council meetings are held, is structured so that all debate takes place "across the fire."<sup>43</sup> Discussion on a particular subject will be carried through three separate and elaborate stages until consensus is reached. Wallace describes this process as follows:

First, each national delegation discussed the proposition and came to a conclusion so that it might speak with one voice. Second, the national unit compared its conclusions with that of its "brother" (the Mohawk with the Seneca, the Oneida with the Cayuga), in order that each side of the fire might speak with one voice. Then the Mohawks, as representing the Elder Nations, handed the joint decision of Mohawks and Senecas across the fire to the Oneidas, who received it on behalf of the Younger Nations. If the Younger Nations agreed, the matter

was handed back across the fire to the Mohawks, who announced the agreement to the Onondagas, and the presiding officer, who inherited the title of "Aotiarho" [*Tadadaho*], declared the matter settled.<sup>44</sup>

As might be expected, there is often disagreement which impedes the discussions.<sup>45</sup> Depending upon the stage at which the discussion breaks down, the matter will be referred back to the point at which the process ceased. If, however, it is not possible to achieve unanimity, the matter will be laid aside until a later time.<sup>46</sup> Historically, unreasonableness in this process is not tolerated and any "sachem"<sup>47</sup> so acting would have "Influences . . . brought to bear on him which he could not well resist."<sup>48</sup>

This elaborate decision-making process, which focuses on achieving unanimity amongst all of the *royaneh*, ensures that the official positions taken by the Confederacy carry the full support of all of the member nations and their people. Under this system of government, when decisions are reached, they have been extremely well discussed, with each of the nations fully informed of the competing considerations and solidly behind any chosen action. This deliberative process facilitates the compromises and accommodations necessary to achieving "one mind" regarding any planned actions.

Because it is not possible for the Confederacy to act without all nations being in agreement, there is no risk that a decision could be perceived by a political minority as being illegitimate. Commensurately, the fact that minority positions have veto power ensures that power is exercised wisely and deliberately.<sup>49</sup>

This consensus oriented decision-making process allowed for such a concentration of political strength that the Confederacy was a dominant power in the eastern portion of the North American continent for over 300 years.<sup>50</sup>

Because of its foundational belief that all human beings have the power of rational thought and that all significant decisions must be achieved through consensus, pre-Colonial *Haudenosaunee* society was afflicted with relatively little interpersonal conflict and few transgressions of community norms.<sup>51</sup> Individual behavior was governed by a strong unwritten social code that relied upon social and psychological sanctions, such as ridicule and embarrassment, as the primary methods of enforcement.<sup>52</sup> Behavior was governed not by published laws enforced by police, courts, and jails, but by oral tradition supported by a sense of duty, fear of gossip, and fear of retaliatory witchcraft.<sup>53</sup>

#### D. Distribution and Accountability of Power Under the *Gayanashagowa*.

The most critical component of pre-Colonial *Haudenosaunee* strength under the *Gayanashagowa* was the commitment to pursuing peace through consensus-oriented decision-making. Because Confederate action could not be taken until consensus had developed, by definition, the power of all of the *Haudenosaunee* people could be directed towards the agreed upon course of action. This was certainly a difficult and time-consuming process, given the clashes naturally associated with political personalities who rely upon speech-making, diplomacy, and hardball politics to accomplish their objectives.

A closer look at the structure of the *Gayanashagowa* reveals that power was widely distributed throughout *Haudenosaunee* society. Men, women, *royaneh*, pine tree chiefs, war chiefs, warriors, families, and the various clans all had a share of the political power. As an important threshold matter, all of the major political constituencies then had a voice in deliberations on matters of public concern, and indeed, exercised a virtual veto over any proposed course of action. Or, viewed another way, no group had so much power that it was able to unilaterally force its will upon the other groups within the society. Progress — which could only be defined as progress for everyone — required that each of the disparate political interest groups find ways to compromise and find agreement with one another.

In addition to being widely distributed, power was also narrowly channeled and separated to ensure that each major political group had at least one other group as an opposing check and balance. This check on the exercise of power existed on a variety of levels within *Haudenosaunee* society (confederacy, nation, village, longhouse) and was thus another important component to ensuring that the decisions made by the Grand Council had wide public support.

Power was distributed and kept in check within *Haudenosaunee* society in four primary ways: (1) by gender, (2) by clan and family, (3) by government function, and (4) by nation. The following is an overview of how this occurred.

##### 1. By Gender.

The *Gayanashagowa* assigned governmental duties and responsibilities on the basis of gender. All of the official positions within the government — the *royaneh*, war chiefs,

pine tree chiefs, and warriors — were held by the men. Women, however, did have a central role to play in governmental affairs as they were responsible for selecting the *royaneh* and the war chiefs and had the power of removing the officials if it was deemed necessary.<sup>54</sup>

In addition to serving as and selecting the leadership, men and women within each clan were required to have their own councils from time-to-time to discuss the clan's welfare.<sup>55</sup> In emergencies, such as when the *royaneh* failed to heed the warnings of their female relatives, both the men and women of the Confederacy would meet in their own separate councils to discuss the matter and give notice and warnings to the *royaneh* to take corrective action.<sup>56</sup>

As a practical matter, then, women not only played a role in *Haudenosaunee* government, they were fully equal participants. The *royaneh*, accordingly, had no direct power over women in *Haudenosaunee* society and were thus required to respond to the political concerns of the women and incorporate their views into the decision-making process to prevent their removal from office. In sum, while the men had the ultimate responsibility of holding council — with the diplomacy and speech making attendant thereto — the women were very much the critical influences upon what was said and whether those doing the speaking were to continue doing so in the future.

##### 2. By Clan and Family.

Political relations within *Haudenosaunee* government were heavily dependent upon a clan and family structure. The clan was both a separate political unit and a source of kinship relationships throughout the Confederacy.<sup>57</sup> As a political unit, the clan — through certain fami-

lies vested with the hereditary titles — was responsible for selecting chiefs and war chiefs.<sup>58</sup> In addition, the decisionmaking process incorporated a clan role, with both women's councils<sup>59</sup> and men's councils<sup>60</sup> always in operation to discuss clan welfare. Any decisions arrived at by these clan gender councils that included a recommendation for Grand Council action would be taken by that nation's war chief to the Grand Council.<sup>61</sup> Because no one clan in any nation comprised more than one-third of the total clans,<sup>62</sup> the clan structure imposed an important limitation on the exercise of political power.

### 3. By Governmental Function.

Another important separation of political power within *Haudenosaunee* government was on the basis of governmental function. The following are distinct governmental functions that were allocated amongst the different political constituencies within *Haudenosaunee* society.

#### a. Decisionmaking/ Lawmaking.

Decision-making authority within each nation was not centralized in the Grand Council, but was instead vested in a variety of different groups. Each of these groups had the authority to participate in the decision-making process depending upon the nature of the decision and the degree to which people would be affected by it. Thus, while decisions on behalf of the entire Confederacy were made by the *royaneh* sitting in Council, decisions on behalf of a particular nation would be made only by the *royaneh* of that nation in consultation with the people of that nation. Decisions affecting the clan would be made through the men's

council or the women's council of that clan. And decisions involving *royaneh* and war chief selection and removal were made solely by the women of the family holding the particular title. Accordingly, this process ensured that decision-making authority was widely distributed throughout *Haudenosaunee* society and thus, was extremely democratic.

#### b. Law Enforcement/Peace.

The power to conduct war was not vested in the Grand Council, but was instead vested in the War Chiefs and executed by the warriors. *Skaniwarith*, who was the only *royaneh* to also hold the title of War Chief, was responsible for declaring war.<sup>63</sup> In the event that war was declared, he was responsible for notifying the other five War Chiefs (serving as a Council of War Chiefs), to begin preparations.<sup>64</sup> During a time of war, all men had the responsibility to serve as warriors of the Confederacy under the direction of their national War Chief.<sup>65</sup> So strict was the separation between the diplomatic functions of the Grand Council and the war power of the War Chiefs and warriors, that *royaneh* who wished to go to war had to temporarily relinquish their title.<sup>66</sup>

#### c. Representation.

Each political group within *Haudenosaunee* government had different constituencies to which they were held accountable. Only the *royaneh*, who each held their titles as national representatives, were responsible for serving all of the people in the Confederacy.<sup>67</sup> In contrast, the War Chiefs for each nation were only responsible for representing the interests of people of their own nation.<sup>68</sup> So too with the other political groups,

such as the clans, the women, and the men, which were only accountable to their membership.

#### d. Agenda Setting.

The Grand Council did not set its own agenda. Instead, the War Chiefs of each nation were responsible for determining what business would be taken up by the Grand Council.<sup>69</sup> Individuals, however, could also bring matters before the Council.<sup>70</sup>

#### e. Leadership Selection and Removal.

*Royaneh* were selected by the women of the clan holding a particular title.<sup>71</sup> These same women also had the authority to remove the *royaneh* that they had installed.<sup>72</sup> In certain instances of removal, however, such as when the *royaneh* has failed to serve the people or to follow the *Gayanashogowa*, the women could remove the *royaneh* only after warnings issued by the men, the women, or the Council of War Chiefs failed to have any effect.<sup>73</sup>

#### 4. By Nation.

The *Gayanashogowa* was structured so that each nation had a veto power over any Confederacy decision. Thus, in the Grand Council's decision making process, it was necessary for a nation seeking to move the Confederacy to action to obtain the assent of every other nation.

#### IV. Seneca Governmental Transformation

##### A. Societal Change and the Seneca Revolution of 1848.

Despite the fact that pursuing peace was the foundation of *Haudenosaunee* strength, it

was also its weakness. With the onset of the American Revolutionary War, the *Haudenosaunee* were torn apart because of the tension associated with its long-standing relationship with Great Britain and the American colonists.<sup>74</sup> Many Oneidas and Tuscaroras chose to side with the Americans; the Mohawks, Onondagas, Cayugas and Senecas sided with the British.<sup>75</sup> Unable to maintain a unified diplomatic position, the *Haudenosaunee* were unable to repel American military power.<sup>76</sup> The British made no provision for their *Haudenosaunee* allies in the Treaty of Paris in 1784 and so the *Haudenosaunee* entered into their own treaties with the United States to secure the peace.<sup>77</sup> The emergence of factionalism and division within the Confederacy, however, resulted in almost all *Haudenosaunee* land being lost, its members scattered throughout small reservations in upstate New York and Canada, and the *Gayanashogowa* being abandoned for a time within a 20 year period following the War.<sup>78</sup>

The early years of the nineteenth century were difficult for the Seneca People, with additional lands being lost and the traditional way of life continuing to decay. A major event in Seneca history occurred in 1799, when Handsome Lake, the half-brother of the Seneca War Chief Cornplanter, had the first of a series of visions that not only described the sorry condition of Seneca society at the time but also proscribed religious and secular solutions. Handsome Lake was to have subsequent visions, which eventually formed the basis of a social gospel and a new religion, the *Gawwio*.<sup>79</sup> In 1801, Handsome Lake set forth his social gospel. He called for considerable changes to be made in Seneca society, much of

which reflected the assimilationist views of his brother, the Quakers, and federal officials. For example, he called for an emphasis on the nuclear family with the husband-wife relationship at its center. This was in contrast to the extended kinship relationship focused on an elder female that had previously been the hallmark of Seneca society.<sup>80</sup> In addition, he called for a transformation of gender roles, with men rather required to be successful farmers, to build houses for his wife and family, and for women to be homemakers.<sup>81</sup>

Handsome Lake's gospel was effective, and "[w]ithin a generation, the transition from matrilineal extended family household to nuclear family household was complete, with families eventually becoming patrilineal with respect to name and inheritance."<sup>82</sup> So great was the change, that it has been argued that Handsome Lake's reforms were "a sentence of doom on the traditional quasi-matrilineal system."<sup>83</sup> While women maintained roles in the new religion, their economic roles had been radically transformed.<sup>84</sup>

Change in Seneca society continued to occur rapidly throughout the first half of the nineteenth century. Eventually, these changes ignited a series of events that resulted in the overthrow of the traditional Seneca leadership provided for under the *Goyanahogowa* and the establishment of a constitutional republic, the Seneca Nation of Indians, in 1848.<sup>85</sup>

The efforts to displace the traditional government of the Seneca Nation were spawed primarily by the perception that the traditional leadership had betrayed the Seneca People. One of the main issues of contention related to whether the treaty annuities received from the federal and state governments should be dis-

tributed to the heads of households or kept by the leadership for governmental purposes.<sup>86</sup> It was widely believed, however, that the chiefs were appropriating the annuities for themselves. The second major issue was the acceptance of bribes by the chiefs,<sup>87</sup> and their consequent agreement to sell all remaining Seneca lands and to remove all Senecas in New York to Kansas under the 1838 Treaty of Buffalo Creek.<sup>88</sup>

In 1842, the so-called "Compromise Treaty" restored Seneca ownership to the Allegany and Cattaraugus Reservations by agreeing to relinquish claim to the Tonawanda and Buffalo Creek Reservations.<sup>89</sup> Three years later, however, the state of New York, urged on by those Senecas disgusted with the traditional leadership, passed a law that fundamentally altered the Seneca government. The statute provided for new officers of the Seneca government—a clerk, a treasurer, six peacekeepers, and two marshals—to be selected from the traditional chiefs.<sup>90</sup> Furthermore, it defined the duties of the existing chiefs and the new officers.<sup>91</sup> Not surprisingly, two factions of chiefs emerged—those in favor of the "Law" and those who were "Anti-Law"—split along the lines of who had been put in power under the "Law."<sup>92</sup> By 1847, a compromise between the factions had emerged that called for no changes to be made to the 1845 Law. Nonetheless, the State acted unilaterally to amend this law and provide for the popular election of the positions of clerk,<sup>93</sup> treasurer,<sup>94</sup> marshal,<sup>95</sup> and peace-maker<sup>96</sup> that had been earlier provided.<sup>97</sup>

On December 4, 1848, the Seneca Republic was established when a Constitution was adopted at the Longhouse at the

Cattaraugus Reservation. The purpose for the Revolution and the adoption of a constitutional form of government was set forth in the preamble:

We, the people of the Seneca Nation of Indians, by virtue of the right inherent in every people, trusting in the justice and necessity of our undertaking, and humbly invoking the blessing of the God of Nations upon our efforts to improve our Civil condition, and secure to our nation the administration of Equitable and wholesome laws, do hereby abolish, abrogate and annul [sic] our form of Government by Chief's, because it has failed to answer the purpose for which all governments should be created. It affords no security in enjoyment of property—it makes no laws regulating the institution of marriage, but tolerates polygamy. It makes no provision for the poor, but leaves the destitute to perish. It leaves the people dependent upon foreign aid for Education. It has no judiciary, nor executive departments. It is an irresponsible, self constituted aristocracy. Its powers are absolute and unlimited in assigning away the people rights, but indefinite and not exercised, in making municipal regulations for their benefit or protection. We cannot enumerate the evils growing out of a system so defective, nor calculate its overpowering weight on the progress of improvement. But to remedy these defects, we proclaim and establish the following Constitution or Charter, and

imply the Governments of the United States and the State of New York to aid in providing us with laws under which life shall be possible.<sup>98</sup>

#### B. *The Seneca Constitution of 1848*

The new Constitution was an obvious reflection of colonial influences since it was loosely modeled after the American Constitution and its three separate branches of government: a council, possessing the legislative power,<sup>99</sup> a president, possessing the executive power,<sup>100</sup> and a peacekeepers and surrogate courts, possessing the "judiciary" power.<sup>101</sup> These branches of government, however, while separate, were not independent. The president presided over and could vote with the council, and the council was to hear appeals from the peacekeepers and surrogate courts.

With little surprise, given the State's prior legislative influences, other provisions in the new Constitution included the positions of treasurer, clerk, and marshal.<sup>102</sup> These and the other defined positions were to be elected from the territory in which they resided. And perhaps most dramatically only men could serve and vote. Aside from various amendments over the years, the fundamental structure of the Seneca Nation government as set forth in the 1848 Constitution has continued to the present day.

Upon the Constitution's adoption, the most pressing concern for the new officials was obtaining recognition of the new government by the federal and state governments. This recognition, which soon followed,<sup>103</sup> was not easily obtained because the Constitution had been adopted with only a bare majority of sup-

port amongst the Seneca People.<sup>104</sup> In the years immediately following its adoption, the "old" chiefs and their supporters (including the Orthodox Quakers) vigorously opposed the new constitutional system. At one point early on they even formed their own party, won the election, and unsuccessfully tried to disband the constitutional system.<sup>105</sup> But Constitutional restrictions on the ability to amend the Constitution were a key determinant in the failure of the "Old Chiefs Party" to disband the new government. Perhaps most critically, the federal and state governments in the years following the Constitution's adoption continually reaffirmed its support by rejecting the efforts of the "Old Chiefs Party" to de-recognize the new government.<sup>106</sup> The federal and state governments even provided funding to help support the newly emerging electoral process.<sup>107</sup> Eventually, "the Chiefs, except for an attempt in 1864, never again made an attempt which seems to have been taken seriously to regain the reins of government."<sup>108</sup>

For 150 years, the Seneca Nation has followed a constitutional form of government. Nonetheless, the nineteenth century State laws supporting to establish the Seneca Nation government, in addition to later provisions purporting to define the authority of the Nation resident,<sup>109</sup> and Council,<sup>110</sup> illegally remain a part of the State's laws and continue to serve as source of confusion in the public record.<sup>111</sup> This history clearly reflects that some Senecas supported the adoption of an American constitutional form of government. Legitimate reasons—weakness and corruption of the traditional leaders—the role of the federal and state governments, and the mission-

aries, in supporting the revolutionary process was significant and unmistakable.

#### V. The Effects of Seneca Governmental Transformation

The transition of Seneca governance under the *Goyanashogowa* to the establishment of the constitutional republic had a number of obvious and not so obvious effects. Certainly there were changes in the Nation's government structure and process. But there were also more subtle changes affecting the unwritten methods of how Seneca government actually functioned. In recent years, these unwritten methods have deteriorated, revealing how the governmental changes of 150 years ago are only now having an effect on the Nation's self-government and its sovereignty.

##### A. The Effect on Seneca Governing Process.

###### 1. The Gender Roles.

The 1848 Constitution made no provision for women to vote or hold office. In part, this prohibition was consistent with the *Goyanashogowa*, in which only men served in the official governing positions. But fundamentally, the elimination of women from the process of selecting the Nation's officials was a radical departure from the practice that had been in place for hundreds of years.

One logical explanation for this transformation was the fact that women were politically non-existent in American society generally. The drafter of the Nation's constitution—a white lawyer named Chester Howe who was the Nation's attorney—undoubtedly introduced contemporary white customs into the text.<sup>112</sup> Moreover, Asher Wright, a missionary

to the Senecas, translated it for those who could not read or understand English. Given the key roles played by these non-Indians, it is not difficult to imagine that these individuals had little sympathy for such Seneca traditions as preserving a strong role for women in the governmental process.

Despite the lack of a formal role, however, it is most likely that women continued to have some kind of influence upon the Nation's political affairs. Given the adoption of nuclear family relations by this time, a husband involved in the Nation's political affairs would seem to have little ability to avoid his wife's insights and observations on the subject. While it obviously was not the case that Seneca women were able to prevent the establishment of a government that divested them of a formal role, it seems unlikely—against the backdrop of so many generations in which the women had an co-equal role in government—that women were totally divested of influence in the Seneca governing process. Nonetheless, women were formally excluded from the Nation's governing process and remained so for over 100 years.

Beginning in the 1920s, however, some women began a movement to urge the Council to allow a referendum on the right of women to vote in Nation elections. Again, it would not be surprising that this movement was stimulated by the women's suffrage movement in the United States. Given that the decision to bring such a referendum question to a vote was left to the Nation's officials—all men—the request was not soon acted upon. Despite several such petitions filed over the years, it was not until 1964 that the Council agreed to put the issue to the all-male electorate.

One reason why the Council finally took up the issue is related to the efforts taken by the

United States in the late 1950s to condemn one-third of the Allegheny Reservation for the Kinzua Dam Reservoir, a public works project designed to protect Pittsburgh from the periodic flooding of the Allegheny River.<sup>113</sup> It has been argued that this tragic episode in Seneca history was a major catalyst in revitalizing the role of women in Seneca government and politics.<sup>114</sup>

For most of the Nation's constitutional history, there simply was not much to do and the Council only met once or twice a year.<sup>115</sup> When the threat of Kinzua arose, however, considerable demands were placed upon the Nation to both defend against this aggression, but also after defeat had occurred, to administer the relocation of hundreds of Senecas to higher ground. Even though women were unfranchised, they played a critical role in this process, serving on several of the various committees that had been established to address the taking and removal.<sup>116</sup> It was this experience in administering the Nation's affairs that gave Seneca women governmental experience and credibility which translated into efforts to allow them to vote.<sup>117</sup> While it is unlikely that Kinzua alone was responsible for this move—given the heightened concern about civil rights, feminism, and anti-war activism that was occurring outside the Nation—"Kinzua was 'a mechanism where women, schooled in political manipulation and strategy, participating in the rise of a Seneca Nation bureaucracy, and increasingly vocal in their demands, moved readily into positions of authority and influence."<sup>118</sup>

By 1964, then, these considerable changes within the Nation created the environment by which the women's suffrage movement could

prevail. The referendum question put to the men was carefully worded: the only issue was the question of whether women could vote, but not to hold office. On May 23<sup>rd</sup>, it passed by a vote of 169 to 99.<sup>119</sup> Not surprisingly, once women had obtained the voting franchise, the next issue was the question of whether women could hold office. A referendum on this issue was held in 1966 and, with women then able to vote, it was approved by a vote of 146-140.<sup>120</sup>

Since women were granted the right to vote and hold office, there has been much change within Seneca Nation government and politics. Women have become extremely active as voters and as political operatives<sup>121</sup> and frequently have been elected to the Council and the executive offices of Treasurer and Clerk (although no woman has ever been elected President).<sup>122</sup> In doing so, they have changed the face of Seneca Nation politics. One effect was the disruption of the long Seneca practice of vote buying.<sup>123</sup> Another change related to the way in which the presence of women changed the way the Council functioned. Physical intimidation, a crude, but effective, mechanism for building consensus was inapplicable in dealing with women. And finally, the way in which issues were dealt with by the Council changed. It was perceived by some men that it was more difficult to reach final resolutions of particular problems with women, even after a vote had been taken. This had the effect of disrupting the Council's business in a way that made it more difficult to find closure on particular issues.

While it has been argued that "gender is [not] an important issue, overtly or covertly in Seneca elections,"<sup>124</sup> my view as a participant in the system is that gender politics continues to

play an important role in the Nation's governmental affairs. Thus, while women have been elected to Council, men continue to hold a majority of the seats. Moreover, no woman has ever been elected Nation president, although the specter of it in 1998 raised the issue of whether the Nation was "ready" to have a woman president.<sup>125</sup> In contrast to the electoral playing field, however, women have emerged as the predominant administrators of the Nation's government affairs.<sup>126</sup> Today, most men working for the Nation government are employed as laborers; women occupy almost all of the skilled administrative positions. This dichotomy – much like the old days when men served on Council and the women took care of the business of family and farming – has perpetuated a strong measure of gender politics with the Nation.

## 2. *The Clan and Family Roles*

The 1848 Constitution made no provision for clans or any other mechanism to represent community and family concerns. The only separation that it provided for was representation on the basis of geography. Each of the Allegany and Cattaraugus Reservations provided for representation by officials who were to be elected by the entirety of the Nation membership, but who had to reside within a particular reservation.<sup>127</sup> Since the Constitution was adopted, there has been no amendment to include a clan role.

Aside from this separation on the basis of geography, however, there has evolved outside of the Constitution a political mechanism for decentralizing political power. For many years there was a practice by which the Councilors from each of the Allegany and Cattaraugus

Reservations met as a caucus to address issues of particular concern to their particular reservation. It was generally understood by the Councilors from the "other" reservation that such matters, if they should require national legislation to address, should be left solely to the discretion of the "home" Councilors. In a similar way, there also emerged the custom of rotating the candidates for president, treasurer, and clerk between the Allegany and Cattaraugus Reservations.<sup>128</sup>

The actual practice of Nation politics also further decentralized political power on the basis of reservation community. Prudent politicians and organizers would ensure that their slate of candidates would have sufficiently broad representation from across these communities. Thus, it would be politically relevant whether a Seneca was from the Allegany Reservation community of Carrollton, Jimersontown, or Sleamburg, or from one of the many Cattaraugus Reservation communities such as Bucktown, Burning Springs, Indian Hill, or Pinewoods.

Finally, another example of how political power has been decentralized in practice has been the reliance on family relationships. This concern was driven by an assessment by political parties of how many family votes a candidate could deliver on election day. Thus, it was an important consideration whether the political organization was sufficiently broad and that no one family had too much control.

Despite these political practices, in recent years, there has been a move away from geographic and kinship based politics and a move toward ideological politics. In the early 1970s, ideology began to drive a wedge between those Senecas who were "progressive," i.e., commi-

ted to developing the Nation's economy utilizing the Kinzua Dam settlement and federal Self-Determination Act monies,<sup>129</sup> and those committed to a more "traditional" perspective, i.e., committed to preserving language and culture. This is not to say that Seneca political life had not previously been ideologically driven. The Revolution itself revealed an ideological divide between those Senecas willing to throw off traditional ways for the perception of future benefit and those desiring to maintain the traditions. That division still exists and there are many "traditionalists" today who refuse to participate in the Nation electoral process.

The ideological politics that emerged in the 1970s, however, was a further refinement among those who shared the commitment to the "progressive" agenda. Both major parties at the time – the People's Party and the New Deal Party – were committed to sustaining the existing political regime.<sup>130</sup> The difference turned more on what direction to take the Nation in; whether growth and development should be rapid, or whether it should be more rooted in protecting the traditional ways.

This ideological division grew worse in the late 1980s, with the emergence of the Seneca entrepreneur class ("Entrepreneurs"). The newly spawned cigarette and gas retail business within the Nation allowed for a few Senecas to accumulate considerable wealth. When the Nation government sought to impose a sales tax on these transactions, the Entrepreneurs united in opposition. Eventually, this group formed as the "Seneca Party" and, intent upon ensuring that no taxes or controls would be placed on their profit-making, secured nearly all Nation political offices by 1992. Following their term of office, the ideological divide widened and

stimulated the emergence of an anti-Entrepreneur faction. This faction came to power in 1964, and immediately thereafter, political conflict began which developed into the Seneca Nation Civil War.<sup>131</sup>

Despite the formal elimination of all forms of kinship representation in the Nation Constitution, the actual practice throughout most of the Seneca Nation's political history has been to give community and family (as well as geography) important roles. The end of family life in the Longhouse at the end of the eighteenth century most likely was the cause for the end of clan politics. But the modern trend has been to abandon even these kinship relationships in favor of an ideological form of politics.

### 3. Government Functions.

#### a. Decisionmaking/Lawmaking Process.

Under the 1848 Constitution, the structure of the decision making process changed dramatically in two important ways. First, the traditional decisionmaking model, the "multicameral" structure of disparate political units each having a participatory role in making societal decisions, was replaced with a unicameral decision-making model — the Council. Second, the decision-making principle that unanimity was necessary before formal action could be taken was abandoned.

Despite this change in structure, until recently, there did not appear to be a significant impact on the decision-making process. Through the 1970s, the sixteen members of the Nation Council had an extraordinary record of voting unanimously or near unanimously during roll call votes. The reason for this most likely was due to the continued adherence to the

values of consensus politics underlying the *Goyanashogowa*.

While not required under the Constitution, the Council appears to have conducted almost all of its important work *outside* of its formal sessions. Pre-meeting caucuses amongst the councillors and discussions between them with political supporters and community members were common for most of the Nation's political history. This suggests that most of the decisionmaking process occurred outside of Council meetings and inevitably resulted in the actual Council meetings serving as more of a recording process for what had already been decided, rather than as a genuine forum for debate and discussion. In this way, the actual decisionmaking process within the Nation more closely tracked the procedures under the *Goyanashogowa* in which various constituencies were consulted with and involved in the process before a decision was rendered.

The fact that the Nation Council voted unanimously or near unanimously for almost 130 years is also evidence that the process established under the *Goyanashogowa* continued after the adoption of the Constitution. Upon the adoption of the Constitution, the Council only needed a majority vote to conduct its business,<sup>132</sup> yet continued to operate as if unanimity was required. Given the difficulty in obtaining unanimity, the only logical reason for doing so over the years was a continuing belief that legitimacy was dependent upon having all Councilors in support of the matter at hand. Legitimacy on the basis of unanimity was a hallmark provision of the *Goyanashogowa*.

It was not until the early 1980s that the long practice of unanimous voting came to an end. Council voting began to reflect a much

higher percentage of "split" votes, in which measures were passed by a majority vote but with some minority voting opposition. The fragmentation of the decision-making process has continued, and indeed, has proliferated into the 1990s. Council votes on some of the most provocative issues may now be passed by only a bare majority. And during the Nation's civil war between 1994-1995, the division was so great that the President took to appointing "councillors for the day" in order to obtain a quorum to try to do business. Against this breakdown in political cohesiveness, it is not a coincidence that the last fifteen years have been a period of considerable infighting and acrimony.

#### b. Law Enforcement.

The 1848 Constitution dramatically changed the way in which Council enacted laws were enforced within the Nation. The Constitution dictated that this law enforcement responsibility fall upon the president, the two marshals, and the four deputy marshals. Later on, amendments to the Constitution granted the Council the authority to establish police, but rather than develop a Western-style police force, these positions evolved into elected "police marshals," three to be elected from each of the Allegany and Cattaraugus territories. Only in recent years has the Nation had a police force, but these officers were deputized by the local sheriffs and enforced State law. No Nation criminal code has ever been adopted.

Under the Nation Constitution, then, there are, at best, only nine law enforcement officials. This system stands in contrast to the law enforcement system established under the *Goyanashogowa*, in which there existed broad law enforcement power through all of the Nation's men acting as warriors.

#### c. Agenda Setting.

Under the 1848 Constitution, the Council's agenda was set by the president. As a conceptual matter, this function did not change significantly from the procedure established under the *Goyanashogowa*, where the War Chiefs set the Grand Council's agenda.

#### d. Leadership Selection.

The adoption of the Nation Constitution dramatically changed the way in which the Nation's leaders were selected. The new process stood in stark contrast to the old system in which the leaders were selected by the women to serve upon good behavior. What was gained from this move to an electoral system, at least in theory, was the ability to better control the leadership through regular elections and thus, obtain greater legitimacy of leadership as viewed by the whole nation. What was lost, however, was the accountability associated with having a leader selected by and responsible to a much smaller group of people — the clan.

Over the years, this shortcoming was partially addressed through the political party structure. It was good politics to ensure that each state of candidates had representatives from each of the various geographic, family, or ideological constituencies within the Nation. As a result, considerable deference was given to local concerns by Nation officials. In this way, accountability was assured.

But in recent years, the political party structure has broken down. In 1992, there were three parties that each ran full states of candidates. In 1994 there were over 100 candidates, reflecting three full party states as well as a number of independent candidates. In 1998,

103 candidates, including three full party slates, ran for only 29 positions. As a result, by 1994, almost all of the "successful" candidates for Nation political office had failed to capture a majority of the votes cast. In other words - for maybe the first time in our history - the Council and Executives that had been elected did not have most of the voting Senecas supporting them from the very minute they took office.

The troubles following from these electoral nightmares was predictable. The newly elected Nation officials, content with their technical victory but blind to the electoral reality that most voters did not support them, ambitiously presumed that they had a broad mandate from the people to govern. Thus, at the urging of their narrow political constituency, they took dramatic actions that did not have very wide public support and that eventually put them and the Nation in jeopardy.<sup>135</sup>

#### e. Leadership Removal.

The 1848 Constitution did not provide any specific mechanism for the removal of elected officials directly by the Seneca People. The only mechanism for removal of elected officials was by impeachment. In contrast, the *Goyanashogowa* explicitly provided a mechanism for the women of a particular *royameh's* clan to remove him, with the help of the clan War Chief. The grounds for removal included failure to attend Grand Council meetings and to be responsive to the concerns of the people.

#### f. Representation.

The 1848 Constitution also dramatically changed the way in which the Seneca People participated in government affairs. First, under the Constitution, only those elected to office

had a voice in government. Under the old system, all members had the authority to participate in government affairs. Second, representation in government was determined solely on the basis of territorial residence. Under the old system, gender, clan and family groupings all ensured that members had a say in government affairs.

Notwithstanding this change in representative structure, over the years the political parties ensured that there was representation on the basis of family and geographic region of each territory. During the period in which candidates are selected, party leaders sought to ensure political balance by identifying candidates from different families and different communities with their particular reservation. Thus, during the party caucuses, there has been some effort to ensure as wide a political base as possible. In addition to this purely political process, the Executives and Councilors from each territory would meet to deal with local matters. These practices also effectively incorporated women into the political system once they had obtained the right to hold office.

In recent years, however, all of these practices have dissipated. While women continue to serve on the Council, it is now less likely the case that particular reservation communities will be adequately represented or that particular officials will be recognized by the other officials as having the primary authority with regard to local affairs. For example, in past years the executive elected from a particular reservation would be said to "run" that reservation, and the other executive, even if the president, would defer to that official. This practice has been routinely ignored in recent years.

#### 4. Dispute Resolution.

The 1848 Constitution dramatically changed the way in which disputes were resolved. The Constitution established a court system comprised of the Peacemakers Courts, which were the courts of general jurisdiction, and the Surrogates Courts, which handled probate and estate administration. In addition, the Council was to serve as the appellate body from the Peacemakers and Surrogates Courts.

In contrast to this system, the *Goyanashogowa* did not provide for the establishment of any kind of court system. Disputes were not resolved through formal judgments, but rather were resolved informally within the longhouse, the family, and the clan. Peacemaking was relied upon as the primary method of dispute resolution. Political disputes were handled in the same manner as other items of business.

The transition to the Anglo-American style of dispute resolution had a dramatic effect on Seneca dispute resolution.<sup>136</sup> While there is some indication that the Peacemakers continued to address matters in an informal fashion through peacemaking, by 1986, this system had been formally rejected. In that year, the Council adopted court rules that were modeled after state civil procedure rules. In doing so, the Nation's court system has evolved to place an exclusive emphasis upon the adversarial method of dispute resolution common to Anglo-American society.

#### 5. Confederate Relations.

The adoption of the Nation's Constitution ended the Nation's formal role in the Grand Council. Over the years, there rarely have been instances in which Nation leaders have worked with the Confederacy. As a result, the depar-

ture of the Seneca Nation from the Confederacy has been a source of division with the other historic *Haudenosaunee* nations.

#### 6. Summary.

All of the changes that occurred as a result of the Seneca Nation's transition from the *Goyanashogowa* to a constitutional form of government had one thing in common: they all served to concentrate political power in a handful of people and to eliminate the formal checks and balances that ensured accountability to the Seneca People. Specifically, these major changes included:

- Women were being removed from their leadership selection and removal functions and formally eliminated from the governing process in favor of a government of men selected and removed by men;
- Clans and families were removed from their decision-making function and formally eliminated from the governing process in favor of decision-making by men on the Council;
- The people were removed from their participatory function and formally eliminated from the decision-making process in favor of decision-making by men on the Council;
- Unanimous decision-making was eliminated in favor of majority rule by the Council;
- Broad law enforcement authority through all of the men acting as warriors was eliminated in favor of law enforcement by only six elected officials;

Dispute resolution through peacemaking was eliminated in favor of adjudication by elected judges.

It is true that not all of these structural changes in the Nation government had an immediate effect on the governing process. Women simply did not disappear politically; they continued to have some increasing influence until they obtained the right to vote and hold office. Clans and families did not disappear either; they too continued to have an effect through the political parties. And so too with the people; they continued to exert some influence over the elected officials.

But it is hard not to see that all of these changes viewed together had the effect of concentrating all official political power in the hands of only a few men. This was a dramatic change from the traditional way in which Senecas governed under the *Gayanahogowa*, which broadly separated power amongst different political constituencies. The effect was to disenfranchise and isolate a great many Senecas in favor of a political system that was designed to serve the interests of the few men who were elected to office.

## B. *The Effect on Seneca Sovereignty.*

### 1. *The Problem of Concentrated and Unaccountable Political Power.*

After the American Revolutionary War, Seneca government virtually came to an end. The traditional activities of men — warfare and diplomacy — had been eliminated and life changed dramatically for everyone with the establishment of the reservations. As the years went on, even after the Seneca Revolution, there was never much for the Nation government to do. For most of its history, the prima-

ry business of the Council was the administration of leases and rights-of-way through Nation lands and the adjudication of land disputes.<sup>135</sup> Reflecting this relative lack of governmental responsibility, the original Constitution only required that the Council meet annually.<sup>136</sup>

During the last 50 years, however, the governing responsibilities of the Nation have increased dramatically. Following the famous *Forrests*<sup>137</sup> case, the Nation had to defend its jurisdiction against the State's aggressive efforts to have Congress grant it criminal and civil jurisdiction over Nation lands.<sup>138</sup> Following that unsuccessful effort, the Nation then had to fight the federal government's attempt to terminate it and confiscate one-third of the Allegany Reservation for the Kinzua Reservoir. While these efforts ultimately were unsuccessful, the Nation's leaders were nonetheless called upon to deal with a whole new realm of governmental responsibilities — lobbying Congress, litigating in federal court, and developing sufficient public support for maintaining a coherent national position to defend the Nation against these threatening actions.

These events pushed the Nation government into a new level of governmental responsibility, but it was the aftermath of these events that had an even more profound effect on internal developments. The taking of 10,000 acres of the Allegany Reservation precipitated the removal of hundreds of Senecas and caused a disrupting ripple effect that is still being felt today. In addition to this direct effect, there was also an indirect effect associated with the federal government's settlement with the Nation for the sum of approximately \$15 million. Unlike the insignificant revenue that had

been brought in from the Salamanca leases during the past 100 years, for the first time ever, the Seneca Nation had a great deal of money.<sup>139</sup>

With this money came power and change. In the 1970s, these funds made it possible for the Nation government to expand its governmental capacity and to begin to provide services to the Seneca People. These efforts were supported by an influx of millions of dollars of federal money through the Indian Self-Determination and Education Assistance Act of 1975.<sup>140</sup> Service and training programs were started, health care facilities were constructed, businesses were established, and jobs were created. By 1980, in a span of only twenty years, the Nation's government expanded from zero to four hundred full-time employees.

Government services and employment continued to expand through the 1980s. While much of the federal money had been eliminated by Reagan Administration cutbacks, the Nation was able to make up for this with the establishment of State tax-free cigarette and gasoline businesses and the operation of two high stakes bingo halls. As a result of these new sources of income, by 1993, Nation employment had expanded to approximately eight hundred employees.

During the last 30 years, then, the Seneca Nation government has evolved from having almost no significant governmental responsibilities to becoming a force that affects the lives of every Seneca in one way or another. One out of five people living within Seneca territory works for the Seneca Nation in either the government's service or business capacity. The Nation has become a multi-million dollar economic and political force both within and outside its territory. In 1996, it was estimated that

the Seneca Nation had an economic impact of \$330 million on the Western New York economy.<sup>141</sup>

Unfortunately, as the Nation's responsibilities have increased, so too have the expectations of the Nation's role in dealing with the problems facing the Nation. Foremost, these problems have been spawned by conflict over the recent economic development. The emergence of the tax-free cigarette and gasoline trade has created a small but powerful class of Seneca entrepreneurs. For the first time ever, there are Seneca millionaires who have their own economic empires that threaten the Seneca Nation government as the primary economic force within Nation territory. At the same time this has occurred, the State has sought to eliminate all tax-free business activity within Nation territory.<sup>142</sup> Eventually, conflicts over the government's role in these events have generated regulating economic activity within the Nation. One response in the late 1980's was for the Nation government to impose its own sales tax and business regulations in the late 1980's and to enter into an agreement with the State to for-bear additional tax collection efforts. The Entrepreneurs were unable to thwart this effort within the Nation, but were nonetheless able to kill this proposal within the State government.

This episode was the first of many during the last ten years that evidence the failure of the Nation government to address critical issues facing the Seneca People. Almost no major problem facing the Nation has been resolved during the last twenty years. It has failed to prevent destructive *laissez-faire* capitalism from allowing a few to prosper at everyone else's expense. It has failed to prevent loggers from destroying the forests and the ecosystem. It has

failed to prevent individuals from sacrificing the Nation's treaty rights and subordinating the Nation to State jurisdiction. It has failed to conduct its administrative operations fairly and efficiently. And it has failed to address the problem of the Nation's dying language and culture. Perhaps the only major success of the Seneca Nation government during this time period has been the negotiation and settlement of the Salamanca lease issue.<sup>143</sup>

## 2. How Concentrated and

### Unaccountable Political Power

#### Promotes Governmental Weakness.

The Seneca Nation's governmental failings do not necessarily arise because of the people who serve in government. There are many talented Senecas who have and do work for the Nation who come from all different political backgrounds. As is usually the case in government, these individuals have either sought to move the Nation in a direction that is either genuinely in the best interests of the Seneca People or in their own self-interest. Regardless of the motivation of the people involved, it has been very difficult for any person to make a sustained effort to change anything within the Nation government or its operations. This stagnation has been good to the extent it has prevented some bad things from happening. Unfortunately, it also has prevented some good things from happening as well.

The main reason why the Seneca Nation government has been unable to redress critical public policy problems is because it does not have sufficient authority to take bold and sustained action. While there is no question about the government's legal authority, in recent

years the government has not had the legitimacy in the eyes of the Seneca People to develop practical solutions to address the Nation's difficult problems. People have for too long viewed the Nation as an "old boys" club (although with women now involved, it might be better to say an "old boys and girls" club) that for most of its history has allowed a small group of people to safeguard their own interests at the expense of the public interest. This tradition runs deep, and it has been observed that the Nation "possesses a long and strong oral tradition that all its politicians are corrupt. People [are] convinced that those currently in power, like traditions telling of the behavior of previous administrations, [are] stealing vast sums of public money."<sup>144</sup>

Against the backdrop of such a history, few are willing to put much faith in the government's ability to act fairly or effectively in making decisions and thus are hesitant to invest the political capital necessary to allow the government to take what "it" thinks is appropriate action. As a result of this lack of faith, the Seneca Nation government is weak and illegitimate, a condition that has only grown over time as the inability to address increasingly demanding public responsibilities has also grown.

Foremost, the Seneca Nation government is weak because power is concentrated in too small a group of people without any mechanism to ensure accountability. Aside from all of the historical reasons discussed earlier as to why this might be true, the problem of concentrated and unaccountable political power has become much worse during the last few years. After decades of stable, but relatively insignificant government, the weakness of the Nation's

government in the modern era has generated factionalism, instability, and civil war.

The Seneca Nation government is perceived as illegitimate for two primary reasons: (1) because the Nation's officials have been elected in recent years without having the support of the majority of the Seneca electorate, and (2) because majority-rule has recently emerged as the decisionmaking principle in the Council.

In 1992, 1994, and 1998, because of multiple parties, the Nation president and most other Nation officials did not carry a majority of the vote. In 1994, the president was elected with 30% of the vote; in 1998, with 33% of the vote. By definition, these officials once in office simply had too narrow of a political base to accomplish anything significant. Because they did not have to get most of the voters to support them in order to win, they failed to make commitments and build the broad alliances necessary for political success after the election. Viewed another way, these successful candidates simply did not concern themselves with anyone other than their own political supporters. As a result, these "winners" were prone to self-interested factionalism rather than a legitimate political concern for the overall good of the Nation.

The reason for this factionalism is not necessarily what people think — that the people who are elected are not the best people for the job — but because of the structure of the Nation's electoral and lawmaking process. The Seneca Nation Constitution contains no mechanism for ensuring that those who win public office carry the support of most of the Seneca electorate. There are no pre-election primaries — anybody who wants to run for office can do so — and there is no run-off procedure.

Regardless of how many candidates run for office, the person getting the most votes wins. Thus, the more candidates there are, the less legitimacy is generated — such as what happened in 1994 when the Nation president was elected from a field of 8 candidates with only 30% of the vote — events which triggered a civil war that cost the lives of three people.<sup>145</sup>

This has not happened before because for most of the 150 years of the Nation's political history, there was been a strong political party system. The political parties had the responsibility for selecting candidates, for educating them in the fine art of politics, and for ensuring party loyalty and commitment. The caucus system, while non-binding, ensured that the parties would generate successful candidates who had already earned public support. In the modern era (after Kinzua), the best example of an organized political machine was the People's Party, which won election after election over the New Deal Party throughout the 1970s and 80s.

But the last few elections have demonstrated considerable decay in the political party structure within the Seneca Nation. This decay is no doubt the reflection of a number of phenomena. The disruption in Seneca society associated with Kinzua probably is only now beginning to have an effect on political relationships and alliances reflected by the party system. Foremost, Kinzua thrust the Nation into the dominant society's money culture. In concert with the rise of the Entrepreneurs in the last few years, there has emerged a more obviously self-interested form of politics that inhibits strong political parties based upon kinship and geography from being formed.

Only the Seneca Party, perhaps as a reflection of the now significant Entrepreneur class,

has emerged periodically as a cohesive political force. Even so, the preoccupation of this party's members on business development has even generated its own discord and prevented it from uniting (such as occurred in 1996 when all of its candidates lost). Other political parties in the last few years — such as the United Peoples Party in 1996 — appear to have reflected more of an anti-Seneca Party focus rather than any particular ideological agenda of their own. As a result, they too are prone to fragmentation, which is apparently what has occurred in 1998, when three major parties vied for office.

Thus, the end of strong political parties within the Seneca Nation has made the Nation electoral process a free-for-all. Anybody and everybody thinks they can run for office and win. While having more democracy may be a good thing in the long run, for too long the Nation's political parties provided the necessary restraints to ensure that those candidates who were elected to Nation office at least had the support of most of the people. The breakdown in the political parties has meant that this new phase of democracy means greater chaos. Whether anyone has liked it or not, this unten political system was part of the Nation's common law that helped to maintain stable government.

The defects in the Nation's electoral system are compounded by the fact that the Council in recent years has abandoned consensus decisionmaking in favor of majority rule. For most of the Nation's history as a constitutional republic, the Council voted unanimously or near unanimously, a practice that began to erode in the late 1970s. In recent years, the Council has become increasingly reliant upon majority rule, simply requiring votes of nine of

the sixteen Councilors (ten for appropriations) in order to conduct its business.

Against the backdrop of having officials elected without at least majority support, this practice has promoted great division in the Seneca political system,<sup>146</sup> and fostered the perception that the Seneca governing process is illegitimate. If the elected officials themselves do not have majority support, the fact that these officials are now proceeding to operate under the barest of majorities ensures the greatest degree of illegitimacy. While it could be argued that unanimous votes of a Council that was elected without majority might still not be illegitimate, the fact that such Councilors themselves cannot not agree fully condemns the outcome of such a legislative process.

As a result of all of these changes, then, modern Seneca government is controlled by a minority of the Seneca People who themselves are often deeply divided. The government is thus perceived as illegitimate by most Senecas, and is thus overwhelmed with factionalism and weakness in the face of internal and external problems that require a strong governmental presence to resolve them. Not surprisingly, this weakness has a tremendous impact on Seneca Nation sovereignty.

### 3. *How Seneca Sovereignty is Undermined by Concentrated and Unaccountable Political Power.*<sup>147</sup>

Seneca sovereignty is the right of the Seneca People to freely determine their political status and to freely pursue their economic, social and cultural development.<sup>148</sup> In short, it is the right of the Seneca People to choose the future. This sovereignty is a reflection of three

interrelated phenomena: "(1) the degree to which the Seneca People believe in the right to define their own future, (2) the degree to which Seneca People have the ability to carry out those beliefs, and (3) the degree to which sovereign actions of the Seneca Nation are recognized both within the Nation and by the outside world."<sup>149</sup>

If Seneca sovereignty is viewed in this way, there are at least four different factors that support the conclusion that the Seneca Nation's sovereignty is undermined by the existence of concentrated and unaccountable political power: (a) a lack of administrative capability, (b) the existence of weak laws and legal system, (c) a dependence upon foreign governments, and (d) infighting.<sup>150</sup> Each of these four factors has a direct impact on the second prong of the sovereignty "test" set forth above. The existence of each factor affects the collective ability of the Seneca People to carry out a belief in being a sovereign nation. But this failure of ability also perpetuates itself by undermining the first and third prongs of the sovereignty "test" — the belief in and recognition of the Seneca Nation's sovereignty. When viewed together, these factors are all symptoms of the same fundamental problem — the perceived illegitimacy of government derived from the concentration of political power in the hands of too few people with no mechanism to ensure accountability.

#### a. Lack of Administrative capability.

The Seneca Nation, not unlike any other government, is afflicted with considerable administrative dysfunction. This is not too say that there have not been administrative devel-

opments that improved the administration of Nation government. There are 800 employees and countless others outside the government who depend every day on the fact that the Nation can, in fact, administer its own affairs. This is no small achievement. It has occurred in only twenty years and is testament to the Nation's capacity for development. But unfortunately, much of the problem within the Seneca Nation government extends beyond the ordinary degree and affects directly the ability of the government to accomplish even the most basic responsibilities.

For example, difficulties have arisen in establishing an effective organizational structure, which has become extremely decentralized. Nearly 40 department heads report to only two executives, with the result being that it is virtually impossible to supervise and give leadership to a significant proportion of the government staff at any one time. Moreover, this lack of oversight allows for a considerable degree of dysfunction and malaise, since directors know that it would be rare that they are held accountable. Add in problems of political interference in human resource management, inadequate fiscal policies, and the lack of any mechanism to properly train staff and elected officials, and it is easy to see that administrative problems help keep the Seneca Nation weak.

For example, in 1993, there was a year long effort to restructure Seneca government administrative practices.<sup>151</sup> This plan affected both executive and legislative operations. To assist in administering the numerous Nation departments, a new level of administration — six commissioners — were established to serve as a check and balance on both the unpredictable influence of the three executive officials and to

ensure accountability of department directors.<sup>152</sup> Moreover, Council operations were reorganized by instituting a number of standing committees to better distribute the workload of the Council and to better ensure public participation and review in the lawmaking process.<sup>153</sup>

Despite the need for change of some kind, these reforms were scuttled after less than a year in operation as a result of the 1994 election that, in part, made the administrative reorganization a key political issue. In retrospect, it seems obvious that these changes were too sweeping and too heavily reliant upon the political will of the Nation officials then in charge. None of the Nation officials at that time had received a majority of support from the people. As a result, as a faction in charge of the government, there was little chance that these efforts would have a lasting effect because those in opposition — who later came to power — had been formally left out of the development process despite their opportunity to participate. They were either uninformed about what the changes entailed, understood the changes and simply disagreed with them, or understood them and cynically used them for political leverage because they were generated by their opposition.

In any event, this major restructuring effort failed. With time to analyze how this happened, it should have been little surprise that these changes would be abandoned following the election. Factions, by definition, have no mandate to make such sweeping changes. This reorganization was a sweeping change that was implemented by officials without a sufficient mandate and highlights the fundamental administrative weakness of the Nation government.

#### b. The weakness of the Nation's laws and legal system.

Within the Seneca Nation, it is hard to identify many laws that are universally accepted by the Seneca People. The official lawmaking institution, the Nation Council, enacts "laws" that are routinely ignored by a large part of Seneca society. Unless the Nation government itself has control over a particular law's effect — such as the denial of a permit or license — the general laws seem to have little effect on the lives of the general membership.<sup>154</sup> There are a number of reasons for this deficiency, all related to the process by which the "laws" themselves are made.

Generally, Seneca "lawmaking" arises when an individual or group within the Nation discovers that they have a problem that needs to be addressed. The problem is taken to a member of the Council or one of the Nation's Executives — whoever might be politically sympathetic to the complainant — who then embarks upon an effort to convince the President and the other Councilors to take official action to address the problem. Often a written proposal to address the problem is prepared, such as a draft resolution or law, that is circulated to the Council members. All preliminary discussion, however, often is done orally and there is usually no written proposal developed until just before official action is about to be taken.<sup>155</sup>

The Nation's attorneys are not involved in the "lawmaking" process on a consistent basis. Oftentimes they are ignored, especially with respect to purely political legislation. Other times, usually on technical or politically unspiriting matters, they are given absolute authority over the terms of the legislation. Regardless

of the attorney involvement, however, if there is political will to enact the legislation, it is often done with little regard for whether the law works or not, how it might be implemented or enforced, or whether there are any long term deleterious effects. Little public debate takes place on non-controversial matters — indeed, the citizenry and most members of the Council rarely even see the legislation until minutes before action is scheduled to be taken. The fundamental objective of the exercise is simply to resolve the political problem that was first presented by the individual member or group that first brought the matter to the Council's attention. Once enacted, the "law" is recorded by the clerk, but there is no general reporting of the details of what action was taken.

As a lawmaking process, then, the actions of the Seneca Council are perceived as illegitimate by almost all members of the Seneca citizenry. Law is not perceived as being generated for purposes of ensuring societal standards or addressing important public policy initiatives; it is simply viewed as a commodity that is dispensed by Nation officials for purely political purposes for the benefit of the few who happen to be in power at the time and their supporters.

This is well understood by the Seneca People, which greatly inhibits the degree to which they allow such "laws" to be enacted in the first place and if so is better they willingly comply with them. This is not to say that there are not occasions when the Council enacts laws that have the real effect of promoting a standard of behavior and that are supported by the Seneca People. But these occasions usually arise only when the Council is reiterating standards of behavior that the people themselves already accept as a matter of tribal common law, rather than instances in which the Council

is seeking to change personal behavior or address a major public policy problem.<sup>156</sup>

Aside from laws of this kind, however, it is difficult to conclude that there are universally accepted standards of behavior within Seneca society. At best, there are standards of behavior that are accepted within the various factions of Seneca society. For example, if one believes in the legitimacy of the official Nation government (which is usually the case for those in power at the time), there is a general willingness to accept the standards that it generates. But many Senecas do not accept these standards, and instead accept standards that exist within their own faction. These factions would include the Entrepreneur community, the Longhouse community, the political opposition community, or communities defined by geographic location within the Nation. In short, while there are standards that exist within the Seneca Nation — they could be called "factional laws" — there are few societal standards — real laws — that are accepted by the entirety of Seneca society.

#### c. Dependence on foreign governments.

The Seneca Nation is heavily dependent upon the aid and assistance of foreign governments, which undermines its sovereignty by definition.<sup>157</sup> While the manner and extent of the dependence varies, the Seneca Nation is dependent upon foreign governments, e.g. the United States, the State of New York and its subdivisions, for support in a multitude of ways:

• *Government Recognition* — The Seneca Nation government is dependent upon the con-

tinued recognition of its authority by the United States to maintain its governmental authority. The Seneca Civil War, and its episode of two members claiming to be president, demonstrated that the federal government, and not the Nation's courts or other internal body, was the *de facto* final arbiter of who holds power within the Seneca Nation.

• *Law Enforcement* — The Seneca Nation is dependent upon the state and county sheriffs for criminal law enforcement within their territories. While at one point a few years ago, the Nation had its own police force, even then the officers were deputized to enforce the state criminal law and rely upon the state criminal justice process.

• *Dispute Resolution* — The Seneca Nation is dependent upon the state and federal court system for the resolution of internal and external disputes. While the Seneca courts have long existed, support for them is weak. Seneca members frequently enter the federal and state court systems for redress of internal problems.

• *Financial Support* — The Seneca Nation receives considerable financial support to conduct government operations from the United States and/or the State of New York.

• *Education* — The Seneca Nation has no school of its own and thus relies upon the State to educate its children.

• *Social Services* — The Seneca Nation is dependent upon a wide variety of social services provided to their members by the State, e.g. unemployment compensation, welfare pay-

ments and the federal government, e.g. social security, medicare, medical.

• *Enterprise Support* — The Seneca Nation economy is dependent upon non-Indians traveling to Seneca territory and taking advantage of the tax and regulatory benefits, i.e., bingo and exemption from State tax on cigarettes and gasoline.

While it is surely the case that there may be some beneficial effects of entering into dependent relationships — especially in an increasingly interdependent world — the Seneca Nation nonetheless is heavily dependent upon foreign governments for providing basic services that should be provided by and within the Nation itself. Education, dispute resolution, and law enforcement are too important and culturally sensitive governmental functions to leave to the hands of strangers and historically hostile governments. Indeed, because of the interconnectedness between the Seneca Nation and the State, conflict on one issue routinely affects other issues. The failure to attempt to assume as much authority over these important areas of governmental control has a long term detrimental effect on the Nation's sovereignty.

#### d. Infighting.

By virtue of the high degree to which Senecas perceive their government to be illegitimate, Seneca governing activity has, from time to time in recent years, ceased and been replaced with infighting. While infighting has a number of unsavory effects, it has particular impact on Seneca sovereignty because it is a problem that can produce our immediate political self-destruction. The recent civil war and ongoing acrimony within the Nation over eco-

nomic development are two of the main reasons why this infighting has been generated.

Infighting is a matter of life or death for both our members and our sovereignty. If Senecas as a people are so overwhelmed with acrimony, infighting and civil war, we cannot possibly muster enough strength to repel the forces that would seek the destruction of our nation. Even in those instances where there might be an enemy obvious enough to unify opposing factions — such as has occurred occasionally with the State — the days, months, and years of prior conflict will have had a long-term corrosive effect that makes those moments when unity is necessary terribly difficult to achieve.

As Seneca society continues to deteriorate, the growing division has only continued. Friendships have been lost, kinship has fallen away, and the connectedness that exists between all things within the Seneca world is slowly disappearing. As this has happened, distrust, conflict, violence, and death has occurred. It seems assured that the end result of this process will be the complete fragmenting of our relationships and the end of a distinct Seneca society. Put simply, if the Seneca People are divided, then Seneca government will be weak and dysfunctional and unable to protect and defend the Seneca People from the continuing onslaught of over 500 years of American colonization.

#### e. Summary.

The function of government is to channel the destructive societal forces that exist within any society in a direction to minimize their impact and to serve as a mechanism for unleashing the constructive power of the people. If government is perceived as illegitimate,

then it will be impossible for government to serve these two functions. In short, it cannot be effective. Within the Seneca Nation, there has been a tradition for hundreds of years that all Senecas have a role in government affairs. But the Nation Constitution adopted in 1848 put in place a system that had the immediate effect of disenfranchising half of the Nation population — the women — and which has over time continued to allow a weakening of public support that has allowed factions to control the Nation government.

These changes were in fundamental disregard of the natural social formations that existed within Seneca society, social formations that existed along the lines of gender, clan and extended family, and function. It is clear that there were many changes that occurred within the Nation in the 75 years following the Revolutionary War, the foremost being the influence of the Quakers and Handsome Lake's *Gaiwito*. These changes naturally had the affect of transforming the traditional social formations. As a result, Seneca society became more patriarchal and less focused on clan and extended family and more on the nuclear family. These changes induced a process of assimilation that broke down the Seneca social formations and over time allowed Seneca society to be more and more influenced by American culture and society.

In and of themselves, these changes might not have been sufficient to transform Seneca government by the mid-nineteenth century. But the errors in judgment by the chiefs in selling all remaining Seneca lands under the Treaty of Buffalo Creek and pocketing the treaty annuities precipitated the necessary inertia to overthrow the traditional government established under the *Goyanashagowa*. Against the back-

drop of the social transformation that had occurred to date, the fact that non-Indians played such a central role in drafting the Nation's constitution and the fact that contemporary American norms allowed no role for women in the political process, ensured that the Nation's new form of government would have a decidedly American orientation.

In adopting the 1848 Constitution, one of two things likely occurred. Either the Nation Constitution accurately reflected the social formations that existed at the time, or a faction within the Nation was able to establish a new form of government that did not pay sufficient regard to the existing social formations. It is most likely the case that the latter is true. As an initial proposition, only a few hundred Senecas were responsible for the Revolution. And the fact that the Old Chiefs Party was a formidable resistance to the new government — they won the election in the years immediately following the Revolution — is evidence that Senecas (at least the politically active ones) were fairly evenly divided as to which form of government to maintain.<sup>158</sup> It is thus reasonable to conclude that the new Constitution may have reflected the cultural identity of only its proponents, but did not reflect the cultural identity of any its opponents.

This is significant because it suggests that there has always existed within the Nation a considerable population of people who have been socially, culturally, economically, and politically distinct despite the process of assimilation occurring during the last 200 years. As a result, it can be concluded that there remain within the Seneca Nation central elements of the traditional social formations that existed

prior to the adoption of the Constitution in 1848.

The best evidence that this is true is the re-emergence of women in Seneca political life in the 1960s. While it could be concluded that this was solely in response to external phenomena that induced greater attention to civil rights and feminism, Billhertz and Adler have argued convincingly that it was the need to have women involved in the battle against the Kinzua Dam that had the greatest effect on drawing women back into the government. If Seneca society had been so transformed as of 1848 as to disregard the role of women in political affairs, then it seems unlikely that women could have simply materialized out of nowhere to take on important governmental responsibilities 110 years after losing all power. Most likely, it was the case that women continued to play a role on the periphery of Seneca political affairs throughout the Nation's constitutional history (which, recall, was not that big a deal up until the Kinzua era) and were restored to a formal role as the situation demanded. Thus, a social formation that is defined by gender remains a viable component of Seneca social structure. And if such is true with respect to the role of women in the Nation's political affairs, it is most likely also true with respect to other social formations.

#### VI. Recommendations for Restoring

Greater Legitimacy within the Seneca Nation Government

##### A. The Objective of Reform - Realign

*Government Structure With The Underlying Social Formations.*

If legitimacy in the governing process can be restored, then the Seneca People will put more faith in their government. And if there is

more faith put in the governing process, then the decisions that are generated will have the full force and support of the people. Thus, the fundamental question is what can be done to make Seneca government more legitimate.

The answer to this question lies in ensuring that the Nation's government reflects the natural cleavages that exist within the social structure of modern Seneca society. If these cleavages are not respected, then they will continue to operate against one another and thus continue to weaken Seneca government. The strength that existed under the *Goyanwahgowa* was the result of having a formal institutional framework of government in relative harmony with the underlying social structure. The challenge, then, of any governmental reform effort within the Seneca Nation will be to ensure that whatever new government institutions are developed are consistent with the way in which people actually behave.

This will be possible because there remain defined, and traditionally rooted, social formations within Seneca society. Once these are identified, it is most likely that these proposed solutions will be inherently legitimate because their source is within the consciousness and instinct of the Seneca People. In my view, even the most assimilated amongst us will look with great care at purported solutions to our governmental ills that arise from sources within our own society. While it may be the case that the transformation of our collective identity over the years may mean that some of these purported solutions must continue to be rejected, there is certainly much about the Nation's own history of governance and social fabric that could carry considerable sway in the process of redressing our governmental problems.

By virtue of colonization's effect on Seneca society to date, it is likely that there will be some pressure to consider theories of government that exist outside of the Nation. These "outside" solutions derive from the way in which the American federal and state governments function. Since each of these governments has a written constitutional structure and has been in operation for many, many years, there would be considerable material available for comparative study and analysis. In addition, there would be a large number of consultants and experts who could assist the Nation in finding ways to make its government more effective in carrying out its responsibilities to the Seneca People. As a result, then, that it is entirely possible that many Senecas could be persuaded to rely upon American conceptions of law and government in any reform process.<sup>159</sup>

The main problem in looking outside the Nation for solutions to our governmental ills is that it is very likely the case that whatever good ideas could be generated might very well be offset by the illegitimacy associated with these good ideas being from an external source. On the other hand, this might be less the case with ideas derived from American sources. Because of the degree to which American colonization has already infected some Senecas with its notions of political superiority, many might find it a legitimizing influence that the Nation would borrow ideas from the American system of government. On the other hand, many others would reject such ideas outright for precisely the same reason. On the whole, because the Nation has in fact undergone considerable cultural and social changes during the last 200 years, it might make sense under some circum-

stances to consider external sources of ideas to the Nation's governmental ills. Because the primary objective of a successful reform process should be to realign government structure with the social formations that currently exist, such sources, however, should be considered last, rather than first.

#### B. Recommendations.

This article has imparted sought to explain the governmental history of the Seneca Nation under both the *Gayanashogowa* and the Nation Constitution and to draw basic comparisons between the two systems. What is perhaps most amazing about the governmental transformation that occurred within the Seneca Nation 150 years ago is the degree to which that transition was incomplete. If one looks solely at the fact that the Council continued to operate under a principle of consensus up until the 1970s — about 130 years — it is impossible not to be impressed by the resiliency of the fundamental political values inherent within the Seneca People and reflected in the *Gayanashogowa*. Although much has changed in the last thirty years to infect Seneca society with the outside world's values and culture, there likely remains deeply imbedded within every Seneca — like some kind of cultural chromosome — unique Seneca instincts about how government should be conducted. As the Nation's political history has shown, these instincts are not easily suppressed. Because they reflect 500 years of governing experience and are a link to the past when the Nation's government was legitimate and effective, it would be unjust, and indeed, foolish, to simply disregard them.

The problem of concentrated and unaccountable political power within the Seneca

Nation is then, if viewed historically, of somewhat recent origin and is thus, subject to remedy. While the adoption of the Constitution in 1848 obviously did work considerable changes in the formal governing process — primarily by vesting unchecked power in the hands of a only a few men — it has taken many years for much of the Constitution's original promise of governmental transformation to take root. Only recently, for example, has the Nation abandoned consensus rule in favor of majority rule. To the extent that these rooted concepts have negative effects — such as the lack of checks and balances of not having a pure separation of powers — it may not be too late to remedy the resulting dysfunction.

The way in which governmental revitalization might occur would be to look deeply within the governing traditions of the Seneca Nation and seek to revitalize historic governing practices and processes. Once again, the fundamental objective would be to ensure that the structure of government was aligned with the cleavages inherent in the modern, quasi-colonized Seneca social structure.

This process, of course, should be tempered by a number of considerations. First, ample respect must be given to the degree to which colonization has transformed the identity of the Seneca People. Previous governing practices may not be capable of revitalization because the people who once utilized them simply no longer exist as a matter of cultural and social identity. Second, ample respect must be given to the reasons underlying the 1848 Revolution and the abandonment of the *Gayanashogowa*. This was, obviously, a dramatic and significant event in Seneca political history. If people were sufficiently moved to overthrow a form of government that had been

in place for hundreds of years, they must have had good reasons for doing so. These reasons must not be forgotten. And finally, ample respect must be given to political reality. While much of the thinking associated with the process of revitalizing historic governing practices can and should be aggressive and pure, implementation will require a practical assessment of where things stand and what, in a purely political sense, might actually be possible given the current concerns and desires of the Seneca People.

It is with these considerations in mind that I would like to offer a few ideas for restoring greater faith and legitimacy in the Seneca Nation government. The purpose here is not to fully explain how these ideas might be brought into practice; implementation of such ideas are beyond the scope of this work. Instead, my purpose here is to simply raise the possibility that there is much within Seneca society that can, and should, be revitalized and re incorporated into a new governmental vision for the Seneca People. If strong and vibrant government is a collective objective.

#### 1. Restore gender-based political roles.

It is obvious to even the most casual observer that Seneca women play a pivotal role in the Nation political process. Many of the Nation's strongest, most aggressive, and most successful politicians are women. Against this historical reality, to deny women a formal role in the government until 1964 seems absolutely ridiculous. Doing so was a form of political amputation. Cutting out one-half of the citizenry from a participatory role in government was self-destructive at best, and foolishly self-interested at worst.

But just because women can now vote and serve in Nation office does not completely address the issue of how men and women should participate in government. It should be of little surprise that Seneca women obtained the right to vote in 1964 — a time of increasing concern about the civil rights of Americans. Allowing women to participate in Nation government on par with men, however, may have been spawned by these notions of equal rights that do not fit neatly within the Seneca Nation's unique history of respectively and allowing for gender politics.

While women did have equality with men, they did so in ways that first allowed men to interact politically with men and women to interact politically with men. Only after intra-gender discussions had occurred were there inter-gender political discussions. Even then, the degree of inter-gender interaction was limited. Restricting and channeling the power associated with intra-gender politicking — by allowing the power of each gender group to develop consensus on its own in its own way — may have been a key to collective strength in the pre-colonial Seneca decision making process.

Thus, one possibility for restoring the separation of powers within the Seneca Nation government would be to restore political roles on the basis of gender. This would acknowledge that there remains within Seneca society a cleavage on the basis of gender. While it is unlikely in this modern era that this cleavage is so strong as to allow for strict gender segmentation (nor would political reality likely allow for it), there most likely would exist some basis (and political attraction) for restoring gender-based decision making at some level. To not do so might unnecessarily eliminate some of the

synergy associated with sharing power on the basis of gender.

## 2. Restore clan and family political roles.

Kinship considerations have always been a significant force in Nation governmental affairs. The reservation community and family that a would-be candidate was from was critical to the determination of whether a political party would support him for office. Clan politics, however, have been non-existent under the Nation's Constitutional system of government. While this was not the case prior to the adoption of the Constitution in 1848, the erosion of clan relationships that began at the end of eighteenth century with the end of the Longhouse and the establishment of the *Gawwito* has contributed to a rise in individualism and unwillingness to work together as a community.

Notwithstanding the end of clan politics, there is some benefit in strengthening kinship-based political roles. Kinship (as well as gender) may yet be sufficiently strong enough within the Nation to promote political cohesiveness and unity in the face of considerable disintegrative pressures. In the way in which elders, mothers, and fathers have the ability to influence the behavior of their children and other members of their families, so too exists the possibility that kinship might allow for greater political organization. While this is not to say that all family relationships are strengthening — some may have just the opposite effect — it is worth trying to preserve and strengthen healthy kinship relationships whenever possible. Indeed, it has been said that the existence of such kinship relationships is the defining

characteristic of what it means to be an Indigenous people.<sup>160</sup>

Restoring a kinship role within Seneca Nation government is fraught with difficulty. For example, while most Senecas, I presume, know what clan they are a member of, there is not necessarily a strong notion that another member of the clan is "family". The accommodation and deference usually afforded family members, then, simply may not be present. This is not surprising given the degree to which clan members have scattered throughout the Nation and outside of it in the absence of a longhouse to keep an extended family together. Thus, attempting to restore a clan role in the future may be impossible.

In the modern era, a focus on community relations, rather than clan relations, may be a better source of kinship bond. There are many defined communities within the Nation. Each, to a significant degree, reflects a number of families that have historically lived in a particular area. Thus, in an indirect way, incorporating a community role in Nation government would have the effect of incorporating extended family and kinship relationships. In so doing, it may be possible to restore a measure of legitimacy in government if defined communities each have the opportunity to have their views represented. Thus, community, rather than clan, is probably the better way to incorporate kinship relationships into governing responsibilities.

## 3. Redefine government functions.

Because of its structure, as well as developments occurring within the last thirty years, power has become too concentrated in the Council and the President. In addition, given

Council's tendency in recent years to act upon bare majority rule, it is possible that only ten people — nine Council members and the President — have power over the entire Nation government. This stands in stark contrast to the tradition of widely shared power under the *Gayanzahgowa* and most of the Nation's Constitutional history, which may explain why the Nation government has become so dysfunctional. As government responsibilities have increased, the demands on the Council and President have increased as well. Unfortunately, these pressures have tended to overwhelm the Nation's officials who, paralyzed to act affirmatively, usually are on the defensive. Thus, legislative and executive power has been used to keep things from happening, rather than used effectively to deal with the problems that the Nation faces.

The problem of concentrated political power is compounded by a lack of accountability. Since the Nation's constitution has no recall procedure, elected officials can engage in the worst kind of self-interested political behavior without having to fear immediate repercussions. To be sure, the Seneca People have a variety of ways in which to ensure that their officials are listening to them. Being vocal at council, obtaining petitions, conducting protest meetings, organizing marches, blocking business, etc. are all forms of political activity that have been used over time to ensure compliance by government officials with the "will of the people." The major problem, however, is that in an era when the Nation's officials are elected with less than half the vote, those in power may simply not give a damn about what the protesters (who might actually be the majority) have to say. As a

result, government can (and has) literally run amok.

To solve this tremendous problem, serious consideration should be given to rethinking and reworking the way in which important government functions within the Nation government are carried out. For example, it might be considered that the decisionmaking/lawmaking function be extended to other than just the Council to allow more people to be involved in the process. There is some precedent for this in the modern era. A number of boards, commissions, and authorities have been established under Nation law to distribute the responsibilities of government. The most dramatic example of this decentralization occurred when the Council enacted the Nation Education Law, which established boards of education to be elected by each of the Allegany and Cattaraugus Reservation communities. Unfortunately, the Council has found it difficult to resist the temptation to interfere with the workings of these separate political entities and their effectiveness has been undermined. Structuring such decentralized decisionmaking into the Constitution may ensure that Council does not have the ability to interfere.

A similar approach could be taken with respect to the other areas in which power has become too concentrated. For example, it might be considered that law enforcement authority be given to others than just the President and the Chief Marshal. Or, power might be more broadly distributed with regard to government administration. For example, recent Presidents have experimented with the separation of the President's constitutional duties from his administrative duties, which have been vested in an appointed Chief Executive Officer.

Regardless of how power is distributed, there should be new mechanisms in place to ensure accountability of government officials. Perhaps most important is the need for a recall provision to ensure that the people have the authority to remove incompetent or corrupt officials directly.

#### 4. *Redefine the dispute resolution process.*

While not the primary focus of this article, it has long been a concern to me that the adversarial method of dispute resolution has had a destructive effect within the Seneca Nation.<sup>161</sup> In 1992, the Nation amended its Constitution to incorporate a number of important changes, including efforts to make the judiciary more independent and less prone to political influence.<sup>162</sup> As the primary architect of those amendments, it seems clear to me, in hindsight, that those amendments were insufficient to address the true problems of the Nation's judiciary — insufficient legitimacy.

Fundamentally, these changes did not address at all the way in which disputes are resolved by the judiciary. Given the degree of interrelationship and knowledge that Seneca residents have about one another, it may be impossible for a Seneca judge to pass judgment over another Seneca and have the result be perceived as legitimate. The community is too small and our political process well, too political, for objectivity and neutrality — hallmarks of the adversarial system — to ever exist. Aside from the other problems associated with applying the adversarial system within an interrelated Indigenous community, it may make the most sense to simply abandon the practice of judging each other. We should

restore genuine peacemaking in our dispute resolution process and use others — probably Indian lawyers from other nations — to serve as our judges. Doing so could very well restore much of the legitimacy of our dispute resolution process.

#### VII. Conclusion

There are a multitude of changes that could be made to better align Seneca Nation government with the underlying social structure that exists within the Nation. Regardless of the degree to which action is taken to make such changes, any effort to do so must be focused on ensuring that the Nation government has greater legitimacy in the eyes of the Seneca People. With greater legitimacy, the Seneca People will put greater faith in the ability of the Nation's government to resolve collective problems. And if this happens, the results of government action will be more beneficial for everyone instead of a select few. The ultimate effect will be a Seneca Nation that is stronger and better able to promote its sovereign existence.

Throughout this process of change, it cannot be underestimated how much American colonization has undermined our ability to even define what it means to have governmental legitimacy. The transformation of our political values has occurred gradually over a long period of time. As a result, today it may be difficult for most Senecas to even see how much our modern notions of government are divorced from our traditional ways or how the destructive actions that we take against one another have been spawned from the White Man's influences. A good example of this is reflected by the recent move by the Nation Council to rely upon majority rule, a change that has con-

tributed significantly to the Nation's recent troubles:

Majority rule can seem problematic for a small community in which everyone has personal ties to everyone else. The problem arises because the majority can have its way without taking into account the minority's strength of feeling. . . . The advantage of majority rule is that it avoid[s] the paralysis caused by consensus rule in a large heterogeneous group. Perhaps we could say that consensus is the most legitimate and least effective type of democracy, whereas majority rule is the most effective and the least legitimate.<sup>163</sup>

Because Seneca society is not "a large heterogeneous group," we can ill-afford to have illegitimate government. The threats from both inside and outside our nation are far too great for us to be paralyzed by our own government. While we need not revert back to the traditional form of government, we must find ways to preserve those things from our past that remain a part of us that can serve to give us new strength. If we fail to do so, I am afraid that we will have little hope of maintaining our distinct existence into the future.

Perhaps the most important lesson to be learned from the *Goyanshigowa* is that it worked for hundreds of years for one important reason — it promoted peace by ensuring that all members of *Haudenostawnee* society had a say in the governmental process. The Seneca Nation has departed significantly from this fundamental truth and the weakness and division

that is the result of this action is now showing through. Because I believe that the Seneca People are much stronger than the government that we now have, we should take immediate steps to restore some of our most time honored governing traditions before they, and a good part of ourselves, are no more.

#### Notes

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1. See e.g. Robert D. Coote and Wolfgang Fikentscher, *Indian Common Law: The Role of Custom in American Indian Tribal Courts*, 46 Am. J. Comp. Law 287, 290 (1998). ("Scholars have long studied the distinctive norms of American Indians, but no one has studied systematically whether or how tribal courts sustain these norms. Have custom and tradition worked their way into judge-made law on reservations and created distinctively Indian common law?")
2. See e.g. THOMAS W. CAVANAGH, *COMANCHE POLITICAL HISTORY* 479 (1996).
3. See, e.g. KARL LEWELLYN AND E. ADAMSON HOBBES, *THE CHEYENNE WAY* (1942)
4. See generally FRANCIS PAUL BRUCHA, *INDIAN POLICY IN THE UNITED STATES* (1981).
5. See Title 25, Code of Federal Regulations.

6. See generally Allison M. Dussias, *Ghost Dance and the Holy Ghost: The Echoes of Nineteenth-Century Christianization Policy in Twentieth Century Native American Fire Exercise Cases* 49 STAN. L. REV. 773 (1997).
7. See WILLIAM T. HAGEN, INDIAN POLICE AND JUDGES (1966).
8. See LAURENCE HAURTMAN, FORMULATING AMERICAN INDIAN POLICY IN NEW YORK STATE, 1970-1986, 10 (1988).
9. This failure was documented in the Meriam Report on Indian Affairs issued in 1928. See INSTITUTE FOR GOV'T RESEARCH, THE PROGRAM FOR INDIAN ADMINISTRATION (Lewis Meriam et al. eds. 1928).
10. See Pritchard, *supra* note 4, at 33.
11. See 25 U.S.C. §§ 465 et. seq. (1994).
12. See Robert N. Clinton, *Redeeming the Legacy of Congress: A Prison Quest for a Decolonized Federal Indian Law*, 46 ANN. L. REV. 77, 104-105 (1993).
13. From the council, which generally included from between five to nine members, the executive positions of chairman, vice-chairman, secretary, and treasurer, were to be selected. No provision was made for a separate judiciary, nor for any traditional government officials, such as chiefs or warriors.
14. Some, like the Hopi, refused to vote but had it applied to them anyway. See SHAKON O'BRIEN, AMERICAN INDIAN TRIBAL GOVERNMENTS 83 (1989). Others, like the Nez Perce and Coeur d'Alene, voted against the Act, but had it applied to them because objections were counted as votes in favor of the act. See *id.* at 82-83.
15. See Robert B. Porter, *Strengthening Tribal Sovereignty Through Government Reform: What Are the Lessons?*, 7 KAN. J. L. & PUB. POL'Y 72, 74-76 (1997).
16. See Pub. L. No. 92-203, 85 Stat. 688 (1971) codified as amended in 43 U.S.C. §§ 1601-1629(e) (1974).
17. See *id.* at 90-93.
18. See Russell L. Bunn, *Aboriginal Self-Government in the United States: A Qualitative Political Analysis*, A REPORT TO THE ROYAL COMMISSION ON ABORIGINAL PEOPLES 11 (June 1992).
19. *Id.* at 12.
20. *Id.*
21. See Porter, *supra* note 15, at 93-98.
22. See Clinton, *supra* note 12, at 86.
23. See generally THOMAS S. AULEK & ELISABETH TOOKER, *Seneca*, in HANDBOOK OF NORTH AMERICAN INDIANS 505-517 (William C. Sturtevant ed., 1978) [hereinafter *Handbook*].
24. Meaning "People of the Great Hill." See SENECA LANGUAGE TONIC REMEMBRANCE GAZETTE 2 (1987).
25. *Handenosaunee* means "people of the Longhouse." See *Handenosaunee* Homepage, (visited Oct. 9, 1998) <[http://siskiwitons.bufnet.net/Culture/Welcomet.htm?article=we\\_are](http://siskiwitons.bufnet.net/Culture/Welcomet.htm?article=we_are)>.
26. Beginning in the nineteenth century, the Cayugasabogow and the founding of the Confederacy were transcribed by non-Indians. See Arthur C. Parker, *The Constitution of the Five Nations*, in PARKER ON THE IROQUOIS (William N. Fenton ed., 1968) [hereinafter *Parker*]; see generally JOHN ARTHUR GIBSON, CONCERNING THE LEAGUE: THE IROQUOIS TRADITION AS DICHTATED IN ONONDAGA (Hanoi Woodbury ed., 1992).
27. See Parker, *supra* note 26, at 55-56, ¶ 97.
28. Sections III B and C are substantially derived from Robert B. Porter, *Strengthening Tribal Sovereignty Through Peacekeeping: How the Anglo-American Legal Tradition Destroyed Indigenous Society*, 28 CALIF. HON. RTS. L. REV. 235, 240-246 (1997).
29. PAUL A. W. WALLACE, THE WHITE ROOTS OF PEACE XVI (1946) (prologue by John C. Mohawk).
30. *Id.* at 15. The Peacekeeper's message of peace was further refined into three parts — Righteousness ("Gawowoh"), Health ("Shenoh"), and Power ("Gawakawehak") — with each part having two meanings:

  - Righteousness means justice practiced between men and between nations; it means also a desire to see justice prevail.
  - Health means soundness of mind and body; it also means peace, for that is what comes when minds are sane and bodies cared for.
  - Power means authority, the authority of law and custom, backed by such force as is necessary to make justice prevail; it means also religion, for justice enforced is the will of the Holder of the Heavens and has his sanction.

31. See *id.* at 7 ("Peace was the law").
32. See *id.* at 3.
33. See *id.* at 16.
34. *Id.*
35. *Id.*
36. See generally Parker, *supra* note 26, at 30. Royonah means "watchers of the peace." See *Handenosaunee* Homepage, (visited Oct. 9, 1998) <[http://siskiwitons.bufnet.net/Culture/Welcomet.htm?article=grand\\_councils](http://siskiwitons.bufnet.net/Culture/Welcomet.htm?article=grand_councils)>.
37. See Parker, *supra* note 26, at 34, ¶ 17.
38. The Mohawks contributed nine rogones, the Oneidas also nine, the Onondagas fourteen, the Cayugas ten, and the Senecas eight.
39. See Parker, *supra* note 26, at 41, ¶ 35.
40. The war chiefs are responsible for speaking on behalf of the people and to present the questions and propositions before the Council. See *id.* at 41, ¶ 37.
41. See *id.* at 34, ¶ 19.
42. See *Handenosaunee* Homepage, (visited Oct. 9, 1998) <[http://siskiwitons.bufnet.net/Culture/Welcomet.htm?article=bow\\_dock\\_grand\\_council\\_work](http://siskiwitons.bufnet.net/Culture/Welcomet.htm?article=bow_dock_grand_council_work)>; see also Lewis H. Morgan, LEAGUE OF THE HAUDENOSAUNEE, IROQUOIS 111 (1962) [hereinafter *Leaguel*].
43. See WALLACE, *supra* note 29, at 40. The Mohawks and Senecas sat on the east side of the fire; the Oneidas and Cayugas sat on the west side. The Onondagas served as mediators and sat on the north side of the fire. See *id.*
44. *Id.*; see also LEAGUE, *supra* note 42, at 112.
45. See WALLACE, *supra* note 29, at 40; see also LEAGUE, *supra* note 42, at 112.
46. See LEAGUE, *supra* note 42, at 113.
47. See generally Parker, *supra* note 26, at 30.
48. See LEAGUE, *supra* note 42, at 113.
49. See WALLACE, *supra* note 29, at 36.
50. See *id.* The Confederacy's inability to agree upon an ally in the American Revolutionary War was the main reason for its demise as a military power and strong form of government. See note *infra* 74.
51. See LEAGUE, *supra* note 41, at 330, 333.
52. See *id.* at 333 (There was handed by "[t]he lash of public indignation, the severest punishment known to the redman, [which] was the only penalty attached to this dereliction from the path of integrity").
53. See ARTHUR F. C. WALLACE, THE DEATH AND REBIRTH OF THE SENECA 25 (1969).
54. See Parker, *supra* note 26, at 34, ¶ 18-19 (rogonech), at 42, ¶ 39 (war chiefs). Men also could depose a war chief, either alone or with the women, but only the women could designate a replacement.
55. See *id.* at 55, ¶ 95-96.
56. See *id.* at 46, ¶ 59.
57. See generally *id.* at 42, ¶ 42.
58. See *id.* ¶ 45-46.
59. See *id.* at 55, ¶ 95.
60. See *id.* ¶ 94.
61. See *id.* ¶ 95.
62. The Mohawk and Oneida nations had the fewest number of clans — three — and thus the most concentrated clan power structure.
63. See Parker, *supra* note 26, at 52, ¶ 79.
64. See *id.* at 41, ¶ 37.
65. See *id.* at 52, ¶ 81.
66. See *id.* at 54, ¶ 90 (the warriors had authority to bestow the title on another on a temporary basis).
67. See generally *id.* at 34, ¶ 19, at 37, ¶¶ 24, 26.
68. See *id.* at 41, ¶ at 37.
69. See *id.* at 32, ¶ 9, at 41, ¶ 37.
70. See generally *id.* at 32, ¶ 9.
71. See *id.* at 34, ¶ 17.
72. See *id.* ¶ 18 (removal for failure to attend the Grand Council).
73. See *id.* ¶ 19 (removal for failure to serve the people or follow the Cayugasabogow).
74. See *Handbook*, *supra* note 23, at 434-435. Tooker argues that *Handenosaunee* dominance began to wane after the French and Indian War in 1763, in which the Confederacy also was divided in its loyalties to the British and the French. The resulting British victory allowed them to trade directly with the western Indian nations, thereby bypassing the *Handenosaunee* as the agent in Indian-Indian relations. See *id.* at 434.
75. The Confederacy "covered the council fire" in 1777 and allowed each nation to pursue its own course. See *id.* at 435.
76. See *id.*
77. See Treaty with the Six Nations at Fort Stanwix, Oct. 22, 1784, 7 Stat. 15; Treaty at Fort Harmar, Jan. 9, 1789, 7 Stat. 33; Treaty with the Six Nations at Canandaigua, Nov. 11, 1794, 7 Stat. 44.
78. See Anthony F. C. Wallace, *Origins of the Longhouse Religion*, in *Handbook*, *supra* note 23, at 444, see also WILLIAM T. HAGEN, LONGHOUSE DIPLOMACY AND FRONTIER WARRIORS 55-56 (1976); see LAURENCE M. HAURTMAN, FORMULATING AMERICAN INDIAN POLICY IN NEW YORK STATE, 1970-1986 3-4 (1988).
79. See *id.* Wallace, *Origins of the Longhouse Religion*.

80. See Joy Bihlartz, *First Among Equals? The Changing Status of Seneca Women in Women and Power in Native North America* 108 (Laura F. Klein and Lillian A. Ackerman eds. 1995).
81. See *id.*
82. See *id.*
83. See *id.* (quoting Anthony Wallace).
84. See *id.* (acknowledging that there were an equal number of male and female faithkeepers in the new religion and that only female-deeded crops such as corn received ritual recognition).
85. See Thomas Abler, *FACTORIAL DRAINAGE AND PARTY CONFLICT WITHIN THE SENECA NATION 1845-1890: AN ETHNOHISTORICAL ANALYSIS* 93-149 (1969) (unpublished Ph. D. thesis, Toronto).
86. See generally *id.* at 109-116. Abler concludes that while there were several issues that precipitated the revolution, "[i]t was the annuity question, particularly a change in Federal policy with respect to the annuity, which precipitated the 1848 revolution." *Id.* at 110.
87. See *id.* at 98-99.
88. See Treaty with the New York Indians (also known as the Buffalo Creek Treaty), June 11, 1838, 7 Stat. 550, see generally Abler, *supra* note 85, at 96-98.
89. See Treaty with the Senecas, May 20, 1842, 7 Stat. 586. Not surprisingly, the Senecas residing at Tonawanda refused to participate in this treaty. They lobbied independently to secure title to their reservation and were successful when they obtained a treaty in 1857 that not only provided funds for them to buy out non-Indian claimants but also acknowledged them as an independent political entity. See Treaty Between the United States and the Tonawanda Band of Seneca Indians, Nov. 5, 1857, 11 Stat. 735.
90. See Act of May 4, 1845, ch. 150, § 5, 1845 N.Y. Laws 146, 149-50; see also Abler *supra* note 85, at 102-104.
91. See Act of May 4, 1845, ch. 150, § 5, 1845 N.Y. Laws 146, 149-50.
92. See Abler, *supra* note 85, at 103.
93. See L. 1847, c. 365 § 7, L. 1863, c. 90, §§ 6, 7, and 14, as amended L. 1884, c. 316, L. 1892, c. 679, § 45 codified at 26 N.Y. Indian § 43 (McKinney 1997) (providing for the duties of the clerk).
94. See L. 1847, c. 365 § 6, L. 1863, c. 90, § 5, L. 1892, c. 679, § 44, as amended by L. 1893, c. 229 codified at 26 N.Y. Indian § 44 (McKinney 1997) (providing for the duties of the treasurer).
95. See L. 1847, c. 365, § 1, L. 1863, c. 90, §§ 1, L. 1892, c. 679, § 41 codified at 26 N.Y. Indian § 41 (McKinney 1997) (providing that the "Seneca nation shall have a marsh"; see also L. 1847, c. 365, § 13, L. 1863, c. 90, § 12, 28, and 29, L. 1892, c. 679, § 54 amended by L. 1893, c. 229 codified at 26 N.Y. Indian § 53 (McKinney 1997) (providing for the duties of the marshal).
96. See L. 1847, c. 365, § 1, L. 1863, c. 90, §§ 1, L. 1892, c. 679, § 41 codified at 26 N.Y. Indian § 41 (McKinney 1997) (providing that the "Seneca nation shall have . . . three peacekeepers"; see also L. 1847, c. 365, § 9, L. 1863, c. 90, § 8, L. 1892, c. 679, § 50 as amended by L. 1893, c. 229 codified at 26 N.Y. Indian § 50 (McKinney 1997) (defining incompetency of peacekeepers to hear cases); L. 1915, c. 560 (eff. May 10, 1915) codified at 26 N.Y. Indian § 46 (McKinney 1997) (defining the jurisdiction of the peacekeepers courts).
97. See Abler, *supra* note 85, at 104.
98. See Declaration of the Seneca Nation of Indians, Dec. 4, 1848.
99. See *id.* § 2.
100. See *id.* § 3.
101. See *id.* § 4. This Constitution even allowed for State court jurisdiction over cases arising within the Nation as the State "Legislature thereof may permit." See *id.* §§ 4, 5.
102. See *id.* § 7 (providing for clerk, treasurer, superintendent of schools, overseers of the poor, assessors, and overseers of highways), § 9 (marshals).
103. See *id.* at 121.
104. Thomas Abler has written that those in favor of the Constitution had little more than half of the Seneca population supporting them:
- Thus it cannot be said which faction held the majority of the Seneca at this time. Later, perhaps less biased, observers reported the Seneca almost evenly split over the issue of government by chiefs vs. republican government (note omitted). I suspect that was the case in 1849, immediately after the revolution. Even if one faction held a majority, evidence indicates the other possessed considerable strength. See Abler, *supra* note 85, at 120.
105. See *id.* at 132-146.
106. See *id.* at 127-129 (regarding 1849 attempt of "old" chiefs to invalidate recognition of new government), 131 (regarding 1850 attempt), 133-141 (regarding the 1851, 1852, and 1853 attempts after securing office), 145 (regarding the 1855 attempt after the January Constitutional convention).
107. See Abler, *supra* note 85 at 146.
108. *Id.* at 147.
109. See L. 1892, c. 679, § 72 codified at 26 N.Y. Indian § 72 (McKinney 1997).
110. See L. 1909, c. 1022, § 1 (eff. May 26, 1909) codified at 26 N.Y. Indian § 73 (McKinney 1997).
111. See N.Y. Indian Law § 41, 44, 45, 46, 49, 53, 72, 73. These laws, like all other provisions of State law purporting to regulate internal tribal political affairs, are invalid as a matter of Federal law. See *Williams v. Lee*, 358 U.S. 217, 220 (1959) ("Essentially, absent governing acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them."); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 595 (1832) (rejecting the application of state laws within the Indian territory absent express Congressional consent); *Bowen v. Doyle*, 880 F. Supp. 99, 105-38 (W.D.N.Y. 1993) (rejecting the authority of the New York State courts to exercise civil jurisdiction over internal Seneca political matters).
112. See Joy A. Bihlartz and Thomas S. Abler, *Kinewa's Legacy: The Re-Empowerment of Seneca Nation Women* 3 (paper presented at the Conference on Inqouois Research, 1997) (unpublished manuscript on file with author).
113. See Lawrence M. Hauptman, *The Iroquois Struggle for Survival: World War II to Red Power* 144 (1986).
114. See Bihlartz and Abler, *supra* note 112, at 5 (The "return of women to formal participation in the politics of the Seneca Nation is a legacy of the struggle to stop the construction of the Kinzua Dam and the effort to manage the rebuilding process necessitated by the relocation of most of the residents of the Allegany Reservation whose homes and lands were taken for the reservoir."
115. See *id.* at 8 (the Council met "primarily in order to sign oil, gas, or mineral leases").
116. See *id.* at 8, 9.
117. See *id.* at 9. It has also been suggested that adverse publicity surrounding the inability of women to vote also put pressure on the men in power. In a hearing before a U.S. Senate Subcommittee on Indian Affairs, it was alleged that the Nation President at the time, George Heron, had made disparaging remarks about women being "second class citizens of the Seneca Nation." See *Hearing*
- on the Seneca Kinzua Settlement Act, 147 (1964). On the basis of this hearsay, the subcommittee chairman, Frank Church of Idaho, directed Commissioner of Indian Affairs Dr. Phillip Nash to inquire into the matter "in view of the fact that tribal constitutions under the laws are supposed to be not inconsistent with the governing constitution of the State and Nation." See Bihlartz and Abler, *supra* note 112, at 10. Nash responded that he "had discussions with Mr. Heron, . . . who is the of the opinion that the tribe bylaws ought to be revised, so as to provide for women suffrage." See Senate Hearing, at 152.
118. See *id.* at 20.
119. See Bihlartz and Abler, *supra* note 112, at 11.
120. See *id.* at 17.
121. See Bihlartz, *supra* note 80, at 111 ("For example, all of the 1986 SNI presidential candidates had female campaign managers. Whether this is a holdover from the times when women's political role was primarily behind-the-scenes manipulation or whether it is merely coincidental is unknown). My view, is that women's involvement in politics at this level is no coincidence.
122. See *id.* at 13, 19-23.
123. With the inclusion of women, the number of voters increased, which had a dramatic impact on Seneca political behavior.
- One successful politician told Abler that there were simply so many voters now that no party could afford to "buy" an election. Moreover, even if a party had sufficient funds, it appears the women were not as willing as their brothers and husbands to accept bribes in return for their votes. Nor, as candidates, were they able to afford to purchase votes even if they had been willing. See Bihlartz and Abler, *supra* note 112, at 13.

124. See *id.* at 24.

125. In 1998, for the first time, a woman ran as the presidential nominee of a major political party. Rae L. Synder, of the Allegany Reservation, was the nominee of the People's Party and finished second in a three way race. See LAURA HOWARD, *JIM RAY, SENECA PARTY SWEEP SNI ELECTION*, Salamanca Press, November 4, 1998, at 1.

126. In 1962, the Seneca Nation hired its first full time employee. See Bihlartz, *supra* note 80, at 111. Today, as the result of the influx of federal settlement and program

- money, as well as the Nation's own businesses, the Seneca Nation employs approximately 800.
127. These positions included eight councilors, one peacekeeper, one surrogate judge, one marshal, one highway commissioner, one assessor, and one postmaster.
128. This process links the offices of president and clerk to one reservation and the office of treasurer to another. Every two years, the offices rotate so that the president can never succeed himself. See Bilharz and Adler, *supra* note 112, at 4. This custom has ensured that political balance exists between the Allegany and Cattaraugus Reservations, notwithstanding the fact that Cattaraugus has twice as many residents as Allegany.
129. See Indian Self-Determination and Education Assistance Act, Pub. L. No. 93-638, §§ 1-209, 88 Stat. 2203, 2307-17 (1975) (codified as amended at 25 U.S.C. §§ 450-458 (1994)).
130. From the beginning of the Seneca Republic, the Nation has had a vibrant two-party system. Following the 1848 revolution, the parties emerged along lines of those in favor of the new government - the "New Government Party" - and those opposed to it - the "Old Chiefs Party". See Adler, *supra* note 85, at 117. By the turn of the century, the parties had evolved into the People's Party and the Republican Party. The latter was recast as the Veteran's Party following World War II and once again transformed in the 1950s as the New Deal Party. See Bilharz and Adler, *supra* note 112, at 4. By the 1980s, the New Deal Party had become formally non-existent.
131. See Porter, *supra* note 28 at 288-96.
132. Under the original Constitution, two-thirds of the eighteen Councilors was necessary to appropriate money. See Declaration, § 2. Under the amended Constitution, ten of sixteen Councilors are necessary for appropriations. See Constitution, as amended, § 2.
133. Good examples would include the surprise gannibing resolution that the Council approved by a wide margin during the summer of 1993. This action so enraged the people that they took to protesting and blocking both the Nation's and the President's personal businesses. Within only a few days, in response to great public pressure, the Council convened an emergency session to rescind the resolution. And it would be hard not to forget the trouble that started in 1994, when the newly elected president sought to remove councilors, rescind laws, and fire employees, actions that eventually led to the Nation's civil war.
134. See generally, Porter, *supra* note 15.
135. See Bilharz & Adler, *supra* note 112 (explaining activities of Seneca Council).
136. See Declaration, *supra* note 75, at § 13.
137. See United States v. Forman, 125 F.2d 928 (2d Cir. 1942) (holding that New York State law was inapplicable to Indian lands located within the State absent express Congressional authorization). This dispute arose out of a conflict with one of approximately 2,000 leases of Seneca land located within the City of Salamanca. See generally The Seneca Nation Settlement Act, 25 U.S.C. §§ 1774 *et seq.*
138. See generally, Robert B. Porter, *The Jurisdictional Relationship Between the Hoquiam and New York State: An Analysis of 23 U.S.C. §§ 232, 233, 27* HARV. J. ON LEG. 497 (1990).
139. See Bilharz and Adler, *supra* note 112, at 14 ("The Council elected in November 1964 had a budget far larger than any previous Seneca Nation administration").
140. See Pub. L. No. 93-638, §§ 1-209, 88 Stat. 2203, 2203-17 (1975) (codified as amended at 25 U.S.C. §§ 450-458 (1994)).
141. See William L. Stringer and Jeffrey L. Margolick, *The Economic Impact of the Seneca Nation of Indians on Western New York State*, Exec. Summary at ii, September, 1997.
142. See, e.g. Department of Taxation and Finance of New York v. Millheim Avoca Bros., Inc., 512 U.S. 61 (1994); see generally Karen L. Folster, *Just Cheap Buys, or an Equal Protection Violation? New York's Failure to Tax Reservation Sales to Non-Indians*, 62 ALA. L. REV. 697, 697-712 (1998).
143. See Seneca Nation Settlement Act, *supra* note 137.
144. See Bilharz and Adler, *supra* note 112, at 17.
145. See Porter, *Strengthening Tribal Sovereignty Through Peacemaking*, *supra* note 15.
146. Majority rule and declaratory law have had a corrosive and divisive effect on Indigenous societies wherever they have been adopted. Discussing the topic generally, it must be understood that

ing the dissenter withdraw from the group. The abrupt change from consensus methods to majority rule among the tribes in the 1930's caused much of the bitterness in tribal politics. See Cooser & Fikentscher, *supra* note 1, at 319 (notes omitted).

147. To evaluate the degree to which the weakness of Seneca government affects Seneca sovereignty, it is necessary to identify the degree to which Seneca government is dysfunctional, i.e. unable to respond to the internal demands of the people and the external threats to the Nation. Naturally, any inquiry of this sort does not tend itself to perfection. The point however, is not to focus on some precise measure of sovereignty loss, but instead to identify the broad categories by which the Seneca government has been weakened through governmental transformation and a concentration of political power.

148. See *Draft Declaration on the Rights of Indigenous Peoples*, U.N. Doc. E/CN.4/Sub.2/1989/33.

149. Robert B. Porter, *Strengthening Tribal Sovereignty Through Governmental Reform: "What Are the Issues?"* 7 KAN. J. L. & PUB. POL. 72, 96 (1997).

150. See generally *id.* at 90-93.

151. With Robert Rich of Cornell University, I was the primary draftsman of the reorganization plan and implementing legislation.

152. See Seneca Nation of Indiana Government Law, Art. 3.

153. See *id.* Art. 2.

154. In recent years, comprehensive legislation has been developed to address a variety of ills occurring within Seneca society. For example, in the 1980s a timber law was enacted and never implemented. In addition, an underground storage tank law was enacted and never implemented - even by the government itself. In 1994, a law governing the wholesale distribution of gasoline and cigarettes within Nation territory was enacted, but never implemented.

155. A similar process occurs with respect to initiatives by government staff, however, there is a much higher reliance upon written proposals and committee meetings prior to any action by the Council.

156. An example of this type of law would be the Nation laws governing the enrollment of tribal members. For hundreds of years, Seneca customary law has dictated that rights within the Seneca community are based upon one's

mother. Accordingly, the Seneca Nation laws state that the child of any Seneca woman is eligible for enrollment and are not controversial and are universally accepted. While there have occasionally been efforts to abandon this standard in favor of some kind of blood quantum - always initiated by men who have children with non-Seneca mothers - the law has not been changed and today is not seriously questioned.

157. Reliance upon foreign governments is justified in two fundamental ways. First, it is argued that any funds or services provided by foreign governments is an entitlement provided in accordance with treaty provisions. Second, it is argued that it is the prerogative of sovereign nations to enter into relationships with other nations for mutual benefit. Regardless of the rationale that one adopts for justifying this dependence, the fact that there is any dependence at all on foreign governments - especially ones like the State that have long been hostile to Seneca concerns - means that there is a commensurate loss of autonomy by the Nation to carry out its affairs as it sees fit.

158. See Adler, *supra* note 85, at 120.

159. Of course, when looking to external sources of guidance, there is no need to limit attention to just the United States. There are about 200 countries in the world and thousands of distinct peoples within those countries, all of whom have their own form of government. In many cases, these nations and peoples will have forms of government similar to the United States. Foremost, this is due to America's ability to export its way of life to other parts of the world. But nonetheless, there are a variety of other governing models from throughout the world that could be considered if it is deemed necessary to look towards external sources for guidance in the reformation of Seneca Nation government.

160. See Russell L. Barsh, *The Challenge of Indigenous Self-Determination*, U. MICH. J. L. REFORM 277, 297 (1993) ("What makes a political system 'tribal'? By definition it is one that is based on kinship").

161. See generally, Porter, *supra* note 15.

162. See Constitution of the Seneca Nation of Indians of 1848, as amended, § 4.

163. Robert D. Cooser and Wolfgang Fikentscher, *Is There Indian Common Law? The Role of Custom in American Indian Tribal Courts*, 25 (John M. Olin Working Paper Series No. 92-3, University of California at Berkeley, Dec. 1992).

# Tribal Court Opinions: Justice and Legitimacy

Mary Jo B. Hunter

The initial thoughts concerning the topic of this paper began with the first symposium when I was asked to be a commentator on a presentation given by Professor Frank Pommerstein entitled, "What Must be Done to Achieve the Vision of the Twenty-first Century Tribal Judiciary."<sup>1</sup> In preparing my comments, I considered the unique challenges for tribal judiciaries to incorporate the traditional practices of a tribe into an European/American model legal system. The challenges will vary from tribe to tribe, but some of the challenges are common to all of us who preside over tribal courts. The shared challenges arise from the initial creation of the tribal court. The challenges facing the creation of the tribal court system involve questions about who is creating the court and how. The creation of rules and procedural constructs for the tribal court also creates challenges. And one of the most challenging considerations is the use of tribal traditions and customs. How are tribal traditions and customs reflected in the tribal court system? I will address each of these areas individually.

First, the creation of a tribal court system may be a hurdle already jumped for some tribes. Many tribal courts were created by the tribes under the auspices of the Bureau of Indian Affairs as Courts of Indian Offenses.<sup>2</sup> After the passage of the Indian Reorganization Act of 1934, many tribal councils began to create tribal court systems.<sup>3</sup> The history of tribal courts is too extensive for the purposes of this presentation. Suffice it to say that, today, most tribes do have existing tribal courts or are in the

process of formulating a tribal court system.

The question arises in both contexts as to the legitimacy of that court as measured by who presides over the court. Simply put, does the tribal court judge have legal training or is he or she a lay judge. The legitimacy of the tribal court is measured in part by that simple question.

The training and background of the tribal judge or justice is connected to who is the creator of the tribal court. A tribe which has a tribal council that retains the authority over the judicial arm may select tribal court judges and justices by appointments.<sup>4</sup> Such appointments may be made based on a variety of factors. Education may be a key factor in appointing the judge or justices. The tribal council may opt to utilize only law-trained individuals. It is apparent that the Winnebago Tribe of Nebraska appoints only law-trained judges to their lower and appellate courts. Such decisions are an attribute of tribal sovereignty and the tribes' inherent right to select the factors for their judicial officers. Other tribal councils may select only tribal members without requiring a law degree.<sup>5</sup>

Other tribes, such as the Ho-Chunk Nation, have created new tribal constitutions which establish separate branches of government.<sup>6</sup> Where a tribal court is created as a separate

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*Coyote  
has a  
message  
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Heaven Fire

Keeping alive the ancestors

Prayers

Dreams

Songs

Keeping alive the ancient ones

Ceremonies

Paint

Tongues

Restoring the sacred

Places

Altars

Legends

Remembering who you are and

where you come from

Then you will not allow the Precious  
and the Sacred Given by the Great  
Spirit to die.

Treaty on Cultural Property Rights — Convention on Cultural Reality.

ARTISTIC Right is an individual Right  
Group Property -

How do you establish a sustain - action locally and  
action globally.