

**JOSEPH J. HEATH**  
GENERAL COUNSEL FOR THE ONONDAGA NATION  
512 JAMESVILLE AVENUE  
SYRACUSE, NEW YORK 13210  
315-475-2559  
Facsimile  
315-475-2465  
jjheath1946@gmail.com

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## **NATIONS ARE SOVEREIGN; THEY ARE NOT “TRIBES”:**

Over the past 35 + years since I have been fortunate enough to have served as General Counsel for the Onondaga Nation. In 1998, I was asked by the Onondaga Chiefs to author a law review article on their diplomatic resolution of the excise tax issue with then Governor Pataki over a year and a half period, which resulted in the May 1997 signing of a New York State/Haudenosaunee Trade and Commerce Agreement, ( 46 Buffalo Law Review 1011, 1998). Interestingly, despite over two centuries of difficulties in this area, in this historic Agreement the state accepted the Haudenosaunee as Nations and used that label, rather than *tribes*.

The last sentence in the first footnote on this article states: “The more substantive terms *nation* and *people* will be used collectively in their international law sense, rather than the pejorative term *tribe*.”; and the last sentence of the second foot note states: “In the past 25 years, as they have struggled to reaffirm their sovereign status, the Haudenosaunee have endeavored to reject these colonial and imperialist terms . . . .” (*Id.* at 1012.)

So it is important to understand that, to the Haudenosaunee, the use of the term *tribe* means that they are not be accepted as sovereign, independent Nations. However unintentional the continued use of the term *tribe* may be, its use will be interpreted as disrespectful and insulting by traditional Haudenosaunee.

## **The treaties of 1784, 1789 and 1794 were between sovereign Nations:**

The fledgling federal government entered into three treaties with the “Six Nations”, the last of which was the 1794 Treaty of Canandaigua, which, in Charles J. Keppler’s book, *Indian Treaties, 1778-1883*, is entitled: “Treaty with the Six Nations, 1794”. Although this treaty has been repeatedly violated by the non-Native side, it remains in effect and is actively celebrated in Canandaigua, New York, by both sides each November 11<sup>th</sup>, its anniversary. The federal government knew and continues to know that the Haudenosaunee are Six

Nations.

Further, as we all know, the United State Constitution sets forth very clearly that "treaties are the supreme law of the land," because of the abundantly clear wording of Article VI, Section 2:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made under the authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

With this wording, I would submit that the Constitution mandates that state officials honor the treaties, and particularly that they honor the Haudenosaunee requests to be referred to as Nations.

United State Supreme Court:

Despite subsequent rulings which are inconsistent, this ruling by the Supreme Court, in *Worcester v. Georgia*, in 1832, provide strong historical and legal support for the Haudenosaunee position:

The words "treaty" and "nation" are words of our own language, selecting in our diplomatic and legislative proceedings, by ourselves, having each a definite and well-understood meaning. We have applied them to Indians, as we have applied them to the other nations of the earth; they are applied to all in the same sense. (31 US 515, 559-560.)

**New York State's historical disregard for federal laws and deliberate policy to refuse to accept the Haudenosaunee as Nations:**

Let us try to think back to 1783 and the Treaty of Paris with Great Britain which ended the Revolutionary War: New York State effectively only had settlements as far west as what is now Herkimer ("German Flats"). The state was broke from the war and could not even pay its soldiers. Therefore, the state had an insatiable thirst for Indian lands. This need was so great that New York knowingly violated the Constitution; clear federal laws, such as the 1790 Trade and Intercourse Act (today 25 USCA § 177); the treaties; and written warnings from George Washington's administration. These violations are the subject of the land rights litigation.

In this period, in July of 1784, a New York representative to the Continental Congress, James Duane, wrote a letter to then New York Governor, George Clinton. Duane advised that the State abandon the centuries old practice of diplomatic treaty making with the Haudenosaunee Nations, which had been employed by the Dutch, the French and the English. Duane went on to be a delegate to the Constitutional Convention and later to be Mayor of New York City.

In his July 1784 letter to Governor Clinton, Duane advised that New York should significantly alter the manner in which it related to the Haudenosaunee, because such an alteration would facilitate the taking of their vast holdings of land. Duane wrote that Clinton should no longer use the ceremonies and protocol, such as wampum exchange, treaty councils, etc.: *"it would be wise to bring them to adopt, gradually, our forms."* Duane continued: *"I would use neither Belts nor Strings [of wampum] in any communications. Instead, all messages or communications should be signed and sealed or both."*<sup>1</sup>

Most importantly, for this discussion, Duane then advised:

I would never suffer the word "Nation" or "Six Nations" or "Confederates" or "Council Fire at Onondaga" or any other form which would revive or seem to confirm their former ideas of independence. . . . Treat them as though they were your citizens—therefore—subject to your authority. . . . The style by which the Indians are to be addressed is of moment also. They are used to be called *Brethren, Sachems and Warriors of the Six Nations*. I hope it will never be repeated.

They should rather be taught [that] . . . they have become wretched and destroyed themselves, and that public opinion of their importance had long since ceased.

These colonial period references may seem remote to us in the 21<sup>st</sup> century, but rest assured that the Haudenosaunee still refer to them constantly and to New York's historic pattern of referring to them in less-than-respectful terms such as "tribes".

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<sup>1</sup> Parenthetically, ten years later, when President Washington wanted to convene the treaty council at Canandaigua, he asked for and received money for Congress to purchase wampum, so that invitation strings could be properly delivered to all of the Haudenosaunee Councils of Chiefs, to invite their participation.

Further support for this position is found in the United Nations Declaration on the Rights of Indigenous Peoples.

It is our hope and request that federal, state and local governmental leaders will take some time to reflect on this historical, treaty-based history and the Constitutional background, as you consider the difficulties which will most probably continue with the exclusive use of the pejorative term *tribe*. In the spirit of the Haudenosaunee mandate to "use the good mind" to find solutions, let us try to find a reasonable ground on this issue of such importance to the Haudenosaunee.

Respectfully submitted,

*Joseph J. Heath*  
Joseph J. Heath, Esq.