

The Right to Fish in Tyendinaga Mohawk Territory

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First Nations experience a unique, and often challenging, political position in Canada. With attention to the Mohawks of Tyendinaga, I will demonstrate how Mohawk, and Haudenosaunee people collectively, are born into an ancestral political system that governs and defines people's worldviews and actions. While Haudenosaunee political thought is a worldview that exists in constant tension with the *Indian Act*, it is one that has not been lost. I outline The Great Law of Peace, a political system shared by the Haudenosaunee peoples pre-existing European contact in North America. I illustrate the Nationhood exercised by Mohawk people, post-contact and pre-confederation, with attention to the Two Row Wampum belt, a treaty established between the Mohawk people and Dutch settlers. In elucidating the intersections between the Canadian government and Mohawk autonomy, I examine the struggle to confirm spear-fishing rights for the Mohawks of Tyendinaga. I provide a historical account of how the right to spear-fish in Mohawk territory that extends beyond the reserve was restored. I then move to explore the case of Eliza Sero, a Tyendinaga Mohawk woman who sued a government official for the confiscation of her fishing net. I contrast the outcomes of the cases to illuminate that justice may be attained when a First Nation recognizes their ancestral rights as more powerful than the restrictions imposed by the Canadian Government.

Attention to the connections between the past, present, and future is a philosophy interwoven into the Great Law of Peace, an ancestral constitution to govern the Haudenosaunee peoples. From East to West, the Haudenosaunee peoples are comprised of the Mohawk, Oneida, Onondaga, Cayuga, and Seneca Nations united together by the Haudenosaunee confederacy upon mutual acceptance of the Great Peace. Historically, these five Nations existed at war with each other and went against the way of life that was intended by the Creator. To end bloodshed between Nations and to form peaceful relationships, the Creator sent the Peacemaker to bring an

end to suffering (Hill & Coleman, p. 346). To end the conflict, the Peacemaker brought to each Nation The Great Law. He planted a tree of peace in the territory of the Onondaga Nation and said:

Roots have spread out from the Tree of the Great Peace, one to the north, one to the east, one to the south and one to the west. The name of these roots is The Great White Roots and their nature is Peace and Strength... We place at the top of the Tree of the Long Leaves an Eagle who is able to see afar. If he sees in the distance any evil approaching or any danger threatening he will at once warn the people of the Confederacy. (Mohawk Nation News, p. 3).

The Great Law is made up of laws related to the organization of the confederacy, duties of community members, duties of chiefs, organization of clans, duties of clan mothers, adoption, emigration, land ownership, war, rights of the people, ceremonies, songs, protection of the house, and funerals. The purpose of the Great Law has always been to provide a quality of life for people to be at peace with each other and with themselves. It was also produced to ensure that the Great Peace may be upheld by future generations. Robert Porter writes, “the Haudenosaunee were unified and thus sufficiently empowered to carry on trading activity, diplomatic relations and warfare with England, France, and Other Indian nations” (p. 809). Pre-confederation, the Mohawk peoples, as part of the Haudenosaunee confederacy, engaged in diplomacy with Dutch settlers through the Two-Row Wampum belt, known as Teyohá:te (Two Paths) in the Mohawk language.

Prior to 1613, the Mohawks had dealt somewhat with Dutch and French settlers. In 1609, Samuel de Champlain launched an attack on the Mohawks and, for the first time, used firearms against them. It is impossible to completely understand how deeply unsettling and tragic this

would have been (Hill & Coleman, p. 345). Thus, in forming an alliance, the Mohawks sought out the Dutch. While the exact date the Two Row was introduced is unknown, it is believed to have emerged in 1613 in, what we now understand to be, Upstate New York. The Two Row pictures two parallel lines of white beads to represent the Mohawks and the Dutch in friendship with each other. Rick Hill, an artist and knowledge keeper from the Six Nations reserve says:

We both have our own... respective laws. We do not have authority over each other or our kind of culture... The Creator gave us a canoe and you a boat (ship). We will take our vessels to the water and put them in the water, each in their distinctive way. Our people will follow the vessels in the water. We will place them a certain distance apart, but will line them up so they will always be parallel... Now we have laid our vessels out, parallel to each other, so too it is with our beliefs. My beliefs will be in my canoe, yours will be in your boat. I will also put my laws in my canoe, and you will put your laws in your boat. Our authority, beliefs, and laws will be dropped into our vessels. That is how people will know it, by the likeness to two paths. (p. 351).

The Two Row mirrors the Great Law as it seeks to establish peace with other Nations. The Peacemaker brought the five Nations the Great Law so people could find peace. When the Mohawks established an allegiance with the Dutch, they acknowledged the different worldviews of both Nations as they tried to forge a peaceful relationship.

As more settlers arrived in Canada, and as they were seeking out land and resources hungrily and competitively with First Nations people, conflict and tension became increasingly common. Strategies were put in place to exercise control and to inflict subordination onto First Nations peoples. The *Indian Act* (1876) was put in place. It is federal issued legislation that

dictates the rights and restrictions of First Nations peoples in Canada, omitting Inuit and Métis people from the document. The *Indian Act* transpired as an assimilatory tool and was met with disdain by First Nations (Hurley, p. 1). Its paternalism and inherent implication that Canada has ownership over First Nations peoples is offensive and the initial issuing of the Indian Act included policies that intentionally contradicted and undermined First Nations' ways of life. For example, it is well-known that the *Indian Act* disallowed potlatch ceremonies. The potlatch ceremony originated in Nations on the Pacific North-West Coast of Canada and involved the distribution of valuable goods to community members. It was made illegal by the *Indian Act* on the grounds that it was anti-Christian and wasteful. (Gadacz). In 1951, there were many amendments to the *Indian Act*. The Pot latch ceremony was re-allowed and, since 1951, there have been more amendments still, yet, the *Indian Act* itself has never been removed.

The *Indian Act* has caused generations of harm that is not justifiable. Still, the Canadian Government is unwilling to see it removed. Moreover, many First Nations are anxious or hesitant for it to be extinguished. Despite this, there are individuals who believe the Indian Act should cease to exist. John Borrows, for instance, implies that the Indian Act suits the needs of the Canadian Government. He supplies a solution for its extinguishment and maintains that goodness must be at the heart of our actions. Goodness, he believes, lives in First Nations' languages and traditions (Borrows, p. 9). Language revitalization is integral to relinquishing the grasp of the *Indian Act* on communities (Borrows, p. 10). Cultivating the seven teachings in communities, qualities of wisdom, love, respect, bravery, humility, honesty, and truth, will undermine the Indian Act. Borrows expresses frustration with how the *Indian Act* defines First Nations and, ultimately, displaces people from their communities (Borrows, p. 3). He writes, "We should embrace the truth that we are First Nations. A Nation rests on citizenship, families, culture,

outlook, and action – on its political standing – not blood” (Borrows, p. 29). In this generation, he believes it is time for the *Indian Act* to be destroyed.

While there are some communities that do not allow marrying-in to their reserve, most reserves accommodate people’s right to love who they choose. Still, communities are, justifiably, protective of their land and their right to a way of life. Non-Indigenous people who move onto reserves with their partners likely will experience mixed feelings by some community members for an undefined period of time. However, non-Indigenous people give back to the reserve when they have children and, provided that they are respectful, are often gracefully integrated into the community’s structure. This suggests that non-Indigenous peoples who move into communities may often be viewed as strengths to the well-being and survival of the community. In mixed-race relationships, when separate worldviews and upbringings contrast between two people, both people are able to teach each other valuable lessons they would not have otherwise cultivated. Their children are provided the opportunity to see the world through two different lenses, an immense privilege.

I do not disagree with Borrows’ overarching argument that the *Indian Act* should cease to exist. However, I am left unsatisfied with his account of how this should occur. Borrows asserts that to overthrow the *Indian Act* we need language and culture. This is true, but further, the *Indian Act* itself is a political document and, thus, needs to be compensated by a political counterpart. At this time, I do not have a solution for how the *Indian Act* may be removed, but, my instinctive inclining would be for different Nations and communities to re-discover and re-establish their ancestral political systems, even if these systems need to be modernized.

In large part, many First Nations have become comfortable existing within the margins of the *Indian Act*. While the document was developed with a racist mindset, it also officially ties

First Nations peoples to their ancestral territories. It is challenging for people who grew up in their communities, and on-reserve, to perceive of a life where they are not legally tied to their homes; especially when their land is under the constant threat of theft and exploitation. Any reserve in Canada, with a desirable location or with valuable resources, is likely to be sought-after and may be the subject of envy for non-Indigenous people. Pipelines, mines, seaways, and freeways are developments the Canadian government is constantly seeking to initiate. Since reserves interfere with these developments, they are often viewed as barriers and with contempt. First Nations, aware of these attitudes, are more comfortable continuing with the *Indian Act* in place than with its termination because it legally protects their land.

Land and territory define First Nations peoples and makes evident the distinctions that exist between nations. First Nations languages mirror their ancestral territory and provide insight into how ancestors, who existed generations before, perceived of the world. Consider, for example, the Mohawk word *kahronyahtihonthos* which means, *it pulls the water towards itself*. This term, translated into English, literally means sunrays, but it tells so much about Mohawk thought. It shows that Mohawk people have always been scientific and insightful thinkers. The relationship people share with the land holds history and words in itself. First Nations across the country have lost so much territory and have had their ways of life challenged and denied by Canadian authority. The *Indian Act* delineates land masses – reserves – to First Nations and, here, we may recognize the paradox of the *Indian Act*; it is a tool of oppression that also protects First Nations lands. I would like to underscore my initial feeling that I do not disagree with Borrows argument that the Indian Act should be extinguished, however, it is important to recognize that the process is not simple and there is more grey area than is often acknowledged.

Tyendinaga has one of the largest land masses of any reserve in Canada. In 1793, the Lieutenant Governor, John Graves Simcoe, defined the territory with the Simcoe Deed, confirming 110 acres of land to the community. Despite this, Tyendinaga quickly garnered attention from land developers who desired the territory for profit and settlement. The reserve's location is particularly desirable because of its immediate access to a huge body of water, its abundant game, and quality soil ideal for farming. The fishing spots cultivated by Mohawks upon their initial settlement in Tyendinaga, overtime, attracted the attention of settlers and fishing became a source of conflict early. In 1841, Tyendinaga Chief John W. Hill was charged with attempting to "drive away white men who were fishing in the Indian fishing ground and destroying their nets" (Holmes & Konrad, p. 131). Hill was convicted and fishing remained an act of contention.

Canadian systems of power denied First Nations collectively their right to fish. This denial was strategic. First Nations moved onto reserves and were restricted, by *The Indian Act*, from pursuing their lives with autonomy. If First Nations individuals relinquished their status and moved off-reserve, they would be allowed equal opportunity to Canadians. The policing of First Nations has always been rooted in paternalism with the goal of assimilation. If the living conditions of First Nations were made to be unlivable, it was presumed that they would assimilate into Canadian society. However, while the Indian Act is a powerful tool of oppression, it does not have the capacity to make First Nations people forget who they are and the rights that they inherit from their ancestors. In 1992, the Mohawks of Tyendinaga dispelled state intervention and asserted their right to fish because they were grounded in the identity of their community. Incidents such as with Chief Hill were not uncommon and community leadership dedicated more than a century's worth of energy to diplomatically defending their fishing rights.

Written in The *Whig-Standard* newspaper, “[Mario Baptiste] said. ‘It’s not up to the federal government. Those rights [to fish] were given to us by the Creator’” (Rafter). Mohawks persevered in the resurgence of their fishing rights and started fishing before fishing season opened for non-Indigenous fishermen. These fishermen would watch them enter the river with their spears with envy and anger. For concerns of their safety, the Mohawks would travel and fish in groups. They were often met with shorelines full of non-Indigenous, predominantly white, men who would yell racial slurs and threaten violence and harm. It was not uncommon for these population sizes to reach four-figures.

Despite this, the band of Mohawk spears-people recognized the importance of their actions. They entered the same fishing place every day in the Trenton river. The exact place they chose to fish was deliberate. It honoured their ancestors and family members, the Tyendinaga Mohawks who had come before them. There were stories passed down that said Tyendinaga Mohawks would fish up the Trenton river until they were pushed out by violence and racism. The choice to fish in a specific part of the Trenton river was to provide peace to the ancestors who were not able to get justice in their lifetime. Tyendinaga Mohawk spears-people who upheld their fishing rights were also moved by considering the people who would survive them. Amidst all the controversy and violence imposed by non-Indigenous fishermen, the Mohawks did not take the case to court to diffuse the situation. Spearfishing was their birthright, one that could not be contested by anyone. It took courage and motivation to make themselves vulnerable to the aggression and cruelty they experienced, but they sought to honour the Mohawks of the past and to establish opportunities for their children and the generations to follow.

When the Mohawks of Tyendinaga regenerated their right to spear fish off-reserve, they avoided engagement with Canadian politics, a statement that was itself, significantly political.

By 1992, First Nations had been used to living by the rules of the Canadian government, even if they often collided in tension with these rules and fought against them. People were born into a life where they were governed by the *Indian Act* and were not personally acquainted with a life where it did not exist. Yet, an understanding of a life that predated the *Indian Act*, colonialism, and contact with European groups remained present in people's minds. Stories, teachings, ceremonies, and politics were nurtured and continued to bloom with each successive generation. The past was always present, and the Mohawks actively carved out opportunities for their history to be poured through generations. Further, rejecting Canadian law inevitably reminds people, Mohawk and non-Mohawk alike, of the survival of the Great Law and the pre-confederation Two-Row wampum. Recognizing the strength and knowledge of your people and the structures that were put in place for your own generation, and the generations of the future, empowers Mohawk and Haudenosaunee autonomy while simultaneously weakening the integrity of the *Indian Act* and Canadian authority over First Nations as a whole.

Eliza Sero was a Mohawk of Tyendinaga, born into the Turtle Clan in 1869 (Backhouse, p. 109). She built a home with her husband, Israel Sero, on Eagle Hill in the North Eastern corner of the reserve. Together, they had eight children and provided for their family by a traditional way of life. They would hunt, fish, trap, and grow food from their garden. Their lifestyle was one that relied on every member of the family contributing their share. Following the death of her husband in 1914, Sero became solely responsible for the well-being of her family. Her eldest son was killed in World War I and three of her daughters had married and moved into homes of their own, but Sero still had four children to care for. She made the decision to sustain them and herself, largely, through net fishing.

In 1921, Thomas Gault, a fishery inspector, entered Tyendinaga Mohawk Territory and confiscated Sero's net (Backhouse, p. 104). He claimed that it was illegal for Sero to fish without a licence (Backhouse, p. 104). By seizing Sero's net, Gault threatened her livelihood, the well-being of her family, and heightened her position of vulnerability. On a personal level, Sero had woven together much of the net herself (Backhouse, p. 103). Dedication, time, and energy had gone into the production of the net which was quite impressive. Backhouse describes the net and writes, "A forty-foot seine fishing net, with a mesh of about three inches... was designed to be anchored by a 'spool' on the north shore of the Bay of Quinte on Lake Ontario, loaded onto a small rowboat, stretched out across the waters of the bay, and fastened securely to a second 'spool' down the shoreline" (p. 103). When people work hard on a project they find meaningful, in many cases, the work becomes a special part of them. For Gault to confiscate Sero's net, he dismissed the pride and honour Sero likely found in the production and use of the net. Presumably, Gault did not expect Sero to respond to its confiscation. He was granted authority by the Canadian Government and probably did not expect his authority would be questioned. Instead, Sero did more than question his actions, she sued Gault for 1000 dollars in damages on the grounds "that she was not a 'subject of the King,' but a member of the Mohawk Nation" (Backhouse, p. 104). Sero's argument was well-positioned and accurate. She understood that her identity afforded her a position distinct from Canadians.

Sero's case, represented by Edward Guess Porter, was scheduled to be heard in both Belleville and Ottawa (Backhouse, p. 113-114). The case went up against three lawyers, in defense of Gault. Pulling at Sero's claim of sovereignty, Porter addressed the court arguing that Mohawks have been independent since the time of Joseph Brant (Backhouse, p. 115). In this statement, Porter uses the British Crown as his central reference point. Conceptually, the Judge is

more likely to align with the narrative that Mohawks have been independent from the Crown since the military leadership of Joseph Brant and his relationship with Britain. However, importantly, the statement is inaccurate. Mohawks have been sovereign since creation and, the term 'independent', implies that their existing as part of the Haudenosaunee confederacy does not have political significance. Sero strengthened her argument by referring back to the Simcoe Deed. To elucidate her rights, she quoted the deed in court and said, "she was entitled to use her seine net however she pleased on lands she 'held and enjoyed' in the 'most free and ample manner,' according to the Mohawk 'several customs and usages.'" (Backhouse, p. 118). The judge ruling on the case, William Renwick Riddell, was a self-proclaimed misogynist (Backhouse, p. 124) and a member of the Canadian Social Hygiene Council (Backhouse, p. 123). Judge Riddell did not rule in Sero's favour and, thus, her fishing net was never returned. There is no record found of Sero's response to Riddell's ruling. Sero did not receive justice through the court system, yet, she shed light on the subject as the case garnered attention from the public eye. Both Indigenous and non-Indigenous peoples developed opinions surrounding the nature of the case. Sero had limited time and resources to demand what she deserved and still devoted to the case everything she had to give. Sero lost because Riddell was unable to acknowledge the richness of the Mohawk way of life in the past and at his present. While, in his ruling, he recognized Mohawks as distinct (Backhouse, p. 119), in his mind, they belonged to a class of people, to use his words, as having "savage appetites,'... who 'seldom considered themselves to be bound by anything but their own desires'" (Backhouse, p. 123). The loss of Sero's net was one that would have been painful, but the attention Sero's case cultivated likely stirred in First Nations' minds the reality that the court system was put in place to service the needs of the most privileged members of society. These thoughts are powerful because they call people to question

the conflicting systems of which they are living. For Haudenosaunee peoples, they functioned within The Great Law, a constitution that instills within people pride and confidence. The *Indian Act*, a tool forced onto people by the Canadian Government is one that actively conflicts with the integrity of the Great Law.

In taking Gault to court, Sero would have been hopeful that she would win. The premise of her argument, that she has the right to fish in Mohawk territory as a Mohawk woman, affirms that she viewed her people's right to their way of life as more valuable than the laws imposed onto First Nations by the government. With the birth of the Canadian Government, questions of power and sovereignty have long been central points of contention. In 1998, traditional Onondaga Chief through the Great Law, Irving Powless Jr., writes, "When the Creator sent the Peacemaker to us and he formed the Haudenosaunee he did not define sovereignty to our ancestors" (p. 1081). The term sovereign has origins in the French language, stemming from the word 'soverain' which considers a sovereign entity to have authority and high ranking within society. This way of thinking about the right to a way of life is a mindset distinct from traditional Haudenosaunee thought. This is why, as Powless states, the Haudenosaunee do not have the vocabulary to describe themselves in this way. In tension with the government, it is a term that has been adopted because it is able to demonstrate the independence people recognize in themselves in a manner that may be conceptualized by the Canadian government. For a First Nations person entering the court system to achieve justice, they are translating their issue to be understood by the Canadian government like how when people began using the term sovereignty, they elucidated the independence of their community in language that is understood by European settlers.

Contrasting the establishment of spearfishing rights and the confiscation of Sero's net, we see that it is useful to take justice for yourself. The Mohawks of Tyendinaga recognized their right to spearfish as a gift given to them by the Creator. This understanding propelled them to spear and to demonstrate their willingness to fight for their right. The spearfishing case illustrates the power in recognizing the rights afforded to you outside of the Government's scope and by finding the courage to stand up for what is yours. In Sero's case, she recognized her autonomy and rights given to her through the Great Law. Sero's case was different because she was seeking compensation for the loss of her net. She would have been unable to physically take it back from Gault. Likely, taking the case to court may have been her only option and, while she should have received justice, ultimately, she did not. Despite this, Sero made clear to everyone who was paying attention, young, old, Indigenous, and non-Indigenous, that there remained within her, and the Mohawk Nation, strength, leadership, and the determination to exercise rights that predated Canada.

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