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Clan Mothers and Founding Fathers:  
The Impact of the Iroquois Confederacy on American Constitutionalism

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Abstract

The American Constitutional tradition was influenced by many different sources, such as Scripture, English Common Law, and the governmental structure of ancient Greece and Rome. However, many Constitutional scholars often fail to realize that the Founding Fathers looked beyond Europe for inspiration. One source to which they may have turned was the Iroquois Great Law of Peace. The Great Law of Peace was the first constitution in North America, potentially as early as 1450, and passed down via oral tradition until it was written down in the 1880s. The Great Law of Peace brought together the Seneca, Onondaga, Oneida, Mohawk, and Cayuga nations together peacefully, with a sixth tribe, the Tuscarora, joining around 1722. The Iroquois continue to govern themselves under the Great Law even today. This thesis will seek to understand the impact that the Iroquois Confederacy may have had on the American constitutional tradition.

## Clan Mothers and Founding Fathers:

## The Impact of the Iroquois Confederacy on American Constitutionalism

**Introduction**

“One Nation under God, indivisible, with liberty and justice for all.”<sup>1</sup> Even during the worst times of American history, these words of the Pledge of Allegiance have always rung true. The people of these fifty states are divided by distance, background, and history. Yet, still, America is viewed as one nation. This concept of unity is a far cry from the continent of Europe, where “unity” only occurs through the threat of force, such as the United Kingdom. So, the question of how the Founding Fathers conceived the notion of a peaceful unity remains. Philosophers, such as John Locke, speak to the fact that governance should be based upon “consent of the governed,”<sup>2</sup> yet it was almost unheard of for individual nation-states to come together under one national government. Interestingly, this concept did not come from Europe, but from the continent of North America— namely, the Iroquois Confederation. The Iroquois Confederacy, while not the most influential consideration of the Founders, certainly may have impacted American Constitutionalism by proving that nation states could unite peacefully.

**Defining a Confederacy**

In order to understand the similarities and differences between the Haudenosaunee government and the modern, American government, one must first understand what a confederate government is, and how such a government operates. Many people tend to assume that a “confederacy” refers only to the Confederate States of America, which held power

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<sup>1</sup> 4. Flag and Seal, Seat of Government, and the States, 4.

<sup>2</sup> John Locke, *Second Treatise of Government*, Locke, John. *Second Treatise of Government*. Raleigh, NC.: Generic NL Freebook Publisher, 61.

between 1861-1865. However, a Confederacy is actually a style of government. The United States actually began as a confederacy under the Articles of Confederation. Ann O'M Bowman describes a confederacy as "a league of sovereign states in which a limited central government exercises few independent powers."<sup>3</sup> James McClellan provides a slightly clearer picture of a confederacy:

The member-states or member-cities of a... 'confederation' did not acknowledge or create a central government. They... were joined together loosely by... some agreement by which the members pledged themselves to cooperate with each other under certain circumstances... It amounted to no more than a simple apparatus for enabling the members of the confederation to confer and cooperate.<sup>4</sup>

A confederacy, then, is distinct from unitary and federal governmental structure. In a unitary government, the only governmental body is the national government.<sup>5</sup> In a federal system, most powers are delineated to the national government, and some powers are given to the states.<sup>6</sup> Of the three, a confederacy gives the least amount of power to the national government. In a confederacy, the national government also generally performs a few key functions, such as national defense. The States in a confederacy are the main actors, and yield most of the power. This confederate- style government, then, is exactly what the Iroquois set up.

### **History of the Iroquois Confederacy**

Before delving into the specific impact of the Iroquois on the American founding, one must first understand who the Iroquois were. According to the oral tradition, five tribes, the

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<sup>3</sup> Ann O'M. Bowman and Richard C. Kennedy. *State and Local Government* (Boston: Cengage Learning, 2017), 26.

<sup>4</sup> James McClellan, *Liberty, Order and Justice*, (Indianapolis: Liberty Fund, Inc., 2000), 255.

<sup>5</sup> Ann O'M. Bowman and Richard C. Kennedy. *State and Local Government* (Boston: Cengage Learning, 2017), 26.

<sup>6</sup> Ibid.

Mohawk, Onondaga, Seneca, Oneida and Cayuga lived in a state of nearly constant warfare for centuries. Finally, the five tribes banded together under a relationship forged by three individuals: Hiawatha, a clan mother named Jigonsaseh, and the Peacemaker, Deganawida.<sup>7</sup> These three persuaded the tribes to unite, and live peaceably together.<sup>8</sup> Iroquois tradition holds that the Peacemaker planted a great white pine tree,<sup>9</sup> and an eagle perched on its highest branch. For the Iroquois, this eagle symbolized their newfound strength through unity, because the eagle could see and warn the tribes of approaching enemies.<sup>10</sup>

Now that the five tribes had made the decision to stand united as one confederacy, they needed a code of conduct to help govern the way in which they interacted with one another. The tribes came to know this code of conduct as the Great Law of Peace. As Dr. Gregory Schaaf pointed out, “the Peacemaker provided the people with a code of justice called the Great Law of Peace. His vision embraced all the people of the world joining hands in a way of life based on the principle that peace is still the law of the land.”<sup>11</sup> The Great Law of Peace was the Iroquois Constitution. It was originally kept on a series of five wampum belts and passed down through oral tradition before it was finally written down in the late nineteenth century. Although historians do not agree on exactly when this union took place, most agree that the tribes likely

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<sup>7</sup> Allan S Mohl, "The Rise and Fall of the Iroquois Confederacy: Its Influence on Early American History." *The Journal of Psychohistory* 34, no. 4 (Spring, 2007): 347-61, <http://ezproxy.liberty.edu/login?url=https://search-proquest-com.ezproxy.liberty.edu/docview/203930827?accountid=12085>.

<sup>8</sup> Ibid.

<sup>9</sup> The Great Law of Peace, <http://www.ganienkeh.net/thelaw.html>

<sup>10</sup> “Confederacy’s Creation”, The Haudenosaunee Confederacy, <https://www.haudenosauneeconfederacy.com/confederacys-creation/>

<sup>11</sup> Gregory Schaaf, "From the Great Law of Peace to the Constitution of the United States: A Revision of America's Democratic Roots." *American Indian Law Review* 14, no. 2 (1988): 323-31. [https://www.jstor.org/stable/20068293?pq-origsite=summon&seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/20068293?pq-origsite=summon&seq=1#metadata_info_tab_contents)

united between 1450 and 1525.<sup>12</sup> The Tuscarora joined the Confederacy in 1722 after they left their land in Virginia and North Carolina.<sup>13</sup> This later addition can potentially lead to confusion, as the Confederacy is sometimes referred to as the “Five Tribes” and other times as the “Six Tribes”. However, these are the same people.

### **Iroquois Culture**

Interestingly, the name “Iroquois” was a name given to the Confederation by Europeans. The Iroquois actually called themselves the Haudenosaunee,<sup>14</sup> which means “people of the longhouse”, a key feature in their society. Longhouses were the dwelling place of Haudenosaunee families. Each longhouse “typically had from three to five fires, each of which might be shared by two nuclear families of five to six persons.”<sup>15</sup> So, in general, longhouses contained a clan of between thirty and seventy people. Each of these clans was headed by a “clan mother”. The Haudenosaunee are, to this day, a matriarchal society, so “each clan is linked by a common female ancestor with women possessing a leadership role within the clan.”<sup>16</sup> In a matriarchal society, when a man and a woman marry, they are then considered to be a part of the woman’s family.

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<sup>12</sup> Daniel K. Richter, "Iroquois Confederacy." In *Encyclopedia of New York State*, edited by Peter R. Eisenstadt and Laura-Eve Moss, 791+. Syracuse University Press, 2005. *Gale Academic Onefile* (accessed January 21, 2020). [https://link.gale.com/apps/doc/A194196827/AONE?u=vic\\_liberty&sid=AONE&xid=a2ab5166](https://link.gale.com/apps/doc/A194196827/AONE?u=vic_liberty&sid=AONE&xid=a2ab5166).

<sup>13</sup> Ibid.

<sup>14</sup> Out of respect to the culture, this paper will refer to the six tribes as the Haudenosaunee.

<sup>15</sup> Fenton, William. (1999). *The Great Law and the Longhouse: A Political History of the Iroquois Confederacy*. Norman: University of Oklahoma Press, 23.

<sup>16</sup> “Clan System”, The Haudenosaunee Confederacy, <https://www.haudenosauneeconfederacy.com/confederacys-creation/>

### Haudenosaunee Governmental Structure

Now that the definitions and cultural contexts have been established, one must next discuss the actual governmental structure of the Haudenosaunee. Most importantly, the tribes of the Haudenosaunee did not lose their individual identities. For example, an individual was still considered to be a part of the Mohawk tribe, or the Cayuga tribe. However, the tribes collectively were known as the Haudenosaunee Confederacy. According to the Great Law of Peace, tribes were allowed to continue in their traditions, and even keep their own chiefs after unification.<sup>17</sup> The primary difference was simply that the tribes would now send delegates to a Grand Council. Clan mothers would choose the chiefs who would act as representatives to send to the Grand Council, who would decide matters concerning the tribes.<sup>18</sup> This Council does have some similarities to the modern American government. For example, it was structured so that there would be two houses, and an “executive” who cast a tiebreaker vote. Dr. Allen Mohl describes the Council’s structure saying, “the Mohawk and Seneca formed the Upper House and the Oneida and Cayuga the Lower House. The Onondaga provided the presiding officer and intervened when there was a tie vote.”<sup>19</sup> Because the primary actors in a confederacy are the tribes themselves, the Council of the Haudenosaunee did not make a determination on every possible matter concerning the tribes. The Haudenosaunee truly saw themselves as creating a union for the purposes of peace and the betterment of future generations, and so their confederacy has lasted for centuries because of that tradition.

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<sup>17</sup> “Kayanerehkowa: The Great Law of Peace”, <http://www.ganienkeh.net/thelaw.html#org>

<sup>18</sup> Ibid.

<sup>19</sup> Allan S. Mohl, "The Rise and Fall of the Iroquois Confederacy: Its Influence on Early American History." *Journal of Psychohistory* 34, no. 4 (2007): 347-361.



**Powers of the Council**

The Great Law of Peace is not a limiting document to the extent of the modern United States Constitution. Most of the text of the Great Law of Peace is dedicated to describing the structures of the clans, tribes, and the confederacy, and also discusses many of the traditions of the Haudenosaunee. Although there are few specific powers granted to the Council, it did possess several notable powers. For example, the confederacy had to agree as a unit to declare war.<sup>20</sup> The Great Law of Peace also outlines the laws for those who wish to immigrate into the nations, as well as how to replace a chief in the case of death or removal by their respective clan mother.<sup>21</sup> On the other hand, the United States Constitution, written in 1787, was born out of a tradition that emphasized the importance of limiting government for the sake of maintaining freedom for future generations. Thus, most of the text of the Constitution was intended to specifically limit the three branches of government, while the text of the Great Law of Peace is intended to explain and preserve Haudenosaunee traditions and values.

**Considerations for Future Generations**

For the Haudenosaunee, the powers to declare war or choose how to allow immigrants into their communities was not the most important part of their law. Under the Great Law of Peace, the council had to consider how any new proposal would impact each of the next seven generations. This doctrine, called the Seventh Generation doctrine, remains to this day a vital part of Haudenosaunee values. The Great Law of Peace states that, when a new chief is established, they are commanded, “Look and listen for the welfare of the whole people, and have always in view not only the present, but also the coming generations, even those whose faces are

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<sup>20</sup> Kayanerehkowa: The Great Law of Peace”, <http://www.ganienkeh.net/thelaw.html#org>

<sup>21</sup> Ibid.

yet beneath the surface of the ground—the unborn of the future Nation.”<sup>22</sup> According to the official Haudenosaunee website, “The Seventh Generation value takes into consideration those who are not yet born but who will inherit the world... Nations are taught to respect the world in which they live as they are borrowing it from future generations.”<sup>23</sup> This principle, in effect, forces the Haudenosaunee to examine what their policies will look like in the long run. As a result, the way that they view government is not to provide temporary solutions to problems, but to attempt to find a solution that will continue to work for generations to come.

### **The Haudenosaunee and the Founding Fathers**

Benjamin Franklin, specifically, had a lot of contact with the Haudenosaunee. As the individual who was placed in charge of printing the peace treaties between the Haudenosaunee and the British Colonists, Franklin interacted with the six tribes on multiple occasions. At one particular forum in 1744, the Speaker, or “Tadadahō” of the Haudenosaunee, Canassatego, told the Colonists:

Our wise forefathers established Union and Amity between the Five Nations. This has made us formidable; this has given us great Weight and Authority with our neighboring Nations. We are a powerful Confederacy; and by your observing the same methods our wise forefathers have taken, you will acquire such Strength and power. Therefore, whatever befalls you, never fall out with one another.<sup>24</sup>

Benjamin Franklin, in particular, also placed a lot of emphasis on unity in the colonies, as

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<sup>22</sup> Kayanerehkowa: The Great Law of Peace”, <http://www.ganienkeh.net/thelaw.html#org>

<sup>23</sup> “Values”, The Haudenosaunee Confederacy, <https://www.haudenosauneeconfederacy.com/confederacy-creation/>

<sup>24</sup> Susan Kalter. *Benjamin Franklin, Pennsylvania, and the First Nations: The Treaties of 1736-62*. Urbana, IL: University of Illinois Press, 2006. 118.

evidenced by his famous “join or die” cartoon.<sup>25</sup> This cartoon was incredibly influential in its time, because it demonstrated to the people that they must bind together in order to build a strong nation. Prior to the French and Indian War (1754-1763), a delegation from the British colonies, including Benjamin Franklin, met with the Haudenosaunee in order to try to persuade them to side with the British. While the Haudenosaunee sided with the French during the war, this conference did have at least one positive outcome: it allowed the colonists to see a successful model of a united confederation of people. Clearly, the concept of unity was vital not only to the Haudenosaunee, but also to Franklin.

### **The Impact on the Founders**

Two questions inevitably arise in this discussion. First, what is the extent to which the Great Law of Peace influenced the Constitutional tradition? Second, what is necessary to determine whether there was a substantial impact? In order to answer these questions, it is important to understand both sides of the debate over this issue.

### **The Similarities**

The similarities between the Great Law of Peace and the United States Constitution are certainly fascinating. Congress actually recognized the impact of the Haudenosaunee on the United States’ Constitutional tradition in 1988 with H. Con Res, 331.<sup>26</sup> This resolution states, “... the original framers of the Constitution, including George Washington and Benjamin Franklin are known to have greatly admired the concepts of the Nations of the Iroquois

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<sup>25</sup> David Copeland. ““Join, Or Die”: America's Press during the French and Indian War.” *Journalism History* 24, no. 3 (Autumn, 1998): 112-21, <http://ezproxy.liberty.edu/login?url=https://search.proquest.com/docview/205351986?accountid=12085>.

<sup>26</sup> H. Con Res, 331, 100<sup>th</sup> Congress, 1988.

Confederacy.”<sup>27</sup> One of the leading experts on the impact of the Iroquois Confederacy on American Constitutionalism is Dr. Gregory Schaaf. He states, “Iroquoian elders have long claimed their government served as a model for the United States.... The parallels are unmistakable... The Great Law of Peace may inspire people to reconsider the founding principles of America's origins.”<sup>28</sup> In a separate paper, Dr. Schaaf notes, “The Iroquois Grand Council provided a model for the American colonists. As early as 1754, Benjamin Franklin proposed: ‘One general government may be formed in America, administered by a President General, and a Grand Council to be chosen by representatives of the people of the several colonies.’”<sup>29</sup> Specifically, Dr. Schaaf points to a tripartite governmental structure, checks and balances, and also the freedoms of speech and religion,<sup>30</sup> which are all qualities that the modern U.S Constitution possesses. Renee Jacobs also contends that “the Great Law of Peace... provided for federalism, separation of powers, ... accountability of elected officials, officials, freedom of assembly, speech, and religion...”<sup>31</sup> There are certainly some similarities between the Great Law of Peace and the Constitution: namely, the styles of their respective legislatures and the power of impeachment.

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<sup>27</sup> Ibid.

<sup>28</sup> Schaaf, Gregory. "From the Great Law of Peace to the Constitution of the United States: A Revision of America's Democratic Roots." *American Indian Law Review* 14, no. 2 (1988): 323-331.

<sup>29</sup> Schaaf, Gregory. "Iroquois Great Law of Peace." (2012).

<sup>30</sup> Schaaf, Gregory. "From the Great Law of Peace to the Constitution of the United States: A Revision of America's Democratic Roots." *American Indian Law Review* 14, no. 2 (1988): 323-331.

<sup>31</sup> Renee Jacobs,. “Iroquois Great Law of Peace and the United States Constitution: How the Founding Fathers Ignored the Clan Mothers”, *American Indian Law Review*, 1991. 16(2), 497-531. doi:10.2307/20068706

## The Legislatures

Both the Haudenosaunee system and the American system provide for an upper and lower house. However, the primary difference between the two legislatures is the fact that in the Haudenosaunee system, decisions had to be unanimous, so tribe could effectively veto a proposal.<sup>32</sup> In the American system, however, both under the Articles of Confederation and the Constitution, this is not the case. Instead, there only has to be either a simple majority or a two-thirds majority.<sup>33</sup> The closest similarity between the Haudenosaunee and American system in this regard is that under the Articles of Confederation, any amendments required unanimous consent by all States.<sup>34</sup> However, this requirement was not carried over into the modern Constitution. The differences between the means of impeachment and the legislatures of the Haudenosaunee and American systems truly demonstrate the differences in the intent and the values of their respective founders. The ultimate goal of the Haudenosaunee was to maintain peace, not only for themselves, but also for their children. This is the reason that the Great Law of Peace goes so far as to specify that the fire around which the Grand Council meets cannot be made out of chestnut wood, because chestnut wood throws out angry sparks, and the members of the Council should not be angry with one another.<sup>35</sup> The Articles of Confederation and the Constitution, on the other hand, was written very specifically in order to limit the national government. The requirement of unanimity for amendments to the Articles of Confederation was intended to ensure that the States

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<sup>32</sup> Kayanerehkowa: The Great Law of Peace”, <http://www.ganienkeh.net/thelaw.html#org>

<sup>33</sup> "The Constitution of the United States of America" In *The Constitution of the United States of America and Selected Writings of the Founding Fathers* (pp. 95-98). New York, NY: Barnes & Noble, Inc. 2015.

<sup>34</sup> "The Articles of Confederation”, In *The Constitution of the United States of America and Selected Writings of the Founding Fathers* (pp. 95-98). New York, NY: Barnes & Noble, Inc. 2015.

<sup>35</sup> Kayanerehkowa: The Great Law of Peace”, <http://www.ganienkeh.net/thelaw.html#org>

worked together, and that the small states were not governed solely by the majority.

### **The Power of Impeachment**

Both the Great Law of Peace<sup>36</sup> and the Constitution allow for the power of impeachment,<sup>37</sup> but in different ways. Under the Great Law of Peace, Clan mothers removed chiefs who were not acting in the best interest of the people.<sup>38</sup> Under the U.S. Constitution, the Articles of Impeachment are brought before the house, and then the senate tries the President or other accused officer.<sup>39</sup> The backgrounds of the founders of the Haudenosaunee Confederacy and the United States also impacted the power of impeachment in the two systems. In the American system, the power of impeachment holds the executive accountable to the people and to the legislative and judicial branches of government.

The issue of a powerful executive was incredibly personal to the Founding Fathers. The Declaration of Independence details the “long train of abuses”<sup>40</sup> by King George III. Even before the Declaration itself, British citizens and Parliament had a long history of holding their monarchs accountable, which is why Magna Charta, the Petition of Right, and the English Bill of Rights were written in the first place. Thus, the Founding Fathers gave Congress the ability to charge the President, Vice President and other officers with “treason, high crimes and

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<sup>36</sup> Kayanerehkowa: The Great Law of Peace”, <http://www.ganienkeh.net/thelaw.html#org>

<sup>37</sup> "The Constitution of the United States of America" In *The Constitution of the United States of America and Selected Writings of the Founding Fathers* (pp. 95-98). New York, NY: Barnes & Noble, Inc. 2015.

<sup>38</sup> Kayanerehkowa: The Great Law of Peace”, <http://www.ganienkeh.net/thelaw.html#org>

<sup>39</sup> "The Constitution of the United States of America" In *The Constitution of the United States of America and Selected Writings of the Founding Fathers* (pp. 95-98). New York, NY: Barnes & Noble, Inc. 2015.

<sup>40</sup> “The Declaration of Independence” In *The Constitution of the United States of America and Selected Writings of the Founding Fathers* (pp. 95-98). New York, NY: Barnes & Noble, Inc. 2015.

misdemeanors.”<sup>41</sup> In the Haudenosaunee Confederacy, chiefs could be removed by their respective clan mothers for refusing to attend the Grand Council, for the crime of murder, or simply if he does not keep the wellbeing of his people in mind.<sup>42</sup> Again, these specifications point to the inherent desire of the Haudenosaunee to maintain peace in their nation, and of the Americans to limit the strength of government. Thus, a chief’s refusal to attend the Council or to act in the best interest of his people would inherently violate that peace, and so it is under those circumstances that the chief must be removed. Additionally, an executive under the American system who violates the Nation’s laws must be brought to justice, and removed from office if necessary.

### **The Source of the Similarities**

Certainly, some similarities exist between the Great Law of Peace and the U.S Constitution. However, the question as to how to interpret these similarities and differences remains a vital one. Even if the Haudenosaunee Confederacy impacted the American founding, what was the extent of this impact? Some claim that the impact of the Haudenosaunee was negligible at best. Others, such as Brett Schmoll and Karen Mead, even go so far as to say, “Indeed, some of the democratic principles of the Constitution would be drawn from the Iroquois model as much as from any Enlightenment literature.”<sup>43</sup> Schmoll and Mead’s statement here is quite astounding: they are placing the Great Law of Peace on the same level as John Locke, Montesquieu, and others. However, for their statement to be valid, the similarities described by

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<sup>41</sup> "The Constitution of the United States of America" In *The Constitution of the United States of America and Selected Writings of the Founding Fathers* (pp. 95-98). New York, NY: Barnes & Noble, Inc. 2015.

<sup>42</sup> Kayanerehkowa: "The Great Law of Peace", <http://www.ganienkeh.net/thelaw.html#org>

<sup>43</sup> Brett Schmoll and Karen Mead. "Iroquois Confederacy." In *The American Mosaic: The American Indian Experience*, ABC-CLIO, 2020. Accessed February 2, 2020. <http://americanindian2.abc-clio.com.ezproxy.liberty.edu/Search/Display/1463177>.

Schaaf and other scholars must be valid.

### **The Connection to English Common Law**

Many of the similarities that Dr. Schaaf describes can also be found in other sources, such as English Common Law. The British Constitution is not a traditionally “written” constitution, but is rather a collection of documents, judicial decisions, and statutes that collectively holds and discusses the rights of British citizens. Three of these documents, Magna Carta (1215), the Petition of Right (1628), and the English Bill of Rights (1689) are some of the most important.<sup>44</sup> In fact, most of these documents also contain similar governmental structures and powers to those that the United States put in place. For example, the British parliament also has a bicameral legislature: the House of Commons and the House of Lords. Different documents in the British constitution also outline who has the power to declare war, gives Parliament the ability to tax, provides accountability to the monarchy, and preserves the rights of Englishmen. All of these aspects can be found both in English Common Law, as well as the Great Law of Peace. Thus, the powers included in the Great Law of Peace were not necessarily unique to the Haudenosaunee people.

The fact that this information can be found in other sources also means that the Founders may not necessarily have taken the aforementioned principles directly from the Great Law of Peace. However, there is still one distinct similarity. In order to understand this similarity, one must look even further back than the Constitution, and first examine the debates regarding the Articles of Confederation. Of the several individuals who proposed their own versions of the Articles at the second Continental Congress, Benjamin Franklin was the first. His version of the

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<sup>44</sup> James McClellan, *Liberty, Order and Justice*, (Indianapolis: Liberty Fund, Inc., 2000).



Articles states that the colonies will “enter into a firm League of Friendship,”<sup>45</sup> and this language was later adopted into the official Articles of Confederation.<sup>46</sup> The Founders chose this language to emphasize that this new union was peaceful and voluntary, much like the union of the Haudenosaunee Confederacy. The Articles of Confederation did not govern the United States for long—it was soon replaced by the current Constitution only a few years later. While some of the powers from the Articles of Confederation remained similar, the actual structure of the government itself changed from a confederal system to a federal system,<sup>47</sup> and thus, there were fewer similarities between the Haudenosaunee system and the new American structures. It seems natural, then, that there would certainly be distinctions between a confederal system and a federal system. While the phrase, “a league of friendship”, for example, gets the point across, the problem is that it is a somewhat vague statement from a legal standpoint. Because the goal of the Articles of Confederation Congress was essentially to not make the same mistakes as the British government, they instead created, according to Dr. James McClellan, “no government at all.”<sup>48</sup> Many people will often contend that the Articles of Confederation government failed because the federal government did not have a way to collect tax revenue, and did not have enough power overall. Dr. George Van Cleave argued:

Confederation reform was driven most heavily by the perceived need to create a sovereign national government that could preserve American independence, protect

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<sup>45</sup> Franklin, Benjamin. “Benjamin Franklin’s ‘Articles of Confederation’”. In *The Constitution of the United States of America and Selected Writings of the Founding Fathers* (pp. 95-98). New York, NY: Barnes & Noble, Inc. 2015. (Original work published in 1775)

<sup>46</sup> “The Articles of Confederation”, In *The Constitution of the United States of America and Selected Writings of the Founding Fathers* (pp. 95-98). New York, NY: Barnes & Noble, Inc. 2015.

<sup>47</sup> “The Constitution of the United States of America” In *The Constitution of the United States of America and Selected Writings of the Founding Fathers* (pp. 95-98). New York, NY: Barnes & Noble, Inc. 2015.

<sup>48</sup> James McClellan, *Liberty, Order and Justice*, (Indianapolis: Liberty Fund, Inc., 2000), 158.

western expansion, combat foreign trade aggression, provide unified continental government and law enforcement, and maintain internal order.<sup>49</sup>

Although the same phraseology of a “league of friendship” is not included in the modern Constitution, the same principle of voluntary, peaceful union remains- one that is based upon the consent of the governed, because the individual states know that they will be stronger together.

### **Dissenting Opinions**

Many people claim that there would be more direct writing from the Founding Fathers about the direct influence of the Haudenosaunee Confederation if the Great Law of Peace did, in fact, have a substantial impact on the Articles of Confederation and the United States Constitutional tradition. Erik Jansen, who holds a J.D from Cornell Law school, states, “To have a plausible theory connecting Iroquois ideas to the United States Constitution, a historian, one might expect, would cite discussions of the Iroquois Confederacy at the Constitutional Convention. Schaaf and others cannot do that for one simple reason: there were no such discussions.”<sup>50</sup> Dr. Allison LaCroix, a law professor at the University of Chicago pointed out, ““On balance, the consensus appears to be that although British North Americans were certainly aware of the confederal nature of the Iroquois government, the case for causation has not been made.”<sup>51</sup> On the surface, these arguments certainly seem to make sense. The Founding Fathers kept incredibly detailed records of the debates at the Constitutional Convention. If these records

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<sup>49</sup>William George Van, Cleve. *We Have Not a Government: The Articles of Confederation and the Road to the Constitution*, University of Chicago Press, 2017. ProQuest Ebook Central, <http://ebookcentral.proquest.com/lib/liberty/detail.action?docID=4890629>. Accessed October 14, 2019. 19.

<sup>50</sup> Erik Jensen, The Imaginary Connection between the Great Law of Peace and the United States Constitution: A Reply to Professor Schaaf. *American Indian Law Review*, 15(2), 295-308. doi:10.2307/20068679 (1990).

<sup>51</sup> Alison L. LaCroix, *The Ideological Origins of American Federalism* Cambridge, Mass: Harvard University Press, 2010.

do not include a discussion of the Haudenosaunee or the Great Law of Peace, one might conclude that any influence was minimal, if it exists at all. The reason that this entire debate even exists in the first place is because there are no direct writings from the Founders stating the exact impact of the Haudenosaunee on the Constitutional tradition.

### **The Pitfalls**

Naturally, as with nearly any topic, there are several pitfalls that Constitutional scholars can fall into regarding this subject. The first is the pitfall of a romanticized point of view. Dr. Jansen points out that people may want to believe this theory for the wrong reasons.<sup>52</sup> Indigenous people groups were treated horribly by the United States. Thus, the irony that these very people may have had a hand in crafting very specific aspects of the nation is incredibly satisfying. However, as Dr. Jansen writes, “the issue here is not one of Indian rights... If the case for fair treatment depended on fabricated history, the prospects for improvement would be bleak—perhaps hopelessly so.”<sup>53</sup> Dr. Jansen’s statement here correctly points out that scholars should not simply rely on a few similarities between the Great Law of Peace and the Constitution in order to make a determination about Constitutional origins and influences. The assumption that the Great Law of Peace influenced the Constitution simply because the Haudenosaunee Confederacy was the first example of a democracy in America illustrates a “post hoc ergo propter hoc”, or “after this, therefore because of this” fallacy. The fact that the Great Law of Peace is older than the Constitution does not necessitate that very specific aspects of Great Law influenced the powers contained within the Constitution.

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<sup>52</sup> Ibid.

<sup>53</sup> Erik Jensen, The Imaginary Connection between the Great Law of Peace and the United States Constitution: A Reply to Professor Schaaf. *American Indian Law Review*, 15(2), 295-308. doi:10.2307/20068679 (1990).

**The Second Pitfall**

The second pitfall is that of historical perfectionism. Essentially, this view holds that, because there is no evidence of specific aspects of the Great Law of Peace influenced specific powers of the Constitution, then the Haudenosaunee did not influence the Founding Fathers at all. Some, including Jansen, hold this view. Additionally, Dr. Donald Lutz argues, “The Iroquois Confederation was important not for its direct influence on later American documents, but as an historically important phenomenon in its own right. That is, the Iroquois Confederation is worth studying as a successful, independent constitutional system...”<sup>54</sup> The main issue with this viewpoint is that it essentially throws the baby out with the bathwater- even if specific aspects of the Great Law of Peace did not influence the Constitution, the Haudenosaunee could still have influenced the Founding Fathers. As Benjamin Franklin himself said while proposing the Albany Plan of Union, “It would be a very strange Thing if six Nations of ignorant Savages [the Iroquois League] should be capable of forming a Scheme for such an Union, and be able to execute it in such a Manner, as that it has subsisted Ages, and appears indissoluble; and yet that a like Union should be impracticable for ten or a Dozen English colonies.”<sup>55</sup> Essentially, Franklin is saying that the Colonies would not be the first nation in history to unite peacefully, because Haudenosaunee were able to do the same. Thus, even if the concept of a bicameral legislature, or the power of impeachment were not derived specifically from the Great Law of Peace, scholars can still see a distinct similarity between the Great Law of Peace and the Constitutional tradition.

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<sup>54</sup> Donald S. Lutz, "The Iroquois Confederation Constitution: An Analysis." *Publius* 28, no. 2 (1998): 99-127.

<sup>55</sup> Erik Jensen, The Imaginary Connection between the Great Law of Peace and the United States Constitution: A Reply to Professor Schaaf. *American Indian Law Review*, 15(2), 295-308. doi:10.2307/20068679 (1990).

**Constitutional Origins**

The modern Constitution was built upon the Articles of Confederation, which was derived from over five hundred years of political thought, dating back to the Magna Carta,<sup>56</sup> which itself was derived from hundreds of years of prior common law judgments, as well as Scripture itself. Additionally, Dr. Jansen's argument assumes that all influences are equal. The fact that different sources hold different levels of influence upon the American founding speaks to the wisdom of the Framers in examining many different types of governments, and should not be so construed as to imply that sources receiving little or no attention at the Constitutional Convention itself were irrelevant.

**Striking a Balance**

Clearly, Constitutional scholars have an incredibly wide range of opinions on the impact of the Haudenosaunee Confederacy on American Constitutionalism. Some, such as Dr. Schaaf and Dr. Jacobs, argue that very specific aspects of the U.S Constitution, such the three branches of government, impeachment, and religious liberty were all derived directly from the Great Law of Peace. Others, such as Dr. Jensen and Dr. Lutz contend that no impact existed at all, and that the Haudenosaunee Confederation is only worth studying as an independent concept.<sup>57</sup> Thus, scholars must take a realistic, holistic approach to this matter to determine the impact of the Haudenosaunee on American Constitutionalism.

While the Haudenosaunee Confederacy had an impact on American Constitutionalism, this impact is not nearly to the same extent as that of Scripture, or English Common Law, or

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<sup>56</sup> James McClellan, *Liberty, Order and Justice*, (Indianapolis: Liberty Fund, Inc., 2000).

<sup>57</sup> Donald S. Lutz, "The Iroquois Confederation Constitution: An Analysis." *Publius* 28, no. 2 (1998): 99-127.

even the great philosophers such as Locke, Rousseau or Montesquieu. The Bible had a different impact on the Founding Fathers than English Common Law, and similarly, Locke was influential in different ways than Rousseau or Montesquieu. The Founders had a unique opportunity to examine and adopt the best aspects of government throughout history. This is why Alexander Hamilton stressed to his audience in *Federalist Paper no. 1*, “It seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice...”<sup>58</sup> The Founding Fathers did not turn only to one source for inspiration for the Constitution, but instead examined governments from all throughout history, and did not immediately discount any one source, including the Great Law of Peace.

Scholars broadly agree that the Founding Fathers were aware of the Haudenosaunee Confederacy. They primarily disagree on whether the connection can be made between governments set forth by the Great Law of Peace, the Articles of Confederation, and the Constitution. Ultimately, however, even if direct connections between legislatures, the powers of impeachment, and rights given to citizens cannot be proven, the emphasis that both the Haudenosaunee and the Founding Fathers placed on unity simply cannot be ignored. Franklin himself pointed out that Parliament forced the colonies to be united, but the Haudenosaunee confederacy united peacefully, by choice.<sup>59</sup> Thus, even if direct causation cannot be proven, the Haudenosaunee still contributed to the American Constitutional tradition by providing an example of voluntary union.

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<sup>58</sup> Alexander Hamilton, *The Federalist no. 1* in *The Federalist Papers*. Ed by Lawrence Goldman, Oxford: Oxford University Press, 2008.

<sup>59</sup> Susan Kalter. *Benjamin Franklin, Pennsylvania, and the First Nations: The Treaties of 1736-62* Urbana, IL: University of Illinois Press, 2006. 26.

The impact of the Great Law of Peace is more like the influence of Athenian Democracy or Roman Constitutionalism. Classical Greek democracy was not “Greek” in the modern sense of the word, but was rather comprised of “Athenian” democracy and “Spartan” democracy. Athenian democracy, specifically, was a direct democracy, where citizens voted on every issue that came before them. Obviously, America today does not utilize this particular method of governance, but rather makes laws through a representative republic, where elected officials vote on behalf of the people. Ancient Greece also had the earliest known form of a constitution, known as a *poletia*, or a way of life.<sup>60</sup> In ancient Rome, the concept of a constitution was similar—it was a framework upon which their government was built.<sup>61</sup> Obviously, the differences between ancient and modern democracy and constitutionalism are quite prevalent. However, no one disputes the influence of Greco-Roman ideology on the Constitutional tradition, which can unfortunately lead to a somewhat Eurocentric viewpoint of American Constitutionalism.

This main problem with this Eurocentric view is that it often leads to the exclusion of other considerations in the field of constitutional studies. Such is the plight of the Haudenosaunee Confederacy. The impact of the Great Law of Peace may not extend as far as some scholars claim. For example, the power of impeachment, while found in the Great Law of Peace, also exists within English Common Law, and so the Founding Fathers likely took that principle from Common Law. The Great Law of Peace also does denote a bicameral legislature, called the “older brothers” and “younger brothers”, but England, too, maintained the House of

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<sup>60</sup> Donald S. Lutz, *The Origins of American Constitutionalism*. Louisiana State University Press, Baton Rouge, LA, 1988. 9.

<sup>61</sup> Ibid.

Lords and the House of Commons. However, even if the similarities are not as pronounced as some scholars would like them to be, the fact still remains that the Great Law of Peace impacted the Founders, especially with regards to the Articles of Confederation.

### **Unity in and through Diversity**

What is so unique about the Great Law of Peace is that it brought together six tribes to be a collective “Haudenosaunee” unit, while still maintaining individual tribal identities. Many scholars tend to hold an “all or nothing” view of the impact of the Haudenosaunee Confederacy. Either the Great Law of Peace is one of the most influential documents on the Founding Fathers, or it did not influence the Founders at all, and few are willing to accept any position in the middle. Interaction with the Haudenosaunee at least gave the Founders a sense that unity among different states could feasibly be achieved. Additionally, the Haudenosaunee Confederation inspired the Founders because they proved that sizeable group of nations can put aside their differences and unite peacefully for the greater good. As James Madison pointed out in *The Federalist no. 14*, “We have seen the necessity of the Union, as our bulwark against foreign danger, as the conservator of peace among ourselves, as the guardian of our commerce and other common interests...”<sup>62</sup> For centuries, societies have sought answers to the question of how to best create and maintain justice. For the Haudenosaunee Confederation, their idea of justice was a world where their children could live in peace without the constant threat of warfare. They bound together, not despite their differences, but with the knowledge that those very differences made them stronger, both as a people and as a nation.

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<sup>62</sup> James Madison, *The Federalist no. 14*, in *The Federalist Papers*. Ed by Lawrence Goldman, Oxford; Oxford University Press, 2008.



### **Conclusion**

The impact of the Haudenosaunee Confederacy is widely contested in modern constitutional thought. While some scholars claim that the Great Law of Peace impacted very specific aspects of American Constitutionalism, others claim that the Haudenosaunee did not have an impact on the founders at all. Very few scholars are actually willing to meet in the middle for this issue. However, the writings of the Founding Fathers, especially Benjamin Franklin, demonstrate the fact that the Founders had some contact with the Haudenosaunee. While they may not have studied the Great Law of Peace itself, they understood the fact that the Haudenosaunee were comprised of different tribes who had united peacefully. Some influences can certainly be more idealistic, as opposed to specific applications of laws in American society and governance. In fact, this only goes to prove the brilliance of the Founding Fathers, in that they wanted to understand the principles that would make America the greatest country on Earth. And so, even if the power of impeachment, or freedom of religion, or the concept of a bicameral legislature did not come specifically from the Great Law of Peace, The Haudenosaunee Confederacy impacted the Founding Fathers in that they proved that multiple nations could join together peacefully. They banded together, not because of the threat of force by one tribe over the others, but voluntarily, because they knew that they would be strongest together. This unity through diversity is a concept that seems so distinctly, beautifully American that its impact simply cannot be overlooked. One can only hope that Americans today will continue to look back upon the example of the “People of the Longhouse” with fondness, and continue to allow their differences to unite them.

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