

Should Seneca have legal superiority over Americans?

What if American-owned slot machines were up to the jury?

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In Niagara Falls, there is a law that makes it legal for a Seneca to have slot machines and illegal for an American.

The law: The Albany/Seneca compact gave away a portion of downtown Niagara Falls — a first in U.S. history — to a tax-free foreign nation in order to gain revenue for Albany.

The law permits a Seneca, based on race and ethnicity, to open any business and pay no taxes; or build without obeying building codes or zoning regulations. And a Seneca can open a casino; but should a person who is an American do it, he will be arrested and charged with a felony.

Some who study the issue believe that if Americans in Niagara Falls do not secure equality with Seneca, their economic advantages will permit Seneca to own the whole town.

Of course, some might like that a handful of Seneca men rule, while we, the men of Niagara, sit weak-kneed and submissive, poor and docile, passively allowing Albany to grant Seneca superior legal rights, as we, like hyenas, cravenly wait upon the carcass until our leonine masters — Seneca and Albany — are sated. That day will never come.

Meanwhile, this inequality violates every principle of manliness I have ever known: Imagine: Your government telling you that because a man is a Seneca, he has more legal rights in your own town than you, an American? That doesn't sit well with me.

Realistically, Albany is not likely to change the law of Seneca superiority, for the legislators who made the law benefit by having more revenue to spend.

So what is the remedy?

Suppose someone felt that slot machines only for Seneca was unjust, and this person — call him Mr. Henry — put them in his American-owned business, and, of course, the government arrested him.

And, suppose, you were a juror in the trial of Mr. Henry, who was accused of putting slot machines in his building, which is, let's say, less than 1,000 feet from thousands of similar slot machines operated by, for instance, a Mr. John and a Mr. Snyder, both Seneca.

As Mr. John and Mr. Snyder become billionaires, the government charges Mr. Henry (because of his race — he being only American) with a felony punishable by imprisonment — for doing the exact same thing.

Suppose, also, that you, as a juror, do not believe that an American should have less legal rights than a Seneca. Maybe you think Americans should have slot machines. Perhaps you even feel that unless Americans get equality with Seneca, your hometown may be lost to foreign ownership.

Would you vote to convict Mr. Henry because he broke the law?

The judge, paid by the government, would likely "instruct" that you must judge Mr.



SENECA + SLOTS = \$\$\$



AMERICAN + SLOTS = JAIL

Henry only on whether he broke the law.

And suppose Mr. Henry did indeed break the law: He had slots in his building. And suppose the judge told the jury — of which you were a member — that you must render a verdict of guilty — even if you think the law is wrong.

This kind of thing has happened before: In 1734, for instance, John Peter Zenger published a paper that criticized the governor of New York, which was then against the law.

At Zenger's trial, his lawyer, Andrew Hamilton, asked the jury to acquit because Mr. Zenger published the truth. But Judge James Delaney instructed the jury, "The truth is no defense." The law is the law.

Mr. Hamilton argued that juries can veto any law, otherwise "juries are useless. The next step would make the people slaves."

In spite of the judge's instructions, the jury acquitted Mr. Zenger and, consequently, and rather famously, established freedom of the press.

John Adams once said of the juror: "It is not only his right but his duty (to veto unjust laws) though in direct opposition of the court." Therefore, in the case of Mr. Henry, if you, a single juror, felt Seneca superiority was unjust, would you vote to acquit, even if it hung the jury?

Consider: A single juror has the power to veto any law. This concept has been cherished since Magna Carta (1215), when the jury ended the power of kings and, where, after, no one could be imprisoned by royal decree. Only 12 citizens, unanimously agreed, could deprive anyone of their liberty.

The jury's true role was understood once in America, too. Jefferson said the jury is the "only anchor" to hold a government to its constitution. Hamilton said jurors should ignore a judge's instruction "if they have a clear conviction that the charge of the court is wrong."

The first Chief Justice of the Supreme Court, John Jay, in 1794, said that juries must "determine the law as well as the fact in controversy."

In other words, even if a judge told a jury,



If Mr. Henry, a mere American, were to have slots, our dutiful government would promptly arrest him.



According to our state government, this man, Mr. Maurice John, can legally have slots machines in Niagara Falls only because he is not an American.



Mr. Snyder, because of his race and ethnicity, may own slots in Niagara Falls.

"If Mr. Henry had slots, you must find him guilty," the jury may still acquit Mr. Henry. Even one juror may, in good conscience, hang the jury.

There's nothing the government can do. Not that judges haven't tried: In 1670, for instance, it was illegal in England to preach the Quaker religion. William Penn broke that law. During his trial, four jurors voted to acquit the "guilty" Mr. Penn. But the judge, Sir Samuel Starling, ordered the jurors back to the jury room until they "brought in a lawful verdict."

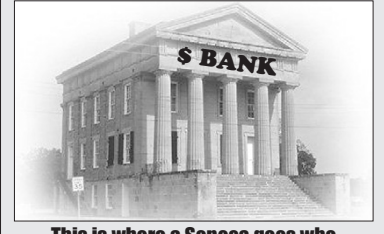
After three days, four men still voted for acquittal. Starling said he would imprison them. But one defiant juror, Edward Bushnell, filed a writ of habeas corpus. The public became incensed. Judge Starling released Bushnell. The jury remained hung. Penn was not convicted, and freedom of religion was established in England.

Or, in 1850, in Syracuse, N.Y., 24 people were indicted for helping a slave escape from jail, violating the Fugitive Slave Law. A federal judge, in Buffalo, called the defendants "disturbers of society." Four trials, however, ended in three acquittals and a hung jury compelled the government to drop the charges. This emboldened others: A crowd broke into a Boston courtroom and rescued a slave. The judge called the defendants actions "beyond the scope of human reason." President Fillmore demanded prosecution. But the jury disobeyed the judge and ignored the president. After an acquittal and several hung juries, the government dropped all charges.

Ultimately, the powers of the government vs. the liberties of the people must be decided by either government or the people. If government decides, people have no liberties except as the government sees fit. If the people decide, then they have all liberties, except those (through a jury) they themselves choose to relinquish. Under trial by jury, government is the servant of the people; required to submit to a jury before punishing



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This is where a Seneca goes who puts slot machines in his building ...

any individual for any law.

Some people, however, who do not understand freedom principles, like to talk of oaths of office and the constitution and voting as freedom. But when did oaths restrain a government that was unrestrained? When did a government fail to determine that all its acts were within the constitution? When did a government admit the injustice of its laws? And voting is exercised only periodically; and it gives no guaranty for the repeal of oppressive laws. Who ever heard that succeeding legislatures were, on the whole, more honest than those that preceded them?

Simply: Any government that can enforce its own laws without appealing to the people (the jury) is an absolute government.

Unless there is a jury, independent and above government, to judge what laws of the government are to be obeyed and what resisted, the nation is not free; the government is absolute; the people are slaves. For resistance to injustice is the only means of preserving liberty: Where there is no right to resist, there can be no liberty.

This simple right was recognized as common law ever since trial by jury was in force and is recognized by the Constitution of the United States.

In the final analysis, the safety of society, which is the only object of criminal law, requires only that those acts that are understood by mankind at large to be intrinsically criminal should be punished as crimes. The remaining few may safely be left to go unpunished.

Like the slot machines of Mr. Henry.

But if you were on the jury, what would you decide?

(For more information on the topic, one might read Lysander Spooner's "Trial by Jury" published in 1852.)

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