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Cultural Sovereignty: Native Rights in the 21st Century
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*75 THE MEANING OF INDIGENOUS NATION SOVEREIGNTY

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I. Introduction

A lot of Indians [FN1] and non-Indians, especially policymakers, lawyers, and scholars, have spent a lot of time trying to figure out what "sovereignty" means as it relates to the Indigenous peoples and nations of the world. [FN2] Having long been a participant in this quest myself, I too, have come up with a few ideas about what the term means. As I see it, "sovereignty" as applied to Indigenous nations simply means freedom, the freedom of a people to choose what their future will be.

Now, I know that this definition is really basic and certainly not novel. But I like it because it goes to the heart of the sovereignty question, Are you a free people? Of course, my definition hardly resolves all of the related questions that might come up, such as: Who, or what, has sovereignty?; Is *76 sovereignty limited?; Can sovereignty be created?; Can it be lost?; and perhaps most importantly, does having sovereignty really even matter? Now, I realize that some people don't like to use the word sovereignty in the context of Indigenous nations and peoples. [FN3] But whether anyone likes it or not, "sovereignty" and the related concepts of "autonomy" and "self-determination" are terms of real world significance that are used by Indians and those who deal with Indians. For those of us who spend lots of time thinking about the most fragile societies on the planet-the Indigenous societies-and how they interact with colonizing peoples, these questions are not just interesting and vexing, they are also important. In the hopes of not muddying the waters further, this article is an attempt to inject some clarity into the discussion.

II. The Threshold Matter of Perspective

The first step towards defining Indigenous nation sovereignty is to put the inquiry into proper perspective. This is important because the effort taken by most commentators thus far to define sovereignty in the context of Indigenous peoples has involved a blending of several different perspectives. As one might guess, this blending has contributed to a great deal of confusion and has made finding a meaningful definition elusive.

As I see it, there are at least three perspectives that one must take into account when defining Indigenous nation sovereignty. First, one must consider the perspective of the Indigenous peoples themselves. In other words, one must ask, How do the Indigenous peoples view their own sovereignty? Second, one must consider the perspective of the colonizing peoples. This inquiry can be thought of as, How do colonizing peoples view the sovereignty of the colonized peoples? And third, one must take into account the perspective of the international community. This perspective can be reflected by the question, How does the world community view the sovereign rights of Indigenous peoples?

77 Breaking the inquiry down this way is critical to understanding the full scope of Indigenous nation sovereignty. The primary reason for doing so is because the historical relationship between Indigenous and colonizing peoples has not been a benign one, but has instead been characterized by invasion, violence, conflict, death, and subjugation. Such a robust history naturally has shaped how each of the peoples affected views the question of the other peoples' sovereignty. To deny this truth is, in effect, to take a political position that favors one viewpoint over another. If one ignores what Indigenous peoples think about sovereignty, then it follows that one is simply favoring the colonial perspective. If one ignores the colonial perspective on Indigenous sovereignty, it follows that one is then simply favoring the Indigenous perspective. Bringing together both the Indigenous and colonial perspectives, as well as the developing global perspective, is necessary for a comprehensive understanding of what Indigenous nation sovereignty really means.

In sum, then, a complete definition of Indigenous nation sovereignty requires an understanding of allthree different perspectives. No single definition can suffice. Accordingly, any complete answer to the sovereignty question must incorporate the Indigenous "answer," the colonial "answer," and the international "answer."

In the classroom, to best demonstrate the importance of perspective in defining Indigenous nation sovereignty, I draw upon a crude (and crudely drawn) depiction of the Indigenous-colonial historical relationship. I start with a drawing of a longhouse, the traditional dwelling of my people, the Haudenosaunee (which means "People of the Longhouse"). [FN4] The point in utilizing the image of a traditional Indigenous dwelling is to symbolize a vision of "unspoiled" pre-contact Indigenous existence. In this Indigenous world, life abounds with the full gamut of human interactions ranging from love to war. Parallel to the longhouse, I next draw a castle, representing the traditional dwelling place of the colonists. [FN5] Now, I know that not all Europeans lived in castles, but the king, the embodiment of European sovereignty, lived there and so did many of his subjects. The point in utilizing the image of the castle is to symbolize a vision of the "unspoiled" imperial European society, a separate and radically different society from that of the Indigenous peoples.

78 With the onset of European colonization of Indigenous lands, there naturally arose conflict and transformation. This transformation, however, mostly affected the Indigenous societies and manifested itself through a tremendous loss of life and land. While use of the term "conquest" is misleading, given the impact of disease as the most potent neutralizing force, European colonization precipitated considerable changes in Indigenous societies. One of the most important initial changes was the establishment of the boundary line between the Indigenous and colonial societies, which I depict as a moat around the longhouse. The moat symbolizes both the limited territory retained by the Indigenous peoples, as well as the political, economic, and cultural barrier that was established between Indigenous and colonial societies.

Across this moat, I draw a drawbridge to reflect the pathways of interaction between the two societies. This drawbridge, however, is unlike other drawbridges in that it is built by those on the outside-the colonists-and thus is anchored on their side of the moat. Designed this way, the colonists, rather than the Indigenous people, possess the disproportionate ability to influence what happens inside the moat by controlling what comes across the drawbridge. What comes across, of course, is everything new associated with European colonial society. This influx of new influences includes the full measure of caustic forces that, for five hundred years, have served to destroy Indigenous peoples and considerably weaken those that remain (e.g., disease, Christianity, capitalism, liquor, schools, and Americanism).

Now, this colonizing process is not completely one-sided. Indians, driven by a desire for strategic advantage, as well as curiosity, embraced much of what the colonists provided and made some personal use of the drawbridge. Some Indians welcomed those colonists who came across the drawbridge, such as the missionaries and traders, and formed alliances with them. Others, when the colonists allowed it, eventually ventured across the drawbridge to visit the castle and explore what colonial society had to offer. As time

passed, additional drawbridges were built, with some even anchored inside the moat, thus facilitating and intensifying the interaction between Indigenous and colonizing peoples.

Viewed historically, then, it safely can be concluded that European colonization has had a considerable impact on Indigenous societies. In many cases, this impact has resulted in the weakening, and in some cases, the extinction, of the Indigenous peoples, and the commensurate empowerment of the colonizing peoples. As a result, of course, life inside the moat has changed considerably. The traditional way of life has been changed, and in some cases, completely destroyed, as the result of the ***79** influences that have come across the drawbridge. The traditional Indian people have changed, too, and, are in some instances, extinct as the result of the increasing interaction and mixing with the colonists. As the Indians changed, so too, did the longhouse that represents traditional Indigenous society. The longhouse has fallen into disrepair, and, in some cases, has been razed to make room for single family homes (the more "civilized" dwelling place copied from the colonists). Other Indians, having been sufficiently influenced by the colonists, decided that life inside the longhouse was unsatisfying, and they traveled across the drawbridge to live on the other side of the moat with the colonists. In a few cases, the Indians even decided that life inside the moat would be a whole lot "better" if the moat no longer existed. These Indians were most often the ones who had been educated by the colonists outside the moat and so they consciously or unconsciously dedicated themselves to filling in the moat so as to facilitate even greater interaction between the Indigenous and colonizing peoples. Only a few Indians resisted this effort and the other caustic forces that continue to come across the drawbridge. In their effort to preserve who, and what, they once were, they struggle on two fronts; battling both the colonists who continue to cross the drawbridges and their own kin who continue to serve as the too-friendly hosts to the European invaders.

Now, in the course of describing this scenario, it naturally follows that those living both inside and outside of the moat started out with a conception of their own sovereignty and the sovereignty of the "other" people. At the time of first contact, we know from the history of both peoples that this conception even extended to thinking of the "other" people in similar terms (i.e., that "they" were as "sovereign" as "us"). Of course, we also know now that the colonists had a lot of debate over this subject. Some took the view that the Indigenous peoples were not "states" in the international law sense, did not have sovereignty, and could not be viewed as equals to Europeans. But others took a different view and believed that the Indigenous nations were, in fact, states under international law and were very much on an equal footing with the colonists.

The Indigenous peoples, too, acknowledged the sovereignty of the king and his colonizing subjects. One good example of this acknowledgment is reflected by the Gus-wen-tah, or "Two-Row Wampum," a treaty that was entered into by the Haudenosaunee and the Dutch in the mid-seventeenth century. On a bed of white beads, two parallel rows of purple beads symbolize a commitment by both peoples to live together peacefully, but separately. While it could very well have been the case that many Indigenous societies did not, at first, think much of the colonists, the ***80** historical record adequately reflects that Indigenous peoples acknowledged and recognized the sovereignty of the colonizing peoples.

Indeed, the best and most conclusive evidence of this fact is that the colonists and the Indigenous nations entered into hundreds and hundreds of treaties and other international agreements. To utilize treaties, to refer to the Indigenous nations as "nations," and to otherwise draw upon the discourse of international law in defining the new relationship has no little significance in either past or present terms. The import of this long and consistent medium of interaction can be summed up no better than it was by one of the most famous colonists of all time, Chief Justice John Marshall of the United States Supreme Court:

The very term "nation," so generally applied to them, means "a people distinct from others." The Constitution, by declaring treaties already made . . . to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations,

and consequently admits their rank among those powers who are capable of making treaties. The words "treaty"and "nation" are words of our own language, selected 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. [FN6]

As a result, then, from the beginning and for many, many years thereafter, both the Indigenous and colonizing peoples thought of themselves, and one another, as peoples possessing and maintaining what is called "sovereignty." In both the longhouse and the castle, there was no material difference in how each people conceived of the freedom that they had to choose their own future. While it might have been verbalized that one viewed the other as not possessing the attributes associated with being sovereign, actions betrayed such words. The treaties that were entered into reflected both the acknowledgment of each peoples' sovereignty, as well as its limits.

III. The Little Problem of Colonial Domination

So long as life in the longhouse and the castle remained separate and apart, the Indigenous nations and the colonists maintained independent and parallel views of each other's sovereignty. Only when the Indigenous nations became overwhelmed by the transformative forces emanating from ***81** across the drawbridge did these perspectives on sovereignty begin to diverge. Naturally, much of this change was driven by the alternation of the power relationship resulting from the military, political, and economic campaigns engaged in by the United States to subdue the Indian nations and colonize the continent during the nineteenth century. But, perhaps the most significant force in the development of new and lasting theories of Indigenous nation sovereignty came from the United States Supreme Court, and in particular, its first great Chief Justice, John Marshall.

During the early nineteenth century, the Court wrestled with a variety of vexing legal problems involving relations with the Indians. How did the United States acquire legal title to its land? What are the Indian nations? What is the nature of the relationship between the United States and the Indian nations? What is the source of the power of the United States to deal with the Indian nations? What is the power of a state over the Indian land within its borders? The Court, in its role as rationalizer of American "conquest," set upon the task of addressing these important questions in a handful of cases throughout the nineteenth century.

The most important case for the future of Indigenous nation sovereignty from the American perspective was Cherokee Nation v. Georgia. [FN7] In that case, the Court was presented with the question of whether the Cherokee Nation could bring its dispute with the State of Georgia directly to the Court in accordance with its original jurisdiction. [FN8] The Cherokees believed that they could bring this case because Article III, section 2 of the United States Constitution provided that the Court's original jurisdiction extended to "controversies . . . between a state or citizens thereof, and foreign states, citizens or subjects." [FN9] Not being a part of the United States government and, in fact, predating the existence of the United States, the Cherokees viewed themselves as clearly falling within the category of "foreign states." [FN10]

The Court, however, disagreed. In dismissing the case on procedural grounds, the Court held that the Cherokee Nation did not constitute a "foreign state" but was instead a "domestic dependent nation[]." [FN11] As such, it resolved that the Cherokees, as well as all other Indians, existed in "a state of pupilage" by virtue of a relationship with the United States that "resembles that of a ward to his guardian." [FN12] The basis for the Court's ***82** decision encompassed three theories: that the territory occupied by the Cherokees and the other Indian nations comprised a part of the United States; that the Indians, pursuant to treaty, accepted the "protection" of the United States; and that the text of the Constitution under Article I, section 8 strongly implied that the "Indian tribes" did not occupy the same status as the "foreign nations." [FN13]

On the basis of the Cherokee Nation decision, then, the Court invalidated, for purposes of American law, any conception of the Indigenous nations as sovereigns on a co-equal

basis with the United States. This assessment, to the extent it was based upon authority conceded to the United States by the Indian nations, could be seen as justifiable. But at the time the case was decided, such an assessment was mostly chutzpah because of the fact that a large number of the Indian nations remained fully free and outside the realm of American military and political power. For the Court to conclude that the Indian nations were in a "state of pupilage" was much more wishful thinking than a statement of fact.

In rendering this decision, Marshall was writing for the ages and not simply for the parties to the case. By recognizing the Indian nations as "domestic dependent nations" in "a state of pupilage" he was able to cement American hegemony over them in such a way as to ensure that this became the foundational principle of new American Indian subjugation jurisprudence. While the depiction set forth in Cherokee Nation might have been true for a few Indian nations at the time, the decision helped rationalize the political strategies and military actions later taken that eventually shaped the future of nearly all of the Indian nations. That he preserved the notion of nationhood is, of course, of some consequence as this term symbolizes and continues to preserve the notion under American law that Indigenous nation sovereignty is separate and independent from American sovereignty. But in doing so, the Court defined it in a way that the Indigenous nations would be permanently subordinated to the United States as a matter of American law.

Contemporaneous and subsequent cases decided by the Court throughout the nineteenth and early twentieth centuries further developed this restricted view of Indigenous nation sovereignty. Land title was obtained from the Indians because of its simple "discovery" by the colonizers, leaving the aboriginal inhabitants of the land with only a "right of occupancy." [FN14] Federal power over the Indian nations was deemed to be exclusive, with states having no authority under the Constitution to interfere in relations ***83** with the Indian nations. [FN15] And building on the guardian-ward notion first articulated in Cherokee Nation, the Court extended American power over the Indian nations through a self-defined and self-assumed "trust responsibility" rooted not on any Constitutional authority but simply upon the "very weakness and helplessness" of the Indian people. [FN16] These decisions laid the groundwork for the development of the ultimate doctrinal tool of American colonialism-that the United States possesses "[p]lenary authority" over the Indian nations. [FN17]

In these decisions, the Supreme Court developed a narrow and self-serving view of Indigenous nation sovereignty that now shapes the modern American conception of Indigenous nation sovereignty. To be sure, the Court no longer invokes the obviously racist and paternalistic language that it used quite commonly during the nineteenth century when referring to Indians (e.g., "savage," "uncivilized"). But it has preserved to the present day the ultimate impact of the decisions spawned from that sentiment-that the Indian nations are subordinate to the United States as a matter of American law.

A prime example of how the Court has maintained this illusion to the present day is reflected by United States v. Wheeler, [FN18] a supposedly "pro-Indian" case from 1978 that rejected the claim that the Indian nations only exercise their authority as an extension of federal power. In affirming the existence of inherent Indigenous nation sovereignty, the Court said rather matter-of-factly:

The powers of Indian tribes are, in general, "inherent powers of a limited sovereignty which has never been extinguished." Before the coming of the Europeans, the tribes were self-governing sovereign political communities. Like all sovereign bodies, they then had the inherent power to prescribe laws for their members and to punish infractions of those laws.

Indian tribes are, of course, no longer "possessed of the full attributes of sovereignty." Their incorporation within the territory of the United States, and their acceptance of its protection, necessarily divested them of some aspects of the sovereignty which they had previously exercised. By specific treaty provision they yielded up other sovereign powers; by statute, in the exercise of its plenary control, Congress has removed still others.

But our cases recognize that the Indian tribes have not given up their full sovereignty. We have recently said: "Indian tribes are ***84** unique aggregations possessing attributes

of sovereignty over both their members and their territory. . . . [They] are a good deal more than 'private, voluntary organizations."' The sovereignty that the Indian tribes retain is of a unique and limited character. It exists only at the sufferance of Congress and is subject to complete defeasance. But until Congress acts, the tribes retain their existing sovereign powers. In sum, Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status. [FN19]

In making this assessment, the Court synthesized nearly two hundred years of American jurisprudential development relating to the Indian nations. Despite the passage of time, however, it is hard to see how this assessment differs markedly from the paternalistic guardian-ward depiction of the Indian nations first articulated by the Court in its 1831 Cherokee Nation decision. [FN20]

If left to its own devices, then, there is every reason to believe that in the future the Court will continue to render decisions that have the effect of weakening American recognition of Indigenous nation sovereignty. Sure, the Court continues to reiterate its support for the notion of reserved Indigenous rights (i.e., that the Indian nations retain "inherent sovereign authority over their members and territories"). [FN21] But this acknowledgment increasingly looks like lip service. In the same breath in which it purports to recognize inherent Indigenous nation sovereignty, the Court has developed a new consent-based notion of sovereignty that wholly eviscerates the territorial component. [FN22] It has done so in recent years by embracing a jurisprudential philosophy rooted in the "general proposition that the inherent sovereign powers of an Indian tribe do not extend to the activities of non-members of the tribe." [FN23] While the Court has crafted two exceptions by which Indian nation authority might be exercised over non-***85*** Indians [FN24]-exceptions that never seem to apply-its sweeping assertion that Indian sovereignty is limited to matters involving just Indians is wholly at odds with its fairly recent assessment that the Indian nations are a "good deal more than 'private, voluntary organizations."' [FN25]

That the United States has developed this view of Indian nation sovereignty is of little surprise. What is surprising and what is of greatest concern, however, is that this view has become so predominant, pervading not just American law and society-as one would expect-but also the Indigenous law and societies as well. That the United States would develop a jurisprudence dealing with the Indian nations that serves to rationalize its subjugation of them is hardly remarkable. After all, isn't that exactly what one would expect from the judicial arm of a colonizing nation? But in the abstract, it is rather odd that Indigenous peoples have come to accept American legal theories that sustain illegitimate and unconsented-to assertions of American authority over them. If, after all, Indigenous and American peoples start out viewing each other's sovereignty on roughly equal terms, how is it that the Supreme Court's view has become so dominant amongst even the Indigenous peoples?

IV. Morphing the Indigenous Perspective into the Colonial Perspective and Back Again

There are a number of ways in which Indigenous peoples have come to abandon their own conception of sovereignty and replace it with the American conception. The most direct way in which this process has occurred has been through the "work" of the Bureau of Indian Affairs (BIA), the administrative arm of the United States government most responsible for the control and regulation of Indigenous peoples.

The BIA, as an institution, is slightly over 150 years old and has been responsible for carrying out all of the statutory and judicial edicts of the United States government relating to the Indians. The foundation of the ***86*** agency's authority is derived from 25 U.S.C. § 2, a sweeping provision which provides:

The Commissioner of Indian Affairs [now Assistant Secretary of Interior-Indian Affairs] shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs and of all matters arising out of Indian relations. [FN26]

This statutory provision is so vast that it has been used as justification for taking actions affecting every aspect of Indian life, including the taking and granting of Indian land, the establishment of tribal governments, the development of a criminal code and courts, the suppression of traditional Indigenous religious practices, the education of Indians, and the administration of Indian natural resources and financial assets.

BIA officials and staff have served and continue to serve a critically important role in the transformation of Indigenous conceptions of sovereignty. They do so directly, through their actions affecting Indians and indirectly by virtue of their mere presence as a continuing reminder that the United States controls the Indian nations, very much like the way prison guards serve as a constant reminder to the convicts that they are not staying at the Holiday Inn.

In the course of carrying out their "duties," BIA officials also serve to perpetuate American conceptions of Indian nation sovereignty by invoking the American law dealing with Indigenous peoples. As employees of the United States, BIA officials obviously must comply with, and be guided by, American law in the course of performing their duties. In so doing, they not only anchor their actions in law, they also communicate the message to the Indians under their charge that their actions are backed up by the full legal, political, and military authority of the United States. For example, where a statute or judicial decision authorizes executive branch implementation, BIA officials will cite these provisions of law as the basis for sustaining their authority to regulate an Indian nation's internal affairs. [FN27]

***87** In some cases, however, the BIA takes action solely on the basis of the broad Secretarial discretion set forth under 25 U.S.C. § 2 and not on the basis of any specific statutory or judicial authorization. A good example of this virtually unlimited authority is reflected by the following excerpt taken from a letter to the Chief of the Saginaw Chippewa Tribe from the head of the BIA:

On June 9, I wrote you and expressed my concern over the Tribe's failure to complete the constitutionally mandated election of representatives for the Isabella District. I urged you and your Council to call and conduct an election within the next 45 days to select 10 individuals to serve as Tribal Council members for the Isabella District from among the twenty persons from the Isabella District who were the successful candidates at the latest primary election in January 1999.

. . . .

. . . [T]he critical fact is that the holdover Council, scheduled to leave office after the November 1997 election, has failed in four efforts to conduct elections and effect a lawful transition of power.

. . . .

. . . Accordingly, I am instructing the Area Director to proceed with the instructions I gave him on June 9. He is to deal with the representatives for the two off-reservation districts and the eleven persons from the Isabella District who received the highest number of votes in January 1999 as representatives of the Tribe on an interim basis. While this interim council is an incomplete reflection of the democratic will of the people, it is the clearest and most recent expression of the sentiments of the tribal membership. I realize that the Isabella District is entitled to only 10 representatives under the Tribal Constitution and that two individuals were tied for the tenth highest number of votes in the January 1999 primary. I see no reason why the two individuals cannot share the vote for that seat on the Council. If they agree, they can cast one vote for the agreed upon position. If they ***88** disagree on a matter, their votes will simply cancel each other out. [FN28]

Now, in the early years of the relationship, when few Indians could read, administrative edicts such as this may have had little psychological effect despite the obvious practical effect that such actions may have had on internal affairs. Over time, however, the use of these documents has served as an extremely powerful tool for indoctrinating Indians to accept the legitimacy of American hegemony. This is especially true as the balance of power has shifted away from the Indian nations to the United States, resulting in the threat of BIA action being backed up through the use of force, either from the military or

its own police. Under such oppressive conditions, multiplied by the passage of time, it would take an extremely resistant (or maybe just ignored) group of Indians to not abandon their own distinctly Indigenous conception of sovereignty in favor of how the Americans define it. For most Indians, however, the American definition of Indigenous nation sovereignty-that such sovereignty is limited and subject to complete elimination by Congress-appears to have firmly taken hold.

In addition to this government-driven influence, it appears that Indians also have changed their views about sovereignty as the result of increased self-education about Indian nation sovereignty and rights. Given the source of this information, however, this self-education may have serious long-term consequences on the ability to preserve distinctly Indigenous conceptions of sovereignty.

Indigenous nations, of course, originated as pre-literate societies reflecting deep and effective oral history traditions by which the collective knowledge and memory of the people was retained and carried on through the generations. In contrast, the United States reflects its European origins by placing heavy reliance on the written word to accomplish the same objectives. In the course of its colonization of Indigenous peoples and lands, the United States has done much to destroy the ability of the ***89** Indigenous peoples to preserve their languages and, thus, their means of preserving such things as history and law. This state of affairs, naturally, has had a critical impact upon the ability of Indigenous peoples to preserve their own conceptions of sovereignty.

For example, since the beginning of the nineteenth century the American government has funded military and ecclesiastical boarding schools, as well as public schools, for the purpose of assimilating Indigenous peoples into American society. Naturally, this process has been predicated upon the displacement of Indigenous languages with the English language. This campaign to destroy Indigenous languages has been so "successful" that today the odds are extremely low that any Indigenous nation will be able to retain its language beyond the current generation of speakers.

This transformation is significant because Indians today ingest almost all of their written information through the English language from sources generated by non-Indians. This body of information includes the law developed by Congress, the Supreme Court, BIA, and all of the other components of the American government having direct control over the Indian nations. Not surprising (given the passage of time), this is a significant amount of material. Two volumes of the United States Code, thousands of Supreme Court, appeals court, and district court decisions, volumes of regulations, and numerous administrative decisions and rulings, all serve as the foundation for a mountain of law that now-mainly through the Internet-is widely available for review by Indigenous peoples.

My observation is that there is an increasing number of Indian people who are trying to understand what is contained in this volume of material. They may do so because they are trying to understand a problem that they are having with their tribal government or with the federal or state governments. Or maybe they are simply curious. Whatever the reason, these Indian "lawyers" may, in the course of their investigation, come up with some "right" answers to the questions despite having no formal legal training. The bigger problem, however, is that the existence and prevalence of America's Indian control laws may carry such authoritative effect with Indians who study it that it will likely serve to displace whatever Indigenous conception of sovereignty that might have been retained within that person to begin with.

A good example of how this occurs relates to arguments made by Indians-particularly Indian leadership-that the United States should take some kind of protective action on behalf of their nation as a result of its "sacred" trust responsibility to do so. It may very well be that an Indian leader making such an argument is aware of a treaty involving their nation whereby the United States agreed to provide "protection" to it. But it might ***90** also be the case that he or she does not fully appreciate that this assertion of authority is based upon the categorization of Indian people as "wards" of the United States government as defined under the Johnson, [FN29] Worcester, [FN30] and Kagama [FN31] line of Supreme Court cases. Moreover, it might not be fully internalized that the

requested exercise of federal trust authority is tempered by the "lesson" from Lone Wolf, [FN32] that the United States has the power to take whatever action it wants to with respect to Indian affairs. Lastly, and most pertinently for analyzing Indian nation sovereignty questions, it is probably not the case that there has been full consideration given to the long-term consequence of accepting status as a "domestic, dependent nation" under American law.

It seems to me that eventually all of the Indians, who want to, will know the law of their colonizer backwards and forwards. When this happens, I can only hope that the incorporation of this knowledge will be compartmentalized so as to preserve an understanding for what it is-simply one of three competing conceptions of Indigenous nation sovereignty. [FN33] But I greatly fear-given the trends at work-that the colonial view will, over time, completely displace the Indigenous view. This inevitable outcome, unfortunately, is as much a reflection of the factors described above as it is a result of the fact that the Indian nations today have very few institutional mechanisms by which a distinctly Indigenous view of sovereignty can be preserved and perpetuated. In critically important ways, Indigenous societies are lacking the practical ability to promote their own view of sovereignty. Indigenous peoples struggle to survive, much less be in a position to aggressively assert a pro-sovereignty agenda. Tribal schools are rare and are not in a position to teach beyond the fundamentals of how to survive in America. And tribal governments are too compromised to fight back, because they are heavily under the thumb of the BIA and the money that it uses as both carrot and stick to control them. I don't think this is simply paranoia. Too often I hear from Indians-especially those mouthing the words "we're sovereign"-that we must accept the hand that we've been dealt by the Americans. This attitude, among other things, is defeatist because it signifies acceptance of the underlying tenets of America's Indian subjugation jurisprudence. Specifically, that Indians are a powerless people, helpless in the face of ***91** American governmental power who have nothing in their lives but what the good grace of the colonizer has given as an exercise of its beneficent trust responsibility. [FN34] While it is hard to believe that anyone could unthinkingly swallow these self-serving fictions, it is actually not so incredible given the history of interaction between Indigenous and colonizing peoples. Our people have long been trained to accept the view that this state of affairs is a genuine reflection of how far we have been engineered from our aboriginal beginnings. Ultimately, to the extent that Indians today internalize the colonizing nation's conception of their own sovereignty, therein lies evidence of the partial, and maybe even complete, displacement of an Indigenous conception of sovereignty that is unlimited and unqualified in its dedication to freedom.

V. The Complicity of the Lawyers and the Law Professors

Over the years, the displacement of Indigenous conceptions of sovereignty has been facilitated by those in the greatest position to harm Indigenous peoples-their own lawyers. My own experience in assessing this phenomenon first arose in the context of a conversation I had with a former president of the Seneca Nation when I first became our nation's Attorney General. For some reason, we were talking about the nation's sovereignty and I must have said something along the lines of, "of course we can do that, we're a sovereign nation." The president, at that point, was very quick to disagree with me. "No," he said, "we're not a sovereign nation. We're quasi-sovereign." This struck me as quite odd coming from one of our nation's former presidents, since the only time I had ever heard that term before was when I had read it in some United States Supreme Court opinion. [FN35] As politely as I could, I asked him, "Why do you think that is so? What's the difference?" He said that he had been advised of that definition by the nation's attorney some years ago and that it meant that the nation was not fully sovereign-that there were things that we just could not do because the United States would not allow it. I've been thinking about the significance of that exchange for years. What was that lawyer thinking? Could he have been deliberately ***92** malicious? Certainly not. But what would possess him to use words that would have the disastrous effect of limiting his client's own conception of sovereignty? Surely he was only trying to give his client an

accurate understanding of the "law." But I still shudder when I calculate the number of times over the years that our nation's former president must have passed on that "wisdom" to other Senecas. Coming from the nation's own attorney, this "advice" must have seemed especially authoritative to him. To me, however, it was more insidiously transformative than any edict emanating from the mouth of some BIA official. Because it was rendered by one in a position of trust to a client who had his defenses down, there was simply no way for our former president to know that this attorney was destroying his own uniquely Seneca conception of sovereignty by passing on as gospel the anti-Indian sovereignty views of the United States Supreme Court. Had I not by that time already become suspicious of what the Supreme Court had been saying about the sovereignty of our nations, I myself, probably would have just blindly accepted this crabbed view of my nation's sovereignty.

Surely there are difficulties involved for any American lawyer advising an Indigenous nation on the question of its sovereignty. One must certainly try to assess what the courts will do when presented with a case involving one's client, so as to best calculate the risks of litigation. But what to do with that information in the broader context? Yes, ethical obligations require that the client be informed of your assessment of American law on all matters where it might be relevant to the client's actions. But what about the Indigenous perspective on the law? How does that come into play? When litigating in an American court, one might think that such a conception does not matter because arguments rooted in an Indigenous perspective would have no application in an American court where only federal precedents matter.

But, it seems to me, the attorney representing an Indigenous nation has just as much an obligation to advise his or her client of that nation's views of its own sovereignty as it does the American view. This is very hard, especially for the lawyer who knows little about the people that he or she is representing. How does one discern that view? What is its source? What is one to do if that view is inconsistent with the American view? Regardless of the difficulty of the problem, however, engaging in this inquiry is critically important to the survival of the Indigenous conception of sovereignty. To the extent there remains a divergence between these two perspectives, the Indigenous perspective-as in the case of the former Seneca Nation president-could be wholly neutralized by the lawyer who ignores his or her client's own sovereignty tradition.

***93** While the correct answer is ultimately an empirical question, my best off-hand assessment is that lawyers representing Indigenous peoples generally fail to adequately take into account their client's own sovereignty perspective. American-trained lawyers, not surprisingly, are too anchored to the American legal system and simply cannot get it out of their heads that what the Supreme Court says is, indeed, the gospel. This anchoring is symptomatic of their legal training in which precedent, especially Supreme Court precedent, is given absolute reverence. Even from those lawyers who view these precedents critically, ultimately, they too promote the legitimacy of these decisions by performing their lawyerly duty of making arguments from these precedents in the hopes of turning an American court in their client's favor.

This is especially problematic for attorneys representing Indigenous nations. While I have observed a few lawyers who seem to have been able to accept the fact that their client is, at its core, a separate sovereign and thus not an "American" client per se, my guess is that these lawyers are in the minority. Most lawyers representing the Indians are, foremost, practicing lawyers, with some or all of their client base comprised of Indian nations and individuals. As a result, the orientation is inclined to the practical and not the theoretical. Just get the job done. Solve today's problem, not tomorrow's. Be real.

As it relates to client interactions, this mentality has the effect of promoting within the lawyer a practice style that has the effect of ensuring conformity with the American, rather than the Indigenous, conception of Indigenous nation sovereignty. Indian nation clients are advised as to the rightness or wrongness of their actions solely on the basis of Supreme Court precedent and acts of Congress, and not on the basisof what the client believes is the essence of their sovereignty. A client's desire to "fight" the colonial law by either ignoring it, taking the battle to the political arena, or to the streets, is viewed as

irrational, ignorant, quixotic, or just plain stupid. The Indian nation lawyer, then, rather than genuinely serving as the zealous advocate-as the canons of ethics require-becomes the agent provocateur of the colonial regime, silently but effectively promoting the colonizing nation's legal and political agenda by conforming the behavior of his or her Indigenous nation client to the "acceptable" American standard. An excellent example of how this can occur is reflected in the comments of Kevin Gover, a prominent Indian nation lawyer (and Indian) who served as Assistant Secretary of the Interior for Indian Affairs:

In terms of sovereignty, I understand your point that the federal government claims the authority to define what Indian sovereignty is. . . . I've had clients ask me, wait, how can they do that? That's ***94*** not fair. And I say, well very simply because they have the numbers and you don't. And that's in many respects what it [is]. The United States has the power, clearly, to define what tribal authority [is] in this day and age. [FN36]

The problem, unfortunately, is far deeper than Kevin Gover. A good glimpse into the depths of this phenomenon is reflected in the work of those lawyers representing Indigenous nations and peoples before the Supreme Court during the last few years. As can be seen in the case excerpts below, lawyers appearing before the Court must concede the "rightness" of the colonial jurisprudence in the course of making their arguments. It is apparent from reading some of these arguments that they are very much trying to "thread the needle" in relying on such precedents-regurgitate just enough of the colonial jurisprudence to "win" the case but not so much so that the gray areas in the law must, of necessity, be resolved against their client's interests. Whether they agree with these cases as a personal matter is, of course, irrelevant. [FN37] What matters most is that as an advocacy measure they are doing what good advocates are supposed to do-trying to make the "best" argumentfor purposes of persuading the decision maker to rule in their favor. Unfortunately, in doing what lawyers do, these advocates must accept the most antagonistic tenets of the underlying colonial paradigm and thereby give it additional credence and legitimacy.

The following examples are representative of how lawyers representing Indian nations support the American conception of Indigenous nation sovereignty:

. In Atkinson Trading Co. v. Shirley, [FN38] the Navajo Nation took the position that it had the authority to impose an occupancy tax on a non-Indian business located on fee land within its territory. In making the argument, the Nation's lawyers conceded the supremacy of American legislative and judicial power by stating that "[t]he power to tax is a fundamental ***95*** attribute of sovereignty which the tribes retain unless divested of it by federal law or necessary implication of their dependent status." [FN39]

. In Nevada v. Hicks, [FN40] the Fallon Paiute-Shoshone Tribes argued unsuccessfully that the tribes' jurisdiction extended to civil suits against state officers in their individual capacities. The tribes' lawyers conceded the legitimacy of the Plenary Power Doctrine because tribes only "retain all sovereign powers which have not been taken away from them by the Federal Government" and that "tribal sovereignty is 'dependent on, and subordinate to, only the Federal Government, not the States."' [FN41]

. In Alaska v. Native Village of Venetie Tribal Government, [FN42] the Village government argued unsuccessfully that it occupied "Indian country" and that it retained the inherent power to tax subsequent to the enactment of the Alaska Native Claims Settlement Act. The village's lawyers validated the Trust Doctrine by conceding that the village was in a "'dependent' relationship with the Federal Government by virtue of their 'subordination' to the superior power of the United States, akin to a guardian-ward relationship." [FN43]

. And in Strate v. A-1 Contractors, [FN44] the Three Affiliated Tribes of the Fort Berthold Indian Reservation unsuccessfully argued that it retained civil adjudicatory jurisdiction over causes of action arising on the reservation that involve only non-Indian parties. The tribes' lawyers affirmed acceptance of the Plenary Power Doctrine by arguing that "[t]he fundamental principle of federal Indian law is that the sovereignty of Indian tribes is inherent and exists unless and until it has been divested by Congress" [FN45] and that "tribal courts are cognizant of the rule that 'federal law defines the outer boundaries of an Indian tribe's power over non-Indians . . . ."' [FN46]

To be fair, the lawyers in these cases-many of whom I know-are decent, hardworking, and talented individuals who did the best they could to ***96** help their clients "win" with what case law they had available to them. The briefs excerpted were uniformly well written, often eloquent, and made very persuasive arguments that were firmly grounded in the Court's precedents. But the foremost problem with this advocacy approach is that these precedents cannot be disconnected from their underlying colonial underpinnings. Because of this structural problem, it simply is not a viable long term strategy to, in effect, argue that, "Congress has absolute power over our nation, except for that sovereignty which it has let us keep, which is what we now want to have recognized in the instant case." Even if you "win" the case under these conditions, the benefit is strictly short-term. The real victory ends up going to the United States, which "wins" in the long-run because it is able to cement yet another brick in the wall of its authority by exacting a concession from the colonized that its view of Indian nation sovereignty is the "correct" one. [FN47]

That lawyers representing Indigenous nations and peoples would be unwitting participants in promoting the viability of America's Indian control jurisprudence is not surprising given their professional orientation towards addressing here-and-now kinds of problems. What is surprising, is the extent to which those in the legal academy promote the American view of Indigenous nation sovereignty in the course of generating legal scholarship affecting Indigenous peoples.

While any generalization here runs the risk of some error, it appears that law professors who write about "federal Indian law" at least implicitly accept the underlying legitimacy of America's Indian control laws. To be sure, there is much criticism of this area of American law, especially with respect to the Supreme Court's decision-making. Such criticism runs along the following lines:

If the "life of the law" for legal formalists is logic and for legal pragmatists is experience, then federal Indian law is for neither. More than any other field of public law, federal Indian law is ***97** characterized by doctrinal incoherence and doleful incidents. Its principles aggregate into competing clusters of inconsistent norms, and its practical effect has been to legitimate the colonization of this continent-the displacement of its native peoples-by the descendants of Europeans. [FN48]

Despite such criticism, however, it remains the case that most law professors writing about "Indian law" are, like the lawyers representing the Indian nations-realists. They are grounded in reality, in the sense that they write in the hope that they have found the "right" answer, or that their work might influence an American judge, maybe even a legislator, or a practicing lawyer, and certainly colleagues and law students. Despite the overwhelming on-going criticism of the Supreme Court's Indian subjugation jurisprudence, there remains a begrudging acceptance that these decisions are, in fact, the law, rather than just some made-up colonial edicts that are wholly illegitimate. Even those who write from what you might call a "pro-Indian perspective" seem resigned to accept the reality that the United States really does have plenary power over the Indian nations, that there exists a federal trust responsibility for Indigenous peoples, and that the Indian nations really are "domestic dependent nations."

This resignation explains the fact that there has evolved in the literature such notions as "treaty federalism," a theory which seeks to build upon the colonialist foundation of federal Indian control law a superstructure that protects and promotes Indigenous nation sovereignty, albeit on par with that of the states and subservient to the federal government. [FN49] This evolution is fundamentally grounded in a positivist assessment that the Indian nations, after all these years of being dominated by the United States, have finally lost their fundamental character as sovereign nations and have thus been de facto incorporated into the legal fabric of American society. [FN50]

***98** Hopefully, not all Indian law scholars would agree with this assessment, but my guess is that the vast majority of them would. Indeed, I would also venture that a good number of them, regardless of their perspective on Indian nation sovereignty, might actually believe that this is a good thing. What all of this suggests to me is that even those who write critically about "federal Indian law" fundamentally share the same

jurisprudential foundation as the United States Supreme Court (i.e., that Indian nation sovereignty is limited and subject to the overriding authority of the United States). Because of this predisposition-common among those generating scholarship in this area of the law-it thus might be said that while Indian law scholarship is often normative, it is far from utopian.

The unwillingness to challenge the current "reality"-whatever that is-and drop anchor in some Indian law world other than the one created by the U.S. Supreme Court is ultimately, in my view, what compromises the utility of much Indian law scholarship. Just as it might be said that advocating utopian formulations of a post-colonial Indigenous-colonist relationship is impractical and a waste of time, so too could it be said that analyzing Supreme Court decisions in the hope of moving the doctrine in a more coherent direction is impractical and a waste of time given the Court's long history of slapping down assertions of Indian nation sovereignty whenever it gets the chance.

At minimum then, scholars who write about the Court's Indian law decisions as if they were legitimate contribute to the elevation of American, rather than Indigenous, conceptions of Indigenous nation sovereignty. The following excerpt, from the introduction of an article analyzing the Court's new "consent paradigm," highlights how this process occurs:

The first and foremost doctrine in federal Indian law is the doctrine of inherent sovereignty. It holds that tribes are domestic dependent nations which may exercise powers free of the strictures of the Constitution unless limited by treaty or by Congress. The doctrine springs from three opinions by John Marshall, and forms the basis for sovereignty over land. The second doctrine, which derives from the same trilogy, empowers Congress to regulate even the internal affairs of tribes. This doctrine, called variously the plenary power doctrine and the doctrine of trust responsibility, is premised on a fiduciary relationship between Congress and the tribes. [FN51]

***99** Because of its grounding in the colonial doctrines, law professors who "do" Indian law scholarship in this manner-by uncritically restating the Court's doctrinal rules-have the effect of promoting the American rather than the Indigenous conception of Indigenous nation sovereignty through their work.

A further proof of this point is to ask the question whether one believes that Cherokee Nation v. Georgia [FN52]-in which the Supreme Court determined that the Indian nations had lost their foreign character and were thus "domestic dependent nations"-was rightly decided. Despite the criticism that one sees in the literature about the case, there are few defenses of the proposition that the Indian nations remain "foreign" in character. [FN53] Sure, there is much agreement that the sovereignty of the Indian nations pre-dates and exists independently of the United States. But, even the Supreme Court agrees with that. Moving beyond this acknowledgment and taking an initial analytical position that the Indigenous nations remain fully sovereign foreign nations that just so happen to be surrounded by the United States, with whom they maintain a protectorate relationship, is a proposition that is not seriously considered. To do so, it seems, would be to take this "sovereignty thing" just a little bit too far.

Viewed together, then, the lawyers and law professors who uncritically practice in and study the field of "federal Indian law" are complicit in the effort of the United States to subordinate Indigenous conceptions of Indigenous nation sovereignty to the American conception. Against the backdrop of the longhouse and the castle, "doing federal Indian law" is the equivalent of filling in the moat and paving over the longhouse with the body of American law. My guess is that such an assessment might come as a bit of a shock to many scholars and lawyers in the field, given how widely accepted the "rightness" of the American perspective is amongst its adherents. But a good measure of one's complicity in this process of subordination is the extent to which one approaches the colonial doctrines as a legitimate source of rules by which legal analysis involving the Indian nations should be conducted. [FN54] The more one accepts the legitimacy of ***100** these rules, the more likely it is that one is promoting the American conception of Indigenous nation sovereignty at the expense of the Indigenous one.

To the extent that one acknowledges his or her complicity in this process, advocates for

Indigenous nations best serve their clients in the long-run by not drawing upon the colonial law. Weaning oneself off this body of law, however, is difficult. I myself have previously written in a way that suggests the legitimacy of the "federal Indian law" [FN55] and from time to time work with Indigenous nations in which drawing upon this body of law seems to be the only logical alternative. But, how might the suppression of Indigenous nation sovereignty by American law ever end if the tools of that suppression continue to be invoked in the name of doing good? While much more thought needs to be given to the problem, the only answer that I can think of right now is that considerable effort must be given to revitalizing and strengthening distinct Indigenous conceptions of sovereignty to offset the caustic effect of embracing the colonial conception.

VI. Towards a Rejuvenated Conception of Indigenous Nation Sovereignty

Up to this point, I have sought to highlight the difficulty that Indigenous nations face in their efforts to sustain and promote a distinct conception of their own sovereignty. As a result of the transformative pressures resulting from colonization, Indigenous definitions on the matter of sovereignty have been almost completely neutralized by the definition of limited sovereignty that has been developed and propagated by the colonizing nation. This neutralization has been enhanced in several different ways: by the direct efforts of American government officials; by the breakdown in the ability of Indigenous peoples to sustain traditional, culturally rooted notions of sovereignty; by the participation of co-opted Indigenous peoples who have come to accept the colonial definition; and by the efforts of lawyers and law ***101** professors who regurgitate and reapply the colonial legal doctrines in the course of their work.

Against this backdrop, then, how can a genuinely distinct and revitalized Indigenous conception of Indigenous nation sovereignty be restored? My prescription is relatively simple.

As discussed at the beginning of this article, I suggested that it is first necessary to reject the notion that there is some universal definition of Indigenous nation sovereignty that applies across Indigenous, colonial, and international perspectives. Perspective does matter, and just as Indigenous peoples have the right to embrace their own conception of Indigenous nation sovereignty, so too does the colonizing nation. From the perspective of the Indigenous nations, the fact that the view of Indigenous nation sovereignty held by the colonists "outside the moat" is seen as oppressive, unilateral, and illegitimate, matters not. Colonizing peoples, as peoples, are entitled to their own views on the subject. What they should not be allowed to do is prevent the ability of Indigenous peoples from embracing their own conceptions of their own sovereignty. Now, to be precise, this is not the same as saying that one peoples' sovereignty cannot displace another peoples' sovereignty. Indeed, that is the essence of the sovereignty struggle in an increasingly interconnected world-how to ensure the manifestation of one's view of sovereignty in competition with other sovereigns. It is for this reason that efforts are underway to clarify how Indigenous nation sovereignty will be recognized from the international perspective.

The second step is to reject the notion that within the Indigenous perspective there is any such thing as one single, monolithic Indigenous perspective. There are, within the United States, over six hundred recognized and unrecognized Indigenous sovereigns. They vary in every conceivable manner. By virtue of population, culture, geography, and the nuances of history, no two Indigenous peoples are the same. It serves little purpose, other than to encourage mistake, to take the position that, with respect to defining Indigenous nation sovereignty, "one size fits all."

In the absence of a monolithic Indigenous definition of sovereignty, the third step, then, must be to put forward a model of analysis that can generate outcomes uniquely suited to particular Indigenous nations. The purpose in doing so is to facilitate the opportunity for an Indigenous nation to sustain its own conception of sovereignty in the face of competing American and international perspectives. Unlike the American conception, however, my approach does not lend itself to the kinds of easily digestible rules associated with Supreme Court doctrine. Instead, my approach is more conceptual,

defining sovereignty in a variable way that allows for evolutionary development overtime. It is based upon the extent to which an ***102** Indigenous people possess three particular factors: belief, ability, and recognition.

Belief is the belief that an Indigenous people have in their own sovereignty. It may be an absolute belief, such as in "we maintain the right to do whatever we want to in our own territory without limitation," or it may be a more limited version, such as "we maintain the right to do whatever we want to in our territory so long as our neighbors do not object." Such belief, of course, can also take an extremely weak form, such as "we do not believe that we can do anything for ourselves," or "we do not believe we can do anything for ourselves without first asking permission from our neighbors." Regardless of the extent of the belief that is possessed, it is just that-a fluid concept that exists along a continuum-rather than in some fixed, absolute quantity.

Ability is the ability of an Indigenous people to take action to carry out their belief in their own sovereignty. This ability reflects a variety of attributes, but would include possessing such things as: a territory, a population, a government, financial and natural resources, an economy, a culture, a language, and the like. Each of these factors alone, of course, is not an absolute prerequisite to having the ability to effectuate sovereignty. How much territory is enough to carry out your sovereignty belief? How many people do you need? How much money must you have? How culturally distinct must you be? A people might have each of these qualities in varying degrees, or they might have some in significant degrees and others not at all. But, the threshold scenario is a situation in which a people have none of these attributes. In that case, such a complete absence translates into having absolutely no ability to carry out one's belief in sovereignty. If you have no land, few people, no resources, and no distinct culture, then it will not be possible for you to effectuate a sovereignty belief even if you are able to formulate one.

Recognition is the extent to which an Indigenous people have their sovereignty belief recognized and respected. This recognition comprises two components: internal recognition and external recognition. Internal recognition is the extent to which a people recognize their own sovereignty. Put another way, internal recognition is the extent to which a people share a sovereignty belief. If there is no dominant belief about the nature of one's sovereignty, it cannot be said that there exists significant internal recognition. In such a situation, weakness of belief and weak sovereignty results. External recognition is the extent to which other peoples recognize a people's sovereignty. As with internal recognition, the greater the degree of external recognition, the stronger the assertion of sovereignty.

***103** When these three variables are viewed together, the contours of the sovereignty model emerge. Each variable is interrelated with one another and to a varying degree, each has the capacity to influence the nature of every other variable. Ability affects belief; belief affects recognition; recognition affects ability; and so on. I depict this relationship as follows:

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

The ultimate question, of course, relates to how sovereign are a particular Indigenous people. To the extent that a people have a strongly and widely held sovereignty belief, but have little ability to carry out that belief, they will likely have only a modicum of external recognition and thus, little sovereignty. This would also be true for a people who have an abundance of ability to carry out a sovereignty belief, but have very little actual belief. They too, would have little sovereignty. A people with a moderate degree of belief and ability would likely find themselves receiving a moderate degree of recognition and, thus, have a moderate degree of sovereignty.

Over time, each of the factors of this sovereignty model has the effect of changing the nature of the other variables. Perhaps the most obvious demonstration of this phenomenon is the extent to which low recognition of one's sovereignty by another people may have the effect of undermining the original belief that one has in being sovereign. Or, it may be that a lack of resources contributes to an inability to manifest a belief in sovereignty, as well as a lack of recognition. It may also be that belief can influence ability. For example, if a people have a low belief in sovereignty, but have

material wealth, they may decide to just distribute their wealth per capita and forego sovereignty-enhancing collective objectives. While doing so may enhance individual well-being in the short-run, it presents a threat to both belief and recognition in the long-run. In sum, then, the sovereignty triad is dynamic, with each factor having an impact on the others over time.

On the basis of this model, it is worth questioning what might be the most important source of an Indigenous nation's sovereignty. My view is that sovereignty emanates most strongly from having a belief in it. Yes, having little ability to manifest that belief will surely result in little recognition and, thus, a weak form of sovereignty. But, it seems to me, it is ***104** possible with some good fortune and creativity to overcome limitations in ability. What is more structurally difficult is how to overcome a lost or weakened belief in being sovereign. Against the backdrop of colonization, this is the question that resonates most deeply in the context of Indigenous nations in the United States today. Yes, it is surely the case that a lack of ability-foremost due to a lack of land, population, and resources-is a critical deficiency to being more sovereign. But, I suggest, not having much ability is simply the most obvious deficiency. It is a lack of belief in being sovereign that is the most prevalent and difficult obstacle to overcome.

To demonstrate this point, imagine a situation in which an Indigenous people have little belief in their own sovereignty and have little ability to carry out that limited belief. One would expect that there would be little or no recognition of that people's sovereignty. But, this is not so, as the United States today recognizes as sovereign nations very small Indigenous nations-many with just a few hundred members or less-as possessing sufficient sovereign existence to carry on government-to-government relationships. In this instance, there arises a disruption in the model that is not easy to explain.

Alternatively, one could imagine an Indigenous people with very little belief in their own sovereignty, but who have considerable ability to carry out whatever belief they have. This might be the case with some of the newly-rich gaming tribes that have generated considerable wealth, but find that preserving a meaningfully distinct existence is not their ultimate objective. Here, too, recognition as a sovereign is afforded by the United States.

On the basis of such scenarios, one might conclude that it is recognition, not belief, that is the most important factor in being sovereign. Regardless of one's belief in being sovereign and one's ability to carry out that belief, if recognition is not afforded-especially by outsiders-then that becomes the de facto limit of one's sovereignty. This, it seems to me, is the justification for those working in the field of "federal Indian law." This law, regardless of how it is worded, is fundamentally the means by which the United States recognizes assertions of Indigenous nation sovereignty. Thus, if the Supreme Court says that, for example, that Indian nations do not have criminal jurisdiction over non-Indians-as they did in the Oliphant case [FN56]-then what they are really saying is that the United States does not recognize ***105** that attribute of Indigenous nation sovereignty, and therefore, you don't have it.

The problem with giving so much emphasis to the recognition factor is that it unnecessarily casts aside belief and ability as key determinants of being a sovereign. Sure, a realist may take the view that if others do not recognize your sovereignty, you simply don't have it. But I would argue that lack of recognition only means a weakening of one's sovereignty, not an elimination of it. This, it seems to me, is a critical distinction. That the United States says that the Indian nations do not have criminal jurisdiction over non-Indians is not to say that such authority does not exist. If an Indigenous people believe that they have criminal jurisdiction over non-Indians, and they have some ability to carry out that belief, then it seems obvious to me that they retain some measure of sovereignty with respect to criminal jurisdiction over non-Indians.

Now, such a scenario may eventually present itself as a major conflict with the United States depending upon the extent to which the Indigenous nation decides to assert its sovereignty. But that, of course, is the whole point of being sovereign! Recognition of one's sovereignty does not ordinarily come about in the absence of conflict with other peoples' sovereignty. This conflict simply will not occur unless a people have divergent beliefs about their own sovereignty and seek to put those beliefs into action. Recognition,

then, only flows from having a belief in being sovereign. That is why it is possible today to have "recognized" Indian nations who have very little belief and ability to carry out their own sovereignty. Sure, all of the "goodies" associated with being recognized as a sovereign by the United States may exist, but such recognition is hollow because it is not predicated upon a genuine belief and ability.

Perhaps the ultimate application of this sovereignty model is to explore what might happen in the event that an Indigenous people in the United States are confronted with some future effort by the federal government to terminate their recognition as a sovereign nation. This future Termination Era, like the one launched fifty years ago, will simply seek to strip away American recognition of Indigenous nationhood and only recognize Indians as citizens of the United States and the states in which they reside. To the extent that this might happen someday (which I think it will), what will happen to Indian nation sovereignty? My best guess is that quite a few Indian nations will simply accept this fate and cease to exist. Their citizens will just assimilate completely into life as state citizens. By that time, this may not even be perceived by many Indians as being a major problem. As was the case during both the prior Termination and Allotment Eras, Indians ***106** may actually choose to abandon their sovereign status and become state citizens in exchange for some kind of pay-off.

But what would happen to those Indigenous peoples who retain a belief in their sovereignty and have some ability to carry out those beliefs? It is my guess that the United States would have to de-recognize these Indians over their most vociferous objection. And, depending on their resolve, they may be able to induce conflict situations that might make the United States wish it had not embarked upon such a disastrous policy in the first place. But even if the United States were to succeed in terminating such an Indigenous nation, would it be the case that those Indians would cease to exist? I think not. They would still have their beliefs and, presumably, some ability to bring those beliefs to life. The best evidence that this might occur is the fact that so many of the Indian nations that were terminated fifty years ago were able to regain their federal recognition. For most, but not all, just because the United States said that they weren't Indians didn't make it so.

For these reasons, I argue that having a belief in being sovereign is the most important factor in actually being so. Only if there is belief will the moat get dredged, only if there is belief will the drawbridges be drawn up, and only if there is belief will the longhouse be rebuilt.

VII. Sovereignty in the Future

Before bringing this article to a close, I should try to answer the questions that I laid out at the beginning.

Who, or what, has sovereignty? On the basis of my model, sovereignty exists for any people that can sustain each of the three elements of belief, ability, and recognition. In this sense, Indigenous peoples are very much like the Amish or the Freemen in possessing sovereignty. The main difference, however, is that while all three may have a belief in their "sovereignty" and some ability to carry out those beliefs, only the Indigenous nations are afforded recognition of such. As discussed above, however, the fact that Indigenous nations are recognized as being sovereign is not the essential characteristic. It is only to say that Indigenous nations, because they are recognized, are stronger sovereigns than those peoples who are not.

It is also worth mentioning that the concept of sovereignty is only applicable to peoples, not individuals. In other words, an individual cannot be sovereign. Of course, use of the term "sovereign" is not to suggest that there is only one true meaning. Surely, how I and other Indigenous peoples ***107** define the term diverges significantly from how the term first came about (i.e., with reference to a sovereign king or queen possessing absolute power over all peoples and territory). But, the term does not encompass every meaning that might be ascribed to it. To the extent that anyone might adhere to a notion of "personal sovereignty," they are really adhering to selfishness, not some attribute associated with being and maintaining an existence as a distinct people.

Is sovereignty limited? Sure it is. The limitation is inherent within each of the three variables. A lack of belief, ability, or recognition is instrumental in determining what the ultimate limitations are on a people's sovereignty. Of course, it is also true that the sovereignty of one people serves as the most direct limitation on the sovereignty of another people. In the context of Indigenous nations in the United States, perhaps the most obvious limitation for the casual observer is the fact that the United States only affords a certain degree of recognition in accordance with its "domestic, dependent nation" formulation. As discussed above, the prevalence of this view is very much rooted in the acceptance of this limitation by Indians, their lawyers, and the law professors who legitimate it through their writings. Perhaps the least obvious limitation is the lack of genuine belief in sovereignty possessed by most Indigenous nations and peoples in the United States. Most, it seems, want to have it both ways-to be a sovereign Indian nation when it is beneficial and to be an American when it is beneficial.

Can sovereignty be created? Yes, I believe it can. What follows from the sovereignty model is that sovereignty can be enhanced by strengthening either one's belief in sovereignty or one's ability to carry out that belief, or both. Although it should, this enhancement may or may not translate into an enhancement of the recognition of one's sovereignty that is afforded by one's own people or others. The creation of "new" sovereignty, however, is especially important to the future of Indigenous peoples. Without the ability to regenerate, and in some cases "rise from the ashes" of colonial subjugation, Indigenous societies run the risk of growing weaker and weaker over time. As discussed above, however, the creation of "new" sovereignty rarely can take place in the absence of conflict with surrounding peoples.

Can sovereignty be lost? Absolutely. Much like sovereignty can be gained, so too can it be lost. In a variety of ways, belief, ability, and recognition can all be undermined with the loss of each or all contributing to an overall diminishment in a people's sovereignty. Perhaps a morechallenging question is whether sovereignty can be completely lost? The answer, I think, is yes and is reflective of a condition ***108** in which an Indigenous people have simply ceased to have any belief in being sovereign and are not recognized by anyone-including themselves-as such. This condition is symptomatic of people who have been completely assimilated. They are referred to as being extinct.

Does having sovereignty really even matter? Yes, sovereignty really does matter, but the extent to which sovereignty matters depends upon how Indigenous people view their future. I believe that sovereignty-or whatever we decide to call it-is the life blood of not just Indigenous peoples, but all peoples. Without the ability to make choices about the future, Indigenous societies are simply appendages of the colonizing society; like a tail is an appendage on a dog. Only by having control over the future-by having true freedom-can a people have a meaningful life. This objective is especially important considering that Indigenous peoples have been subject to colonizing influences that have ultimately sought the complete subjugation of, and even elimination of them as separate human societies.

What European colonization has done to Indigenous nations remaining in the United States has been to erode the two most important foundational premises of sovereignty-belief and ability. The loss of ability has an obvious impact. Without land, population, resources, etc., it is extremely difficult to give life to even the most ambitious of sovereignty beliefs. But colonization has also induced considerable decay in the preservation of the sovereignty belief itself. As discussed above, there are many reasons for this. But the destructive impact of colonization on the retention of distinct conceptions of Indigenous sovereignty has not only been significant, in some cases, it has been complete.

Perhaps the most obvious change in the definition of sovereignty has been the transmutation of the sovereignty belief from a concept designed to promote collective benefit to one designed to promote individual benefit. In an aboriginal sense, back when Indigenous peoples had no choice but to rely upon one another for survival, the concept of sovereignty was predicated upon the perpetuation of collective survival. In the modern era, however, sovereignty increasingly seems to exist only for individual betterment. A

good example of this phenomenon is the way in which successful gaming nations have established a policy of making significant per capita distributions to their citizens. [FN57] One wonders whether, over time, the only reason that such a nation would maintain its sovereignty is for the personal economic betterment of its citizens, much like a corporation is ***109** only concerned about the economic betterment of its shareholders. When one factors in the proliferation of requests for federal recognition during the last ten years-a time period coinciding with the Indian casino era-a cynic could take the position that some people only want to be Indians and to become citizens of sovereign Indian nations so that they can get rich.

One could argue that this recent development is no different than the behavior patterns of old-that Indigenous societies sustained themselves because individual Indians needed to do so for their own benefit, be it for survival purposes or otherwise. But this approach overlooks the fact that it was nearly impossible, depending upon the circumstances, for individual Indians to survive solely on the basis of their own efforts. In contrast to the present day, it is relatively easy (at least economically) for aperson to sustain themselves through their own efforts. The modern Indigenous nation, then, need not necessarily concern itself with enhancing the quality of life for its citizens since, more than likely, they can take care of themselves. [FN58] That modern Indigenous nations do so may be tradition but it would also be a reflection of colonization-induced behavior that emphasizes individual desires over collective needs. When one adds in the fact that some Indigenous nations during the last one hundred years have actually self-terminated-willingly given up their sovereign status for economic gain-the modern gaming phenomenon with its per capita payments looks especially suspect as a form of collective sovereignty.

What this change in the definition of sovereignty means for the future is unclear. It could very well mean that the belief in sovereignty is wholly transitory and subject to eventual extermination-that as soon as a "better deal" comes along, any belief in the collective form of sovereignty will be abandoned in favor of the citizens dispersing throughout the world to pursue the good life. Indeed, much of what seems to be happening throughout Indian country today seems rooted in the desire to incorporate the American way-of- life onto the reservation. Viewed this way, what Indians are doing today seems on par with filling in the moat and eliminating the barriers that keep the colonizing society out of the Indigenous society.

Or, it could mean the development of a new and intensified strain of sovereignty belief that embraces economic empowerment as its primary characteristic. Certainly it cannot be denied that those handful of Indigenous nations that have succeeded through casino development and other aggressive forms of capitalism have been able to enhance their ability to manifest their belief in being sovereign. Whether, over time, such adaptation sustains and strengthens the sovereignty belief remains to be ***110** seen. On the one hand, it makes sense that the sovereignty belief will only grow stronger if doing so might result in greater individual economic betterment. On the other hand, at some point, the economically well-off Indian might eventually get his or her belly full and simply decide to cash in his or her chips for a nice life out in Scottsdale or down in Naples. If all of the Indians eventually retire from the sovereignty battle because everyone has achieved the American Dream, who will be left to tend to the longhouse?

In my view, this potential evolutionary step means the possible end of the Indigenous aspect of being an Indigenous people. If Indigenous people succeed so well at recreating for themselves the American good life inside the moat, could it not be said that they have become indistinguishable from the American people? And if Indians are indistinguishable from Americans, can it not be concluded that the Indigenous peoples have ceased to exist? As far as I see it, to be "Indigenous" must mean something. Why? Because it is just not very convincing to most people to say that one is an Indigenous person simply by mouthing the words "I am Indigenous" or simply anchoring to the fact that one is descended from some Indian who lived five hundred years ago. Why does one need to be convincing in making this assertion? Because one of the critical components of Indigenous nationhood is being recognized by other peoples. If history is any guide, when

the colonizing society does not believe that the Indigenous societies are really "Indigenous" any longer, then there will be new and more aggressive efforts to terminate the Indigenous nations' sovereignty. While failure to defend the recognition of our sovereignty may not necessarily mean that it will cease to exist, it certainly will mean that life for those who seek to maintain a collective sovereign existence will be filled with even greater levels of conflict and struggle to survive.

VIII. Concluding Thoughts

It is my hope that this article has helped to clarify the meaning of Indigenous nation sovereignty. At times, I look around and see signs of hope that Indigenous peoples within the United States will remain a distinct part of humankind seven generations into the future. At other times, though, I fear that the weight of history eventually will come crashing down on us. At times like these, the only thingthat one can count on is one's own hope that things ultimately will get better.

But hope, as we all know, is not enough. Action needs to be taken. But to what end should the action be directed? Can our nations grow stronger by convincing those in the castle to leave the Indians alone? I am doubtful. ***111** Those in the castle have been doing what they have been doing for a long, long time. I'm not sure that there is anything that we can do to prevent them from following what must be their instincts. Thus, making new investments of our human capital and financial resources into lobbying the Congress, advocating before the Supreme Court or trying to "change the system from within," is most likely a wasted effort in the long-run.

What makes a lot more sense to me is that we look inward and explore new ways to rebuild our longhouses, dredge our moats, and dismantle some of those drawbridges. While I know that no society has ever sustained itself for very long by cutting themselves off from the rest of the world, I also know that some Indigenous societies have ceased to exist because they have become too much a part of the world that surrounded them. Obviously, there is tension between these two developmental paths. But I fear that our current course is much closer to the path of complete assimilation than anyone might care to admit. We don't want to be wrong about this assessment-the stakes are too high. And so the best recommendation I could make to ensure the continued viability of life inside the moat is to urge the rededication of a personal and collective commitment to preserving and enhancing the distinct cultural foundation of Indigenous societies. Maybe this is just wishful thinking on my part, but as time moves forward, it may very well become increasingly meaningless that Indigenous peoples are richer, healthier, and more powerful if the cost of those benefits is the sacrifice of a life that is culturally meaningful. I know that I am not the only one who has come to the realization that cultural distinctness, more so than any other attribute of what it means to be sovereign, is the most powerful force for ensuring one's belief in being sovereign as well as being recognized as sovereign by other peoples. [FN59] If this were not true, why is it that we so revere our elders, especially those who know how to speak out Indian languages? Down deep, we know how special they are because they have something in them that too many of us no longer have.

What some, but not all, Indigenous nations have going for them is at least a remnant of a culture and language. For those with more than a remnant, that is obviously even better. But whatever one's people have left, it needs to be picked up and rewoven into the fabric of a decolonized and revitalized Indigenous society of the future. To succeed, it will first require that this belief be accepted among one's own people, and then blended with ***112** their collective abilities to bring that belief to life. Eventually, if the commitment is true and the effort is earnest, it is my guess that pursuing such a strategy will be the best chance for ensuring the survival of that Indigenous society into the future.

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comments on an earlier draft of this article and acknowledge the support of the General Research Fund of the University of Kansas, which helped make this work possible. Of course, responsibility for the content of this article rests with me alone and should not be attributed to any government or organization with which I am affiliated.

[FN1]. When not referring to them by their particular name, I will refer collectively to the first peoples of the American continent throughout this article as "Indians" or "Indigenous peoples." While it has become increasingly popular within American society and in some corners of Indian country to refer to Indians as "Native Americans," this term still seems less utilized among Indians than the term "Indian." Moreover, use of the term "Native American" suggests acceptance of an unsavory assimilationist connotation. Robert B. Porter, The Demise of the Ongwehoweh and the Rise of the Native Americans: Redressing the Genocidal Act of Forcing American Citizenship Upon Indigenous Peoples, 15 Harv. BlackLetter L.J. 107, 108 n.4 (1999). To the extent that some normative definition is helpful, I will utilize the term "Indigenous," which is increasingly utilized in relation to international discourse involving Indigenous peoples.

[FN2]. See, e.g., Judith Resnik, Dependent Sovereigns: Indian Tribes, States, and the Federal Courts, 56 U. Chi. L. Rev. 671, 700 (1989) ("What are the bases of a vision that recognizes the autonomy of 'sovereigns' within another sovereignty? What is meant by that autonomy? How much of that autonomy is dependent upon a vision of 'sovereignty' that, if ever true, has surely vanished?").

[FN3]. See, e.g., Interview with Kevin Gover, former Assistant Secretary of the Interior-Indian Affairs, Justice Talking: Nations Within: The Conflict of Native American Sovereignty, (National Public Radio broadcast, Sept. 10, 2001) [hereinafter, Gover Interview].
We can easily get confused by this notion of sovereignty and I think it's important to keep in mind that sovereignty is a fairly complicated word. It has European roots that aren't necessarily useful to us here in the United States and if you ask a Brit what sovereignty means they think of Queen Elizabeth and that sort of thing. So I don't like the word sovereignty although it can be a useful word. But I prefer to think in terms of 1) responsibility and 2) the authority to meet those responsibilities.
Id. at 2.

[FN4]. Use of a longhouse as a starting point is arbitrary and subjective. The depiction of any traditional Indigenous dwelling, such as a hogan or a tipi, will do.

[FN5]. 5. Use of a castle as a starting point is also arbitrary and subjective. The depiction of any traditional colonial dwelling, such as a fort or the White House, will do.

[FN6]. Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 559-60 (1832).

[FN7]. 30 U.S. (5 Pet.) 1 (1831).

[FN8]. Id. at 15.

[FN9]. Id.

[FN10]. Id. at 17.

[FN11]. Id.

[FN12]. Id. at 17-18.

[FN13]. Id. at 17.

[FN14]. Johnson v. M'Intosh, 21 U.S. (8 Wheat.) 543, 573-74 (1823).

[FN15]. See generally Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832).

[FN16]. United States v. Kagama, 118 U.S. 375, 384 (1886).

[FN17]. Lone Wolf v. Hitchcock, 187 U.S. 553, 565 (1903).

[FN18]. 435 U.S. 313 (1978).

[FN19]. Id. at 322-23 (citations and emphasis omitted).

[FN20]. 30 U.S. (5 Pet.) 1 (1831).

[FN21]. Okla. Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Okla., 498 U.S. 505, 509 (1991).

[FN22]. See Atkinson Trading Co. v. Shirley, 532 U.S. 645 (2001) (rejecting the authority of the Navajo Nation to impose hotel occupancy tax on non-Indian owned fee land within reservation); Nevada v. Hicks, 533 U.S. 353 (2001) (rejecting authority of Fallon Paiute-Shoshone Tribe to exercise civil adjudicatory jurisdiction over tort claims arising from state game warden's execution of a search warrant on reservation lands for evidence of a crime that occurred off the reservation); Strate v. A-1 Contractors, 520 U.S. 438 (1997) (rejecting the authority of the Three Affiliated Tribes to assert civil adjudicatory jurisdiction over civil suits involving only non-Indians that arise on the reservation).

[FN23]. Montana v. United States, 450 U.S. 544, 565 (1981).

[FN24]. Id. at 565-66 (citations omitted).
A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. . . . A tribe may . . . exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.
Id.

[FN25]. 25. United States v. Mazurie, 419 U.S. 544, 557 (1975).

[FN26]. 25 U.S.C. § 2 (1994).

[FN27]. See, e.g., Letter from Dennis L. Wickliffe, Acting Regional Director (Eastern Oklahoma Region), Bureau of Indian Affairs, to Rebecca Torres, Chief of the Alabama-Quassarte Tribal Town 1 (June 14, 2000), in which the BIA withdrew its recognition of the Torres government purportedly on the basis of federal law.
While it is clear that the Tribal Town has leadership issues that must be resolved, the Town can only address its leadership problems once the more serious membership questions have been resolved. Torres, 34 IBIA 181-82. It has long been and remains the policy of the Secretary not to intrude on the internal affairs of Indian tribes. That policy notwithstanding, in order to meet its responsibility of carrying on government-to-government relations with the Town, the Bureau of Indian Affairs (BIA) is obligated to recognize a governing body to deal with, in the interim, while this dispute is being resolved. Goodface v. Grassrope, 708 F.2d 335, 339 (8th Cir. 1983). For this purpose, we recognized Rebecca Torres as Chief on February 28, 2000. We had assumed that the Torres administration would undertake to resolve the pending membership issues within

the Town. It appears now that no action to resolve this issue has been undertaken. As a consequence, I have been directed to withdraw your recognition as Chief and certain members of the Governing Committee recognized in the letter of February 28, 2000.
Id.

[FN28]. Letter from Kevin Gover, Assistant Secretary of the Interior-Indian Affairs, to Kevin Chamberlain, Chief of the Saginaw Chippewa Indian Tribe (Aug. 10, 1999). This letter also contains an unusual paragraph relating to an allegation of bias on the part of the Assistant Secretary:
Finally, I note for the record that I am aware of information suggesting that the holdover Council, or its agents, caused or contributed to the publication of an unflattering newspaper article about me. I have conferred with the Ethics Office for the Department and been advised that, notwithstanding my knowledge of this information, I may properly be the deciding official on this matter. The holdover Council's public relations activities have not caused me to feel any bias against them. I have decided this matter strictly on the merits.

[FN29]. Johnson v. M'Intosh, 21 U.S. (8 Wheat.) 543, 573-74 (1823).

[FN30]. Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832).

[FN31]. United States v. Kagama, 118 U.S. 375, 384 (1886).

[FN32]. Lone Wolf v. Hitchcock, 187 U.S. 553, 565 (1903).

[FN33]. See supra Section II (referring to the Indigenous perspective, the colonizing peoples' perspective, and the international community's perspective).

[FN34]. See Gover Interview, supra note 3, at 5 ("The United States has the power, clearly, to define what tribal authority [is] in this day and age.").

[FN35]. See, e.g., Fisher v. Dist. Court, 424 U.S. 382, 390 (1976) ("The exclusive jurisdiction of the Tribal Court does not derive from the race of the plaintiff but rather from the quasi-sovereign status of the Northern Cheyenne Tribe under federal law."); Morton v. Mancari, 417 U.S. 535, 554 (1974) ("The preference, as applied, is granted to Indians not as a discrete racial group, but, rather, as members of quasi-sovereign tribal entities whose lives and activities are governed by the BIA in a unique fashion.").

[FN36]. See Gover Interview, supra note 3, at 5.

[FN37]. It is surely the case that there may be many lawyers for Indigenous nations and peoples who not only accept the American view of Indigenous nation sovereignty, but believe it to be the correct formulation. Lawyers who fall into this category might very well be effective advocates for Indigenous peoples in America since they share the same philosophical underpinning as the decision-maker. It may also be the case that these advocates more clearly demonstrate my point-that lawyers representing Indigenous nations and peoples can be more effective agents of promoting colonial subjugation in the modern era than even the colonial officials themselves.

[FN38]. 532 U.S. 645 (2001).

[FN39]. Brief for Respondents at 9, Atkinson Trading Co., v. Shirley, 532 U.S. 645 (2001) (No. 00-454).

[FN40]. 533 U.S. 353 (2001).

[FN41]. Brief for Respondents the Tribal Court in and for the Fallon Paiute-Shoshone Tribes and the Honorable Joseph Van Walraven in Response to Brief to Petitioners at 7-8, Nevada v. Hicks, 533 U.S. 353 (2001) (No. 99-1994).

[FN42]. 522 U.S. 520 (1998).

[FN43]. Brief for Respondent at 23-24, Alaska v. Native Vill. of Venetie Tribal Gov't, 522 U.S. 520 (1998) (No. 96-1577).

[FN44]. 520 U.S. 438 (1997).

[FN45]. Brief for Petitioners at 8, Strate v. A-1 Contractors, 520 U.S. 438 (1997) (No. 95-1872).

[FN46]. Id. at 26.

[FN47]. See Wilma Mankiller, Tribal Sovereignty is a Sacred Trust: An Open Letter to the Conference, 23 Am. Indian L. Rev. 479, 479 (1998-99). Wilma Mankiller, former Principal Chief of the Cherokee Nation, wrote about the potentially disastrous long term consequences of entering the American court system on behalf of Indigenous peoples:
The tribe that I worked for in the late 1960s took the position that they did not need federal recognition because they did not recognize the United States. They were a part of the international community of governments. Therefore, many of us were surprised when various Indian lawyers initiated litigation conceding that the U.S. Congress had plenary power over Indian nations. Now, unfortunately the notion that Congress has plenary power over tribes is accepted as conventional wisdom.
Id.

[FN48]. Philip P. Frickey, Adjudication and Its Discontents: Coherence and Conciliation in Federal Indian Law, 110 Harv. L. Rev. 1754, 1754 (1997) (footnotes omitted).

[FN49]. See Russell Lawrence Barsh & James Youngblood Henderson, The Road: Indian Tribes and Political Liberty 270-82 (1980); Richard A. Monette, A New Federalism for Indian Tribes: The Relationship Between the United States and Tribes in Light of Our Federalism and Republican Democracy, 25 U. Tol. L. Rev. 617 (1994).

[FN50]. Robert N. Clinton, Tribal Courts and the Federal Union, 26 Willamette L. Rev. 841 (1990).
While the early treatment of Indian tribes as domestic dependent nations outside the federal union arguably might once have made the comity model of intergovernmental cooperation appropriate, the subsequent de facto incorporation of Indian tribes into the federal union should significantly alter the extent of enforceable legal obligation that state and federal courts have to recognize tribal laws and judgments.
Id. at 906.

[FN51]. L. Scott Gould, The Consent Paradigm: Tribal Sovereignty at the Millenium, 96 Colum. L. Rev. 809, 810 (1996) (citations omitted).

[FN52]. 51. 30 U.S. (5 Pet.) 1 (1831).

[FN53]. See The Cherokee Nations of Indians, et al. v. Georgia (Sup. Ct. Am. Indian Nations 1998), reprinted in 8 Kan. J.L. & Pub. Pol'y 159, 171 (1999) ("We hold that the Indian nations within (and not "of") the United States are nations and states.").

[FN54]. See Stuart Minor Benjamin, Equal Protection and the Special Relationship: The Case of Native Hawaiians, 106 Yale L.J. 537, 541-42 (1996) (conceding that while the

Court's reasoning in Indian law cases "may lack a sound theoretical foundation or fail to support its conclusions," he writes "to explore the case law on statutes singling out Native Americans . . . not in an attempt to justify the cases, but rather in an attempt to bring to light the interplay between them, and the difficulties that such interplay produces.").

[FN55]. Robert B. Porter, The Jurisdictional Relationship Between the Iroquois and New York State: An Analysis of 25 U.S.C. §§ 232, 233, 27 Harv. J. on Legis. 497, 508 (1990). [T]he necessary result of this dependent relationship is that Indian governments remain subject to the overriding authority of the United States. By virtue of the Indian Commerce Clause and the Supremacy Clause, Congress, as against the states, retains plenary authority over Indian affairs and has often acted explicitly to curb or to divest the jurisdiction of Indian governments.
Id.

[FN56]. Oliphant v. Suquamish Indian Tribe, 435 U.S. 191, 210 (1978) ("By submitting to the overriding sovereignty of the United States, Indian tribes therefore necessarily give up their power to try non-Indian citizens of the United States except in a manner acceptable to Congress.").

[FN57]. See, e.g., Eric Henderson, Indian Gaming: Social Consequences, 29 Ariz. St. L.J. 205, 236, 242-43 (1997); Gary Sanders, Gambling: Socioeconomic Impacts and Public Policy: Indian Gaming: Financial and Regulatory Issues, 556 Annals 98, 101-02 (March 1998).

[FN58]. I realize that most do not take this policy position and that a significant number of Indians probably cannot simply take care of themselves.

[FN59]. Wallace Coffey & Rebecca Tsosie, Rethinking the Tribal Sovereignty Doctrine: Cultural Sovereignty and the Collective Future of the Indian Nations, 12 Stan. L. & Pol'y Rev. 191, 209 (2001) ("Cultural sovereignty is the bedrock of Native peoples' self-determination.").
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