

From: Marisol de la Cadena and
Orin Starn, eds., Indigenous
Experience Today. Oxford:
Berg, 2007

Sovereignty's Betrayals

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The worldwide campaign for indigenous rights invokes few words as reverently as it does *sovereignty*. Even when undeclared—and in many contexts it must remain so—sovereignty is the proverbial elephant in the room during global forums on indigeneity. Those who use the term sometimes disagree about its meaning and implications, but its centrality to the political agenda of the contemporary indigenous-rights movement is indisputable.

One might expect that anthropologists, whose occupational reflexes include skepticism toward received categories, would have brought sovereignty under the microscope, but examples of this kind of critical analysis are few. The most likely explanation for such diffidence is the broad support that the indigenous-rights movement enjoys within the profession. It is also the case, as Anna Tsing (this volume) observes, that indigenous leaders often reject suggestions that they should define precisely the movement's central concepts, including sovereignty and indigeneity itself.¹ Nevertheless, in view of the importance of indigenous activism on the world stage and the accelerating diffusion of sovereignty rhetoric to regions where it was previously unknown, we may have arrived at a moment when the notion of the sovereignty of indigenous peoples—of *any* people, for that matter—warrants critical attention.

In this chapter, I review the history and multiple meanings of sovereignty to highlight some unwelcome effects of its application to indigenous-rights debate and the formulation of relevant social policy. The analysis is offered in the spirit of a provocation or thought exercise, undertaken not because I am hostile to indigenous rights but because in the main I support them. Indigenous peoples should be as free as other communities to govern themselves, to promote traditional

languages and social practices to the extent that these are compatible with international human-rights norms, and to exercise a high level of control over their lands and natural resources. For me, the question is not whether indigenous peoples merit redress of grievances but whether such redress is most constructively framed in the language of sovereignty. Sources of inspiration for my approach include recent articles by Thomas Biolsi (2005) and Taiaiake Alfred (2001). Biolsi reviews the current state of American Indian citizenship and tribal sovereignty to underscore the startling complexity of everyday political relations between Indians and the U.S. federal government. The variegated pattern of tribal sovereignty and its unusual interweaving with U.S. national sovereignty, Biolsi insists, make it necessary to rethink our ideas about the state. Alfred, in contrast, questions the legitimacy of sovereignty itself. His argument—a bold and iconoclastic one for a Native intellectual—is that sovereignty is so freighted with Western assumptions about power and social control that it offers a deeply flawed roadmap for the reconstitution of vibrant, authentic Native polities.

Sovereignty holds particular interest because of its talismanic status within the indigenous-rights movement. The sanctity of the term, and its utopian connotations, echo other utopian ideologies that shaped human experience in the 20th century and that continue to affect us today. Utopias have not fared well in recent social thought. The historian Robert Conquest (2000) argues that utopian political programs—those advancing simple, comprehensive solutions to complex social problems—inevitably give rise to totalitarianism. Commentators such as David Harvey (2000) identify neoliberal economics as the dominant utopian ideology of the postsocialist era, and its coercive strategies are almost universally deplored by anthropologists. Yet Harvey, in common with many others, hesitates to forsake utopias. Without them, he says, we lose the sense of open-ended possibilities needed to transcend the stunted political imagination of our time. The view of utopian ideologies that informs the following assessment of indigenous sovereignty is most compatible with the tragic sensibility championed by Terry Eagleton (2003: 186), who calls on social theorists to acknowledge the imperfections of social action without abandoning all ideals or hopes. Where sovereignty is concerned, this means that sovereignty's troubling side—its dystopian arrogance, its need to clarify lines of power by separating one people from another—must be faced squarely if we are to draw from it something useful.

Genealogies of Sovereignty

For a term of great political consequence, *sovereignty* has a surprisingly unstable meaning. The obvious etymological link is to the idea of "the sovereign," a leader imbued with both secular and sacred power. With the rise of the secular state, however, sovereignty came to signify the autonomy and independence of the nation-state vis-à-vis other similar polities. Sovereign nations, in other words, were seen to enjoy an unrestricted right to govern their own internal affairs. State sovereignty was long considered absolute, or nearly so, but in the 20th century the emergence of international law and human-rights protocols has undermined the ability of states to claim that external intervention in their internal governance is always improper. According to the legal scholar Hurst Hannum, the issue about which there is the most agreement at the global level is that "sovereignty is an attribute of statehood, and that only states can be sovereign" (Hannum 1996: 15).

The link to statehood explains why the term *sovereignty* appears so rarely in indigenous-rights documents crafted by the United Nations, UNESCO, and related institutions, including the *Draft Declaration on the Rights of Indigenous Peoples* (1994). The UN charter underlines the importance of "national sovereignty," which prevents it from explicitly identifying ethnic communities as sovereign nations (Köchler 2001: 137). Assertion of a "right to ethnic sovereignty" for indigenous peoples or any other community would place the United Nations in violation of its own foundational principles. Hence, the regular use of "self-determination" as a proxy for sovereignty in UN policy statements.²

Outside the walls of the United Nations, a desire for sovereignty is voiced freely and often. Robert B. Porter (2002: 101), an American Indian legal scholar, puts the strong version of indigenous sovereignty in the bluntest possible terms: "We maintain the right to do whatever we want in our own territory without limitations."³ Within indigenous-rights debate, the meaning of sovereignty has steadily broadened from its conventional implications to encompass every aspect of indigenous life, including education, language, religion, and the expressive arts. Sovereignty is reimagined as a condition of autonomy from other cultures and political entities—an autonomy inseparable from a hoped-for return to primal authenticity. As such, it stands as the culmination of a slow, painful process of decolonization under way throughout the indigenous world.

Such expansive views of sovereignty have a long history in political philosophy. Although *state* sovereignty is arguably the dominant

expression of the concept, notions of popular and even self-sovereignty can be traced back the foundational works of Locke, Hobbes, and Rousseau (see Hoffman 1998). This current of sovereignty thought is often antistatist in its principal thrust, insisting that the state's coercive powers and monopolistic control of force are fundamentally at odds with the freedom of individuals and communities to chart their own political course.

Making an impassioned case for an expanded notion of sovereignty that transcends the merely political, Wallace Coffey and Rebecca Tsosie (2001: 196) insist that indigenous peoples must fight for *cultural* sovereignty, which serves as a bulwark against the "forces of mass media, the educational system, and a host of court decisions failing to protect the religious or cultural rights of Native peoples." For them, sovereignty is an almost mystical state that arises spontaneously within the social life and traditions of a people. Coffey and Tsosie identify repatriation as a dominant theme for this indigenous version of sovereignty—not just repatriation of religious objects and human remains, but the recovery of languages, religions, and values, as well as a purging of unwanted influences originating in nonindigenous cultural life. Inseparable from the project of repatriation is the assertion of control over all representations of indigenous lifeways. What diffuses out from a native nation, in other words, is as important to sovereignty as what does, or does not, flow in. In a similar vein, but with particular attention to the Maori of New Zealand/Aotearoa, Stephen Turner (2002: 75, 92) insists that sovereignty is expressed in the "palpable silence" of indigenous New Zealanders, whose unique experiences cannot and should not be shared with non-Maori.

The status of sovereignty as an untouchable article of faith is made equally clear by Andrea Smith, who struggles to reconcile her commitments as a Native feminist with the sometimes negative impact that indigenous sovereignty has had on American Indian women. Smith (2005: 123) notes that decisions of the U.S. Supreme Court (notably, *Santa Clara Pueblo v. Martinez* [436 U.S. 49, 69, 1978]) have affirmed the right of federally recognized Indian nations to exclude from membership the children of female members who married outside their tribe while recognizing the children of male members involved in similar extratribal unions. This gender-based discrimination, welcomed by many as a ratification of the sovereign right of Indian nations to determine their own membership, raises troubling questions for Native feminists. Unwilling to jettison faith in sovereignty despite this betrayal of feminist principles, Smith claims that achievement of true

sovereignty would lead to liberation for all peoples, not just Native ones. She ultimately rejects the possibility that sovereignty emerged from and is an organizing principle for the oppressive system she so vigorously resists.⁴

The last stop on sovereignty's journey from the political to the metaphysical is the power attributed to it by people involved in libertarian populism and "common law" resistance, an unstable movement in which elements of far right and far left mutate and fuse. I do not wish to imply that the indigenous-rights movement has inspired or promoted contemporary Anglo-American theories of popular sovereignty, some of which (e.g., Aryan Nation militias) are actively hostile to nonwhite peoples. Such theories date to the French Revolution, if not earlier. At the same time, the centrality of a totalizing, mystical notion of sovereignty to both movements is hardly coincidental. Both arise from the same *Zeitgeist*—the fear, for example, that local values and self-governance are under assault by distant powers who stand to benefit from a compliant, culturally uniform populace. Both are also profoundly antimodernist, rejecting modernity's disembedding of social institutions and its marked tendency to universalize time and space (Giddens 1991: 20–21). And both repudiate liberal cosmopolitanism in favor of a sacralization of the local.

Sovereignty Rhetoric in the Global Indigenous-Rights Movement

As far as I have been able to determine, the invocation of sovereignty when discussing indigenous rights first arose in North America, particularly in the United States, because of a century-long history of formal treaty making between the U.S. government and Indian nations, a process that was far rarer in other colonized regions of the New World. Until the practice of negotiating treaties with North American tribes was ended in 1871, the U.S. government officially regarded Indians as autonomous nations to be dealt with at the federal rather than state level, and they were not automatically treated as U.S. citizens until 1924.⁵ This acknowledgment of indigenous nationhood is, however, famously conditional. In many treaties, the government promised to defend Indian land, resources, and the general welfare of Indian people, an expression of paternalism known as the "federal trust responsibility." And Congress assiduously protects its "plenary power" to redefine the federal government's legal relationship to Indian nations as it sees fit. Although this power is occasionally invoked by federal authorities (and

never forgotten by American Indians), a multitude of legal precedents and institutional practices make it unlikely that Congress would take the extreme step of voiding the many treaties that underpin relations between the United States and Native America.

Practical acknowledgment of tribal sovereignty within American political life was slow in coming. The 20th century was characterized by a seesaw pattern of rising tribal autonomy punctuated by periods of federal resistance and retrenchment. Nevertheless, the last 50 years have seen an impressive strengthening of independent tribal governance and a routinization of the social arrangements that give it life, including tribal management of education, public safety, judicial process, and civil administration.⁶

The particular notion of indigenous sovereignty that has arisen in the United States and Canada (the latter involving a different administrative history) has broad significance because of the pivotal role that Native American activists and intellectuals have played in the indigenous-rights movement worldwide. However difficult the experience of U.S. and Canadian Indians, their overall situation is better than that of their counterparts in most other parts of the world. Growing numbers have been able to pursue higher education and professional training, and advocates for indigenous rights in North America now present their views forcefully in courtrooms and other public arenas.

The global reach of U.S. media has insured that Indians are seen almost everywhere as the archetype of the indigenous. It is hardly surprising, then, that the North American view of Native self-determination has diffused steadily from its historic hearth to other communities that have come to identify themselves as indigenous. The word sovereignty is increasingly deployed in indigenous-rights advocacy in Australia, New Zealand, and, with reference to the Sami population, in Scandinavia. It has been slower to gain a foothold in other parts of the world. Latin America may be most notable, especially considering the extraordinary rise of indigenous political power during the 1990s. In some contexts—Bolivia comes immediately to mind—indigenous peoples represent a numerical majority, making *indigenous* sovereignty, as such, a less salient issue. In other parts of the region, nationalist leaders repress indigenous-rights debate that even hints at sovereignty claims, perhaps because states are threatened by the prospect of losing access to subsurface oil and mineral resources (see Jackson and Warren 2005). In Southeast Asia, Africa, and India, indigeneity itself is a problematic concept that, even if it can be institutionalized in some politically acceptable way, seems unlikely to lead to the widespread

creation of autonomous homelands in the foreseeable future (Bowen 2000; Karlsson 2003; Kuper 2003).

Critiques of Indigenous Sovereignty

Political scientists have proven less reluctant than anthropologists to raise questions about sovereignty's moral standing. One critical strain comes from advocates of classic liberalism who worry that sovereignty, as well as other expressions of cultural separatism, could readily shield illiberal practices from external scrutiny, especially in such areas as the treatment of women or religious nonconformists. Although this is a valid concern, the evidence that indigenous communities are more given to illiberal practices than nation-states is unconvincing. A more provocative question has been posed by the legal scholar Jeremy Waldron (2003): What are the moral and political implications of the role played by the doctrine of "firstness" in the indigenous-rights movement, especially claims to land alienated from indigenous peoples during the colonial era? Waldron wonders how we are to identify the (truly) first occupants of specific territories and assess the standing of indigenous groups who acquired their lands through military conquests that may be as morally questionable as those of colonialists, or nearly so. This question bears less on the issue of sovereignty than on indigeneity broadly construed. As we shall see, however, the complex relationship between land (already possessed or sought through a process of reparations) and indigenous identity is deeply implicated in notions of sovereignty.⁷

Other critiques focus on the alleged tactical drawbacks of sovereignty rhetoric. Assertions of sovereignty raise the specter of secession and potentially of civil war, thereby alienating members of the majority society who might otherwise sympathize with indigenous demands when these are framed in the idiom of human rights (see, e.g., Corntassel and Primeau 1995). Although there is little question that local opposition to indigenous sovereignty sometimes evokes "one-nation-for-all" rhetoric (Mackey 2005), in many settings the idea of indigenous self-rule has become so familiar that most nonindigenous citizens accept it, even if grudgingly. The country offering the highest level of indigenous sovereignty, the United States, provides scant evidence that the political autonomy enjoyed by members of federally recognized Indian tribes has lessened their commitment to the defense of the nation-state. Native Americans have amassed an unassailable record of distinguished service to the nation's armed forces, and their public ceremonies emphasize

the strength of their dual allegiance to an Indian nation and the United States (Limerick 2005).

Thus far, then, there is little evidence that indigenous sovereignty fuels secessionist tendencies, although how demands for local autonomy might play out in settings of fragile national unity remains unclear. A stronger case can be made that indigenous-rights discourse has the unhappy effect of driving apart politically subordinate groups that otherwise might present a united front against powerful national interests. This is the principal point made by Sangeeta Kamat, who has studied the rise of indigenous-rights politics in Maharashtra, India. Kamat alleges that anthropology's current infatuation with indigenous peoples—"tribals" in the South Asian context—stifles critiques of neoliberal economics by severing the links between indigenous peoples and ordinary peasants, all of whom are trapped by the same system of exploitation. "Such claims to [indigenous] identity and autonomy," Kamat says, "serve to empower individuals on the basis of being different from others and construct a new elitism, but provide little opportunity to build solidarity for a new cultural politics. In this way, they help contain the discontent of the subaltern who can refer to a new romanticized identity of tribal that is placed in a new hierarchy with other subaltern groups" (2001: 44).

Perhaps the most trenchant critique of the notion of indigenous sovereignty is put forward by the Mohawk political scientist Taiaiake Alfred, whose article "From Sovereignty to Freedom" (2001; see also 2005) develops ideas first explored in the work of Vine Deloria Jr., and others. Alfred argues that sovereignty is a profoundly ethnocentric concept predicated on European attitudes toward governance, political hierarchy, and the legitimate uses of power. He finds these values and practices incompatible with an authentically indigenous politics, which rejects, among other things, "absolute authority," "coercive enforcement of decisions," and the separation of political rule from other aspects of everyday life. To subscribe to a doctrine of sovereignty is, in Alfred's opinion, to evade a moral duty to decolonize indigenous life. "Sovereignty itself implies a set of values and objectives that put it in direct opposition to the values and objectives found in most traditional indigenous philosophies," he insists (Alfred 2001: 27, 28).⁸

The alternative that Alfred sketches is evocative but indistinct. A nonsovereignty-based system of traditional governance would repudiate coercion and foster healthy relationships with the land. "Indigenous thought is often based on the notion that people, communities, and the other elements of creation co-exist as equals—human beings as either individuals or collectives do not have special priority in deciding

the justice of a situation" (Alfred 2001: 31). Alfred ends his article on a utopian note, observing that prior to the rise of European colonialism, indigenous peoples had "achieved sovereignty-free regimes of conscience and justice" that, if revived, could help to make the world a better place for everyone (2001: 34). Admittedly, Alfred's conviction that Native people are always and everywhere paragons of participatory democracy is hard to square with historically documented cases of indigenous imperialism and social stratification. Given the modest scale of most Native American tribes or bands today, however, they may be amenable to the retraditionalized systems of governance that Alfred advocates, although most would, as he himself acknowledges, have to adapt such practices to the challenge of dealing with a hierarchical and bureaucratic state.⁹

Alfred's hopeful vision of a sovereignty-free world is echoed in the work of other political scientists, notably, James Tully and Iris Marion Young. Young (2000: 253), for instance, makes a case for what she calls "decentered diverse democratic federalism" inspired by precisely the forms of Iroquoian self-rule with which Taiaiake Alfred identifies. Although localities down to the hamlet level would enjoy a broad right of self-determination, they would not possess sovereignty in the sense of being closed to the opinions of outsiders who can reasonably claim to have a stake in local decisions. This pattern of nested autonomy articulating with consultation at higher levels would be extended to the international level. States would cede some of their powers to global governing institutions and some to localities. Like Alfred, Young holds that massive changes along the lines she proposes are a moral imperative for anyone committed to advancing the postcolonial project.

From Theory to Practice

Discussions of indigenous sovereignty need not be conducted at the level of theory alone: the high level of self-determination enjoyed by federally recognized tribes in the United States offers ample evidence of sovereignty's possibilities and perils. A thorough review the economic and political history of Indian nations is beyond the scope of this chapter. That said, there is little question that tribal self-governance has been beneficial to Native Americans over the past two decades. A study released early in 2005 by a Harvard think tank reveals that almost every index of economic development showed dramatic improvement in Indian Country during the 1990s. This growth was substantially greater than that of the U.S. economy as a whole. Indian reservations

still lag far behind the rest of the United States in such indexes as per capita income and employment levels, but the disparity is shrinking. The authors of the study attribute this improvement almost entirely to the benefits of tribal self-determination (Taylor and Kalt 2005).

The Harvard study shows that the economic picture for the subset of Indian nations that run casino operations (currently more than 200) is better still, although the advantage is not as marked if one brackets from consideration the experience of a handful of tribes who have reaped enormous profits. With few exceptions, gaming is seen by American Indian leaders and policymakers as having had a positive impact on their nations. It has been a formidable engine of economic growth and raised the profile of Native sovereignty in the public mind.

Yet amid all the favorable talk about Indian gaming there are conspicuous zones of silence. It is difficult, for instance, to find works in the humanities and social sciences that ask hard questions about the morality of the gaming industry, a surprising reticence for disciplines that show little reluctance to assert a moral stance toward other corporate enterprises that prey on human vulnerability.¹⁰ The prevailing attitude in this case is strictly utilitarian. Legalized gambling is going to take place anyway, the argument goes. We should celebrate because the proceeds benefit Native Americans rather than Donald Trump. Gaming tribes have generally done a good job of redistributing profits to their citizens in ways that genuinely improve their individual and communal lives, unlike non-Native gaming corporations, whose activities benefit only affluent owners or shareholders. Still, to hold that gaming has been a good thing for American Indians is a far cry from concluding that, on balance, it benefits the larger society of which Indian nations are a part.

The effects of Native gaming on surrounding non-Native communities are mixed. Non-Native employment in counties with casinos tends to increase, mostly because reservations often lack a labor force sufficiently large to staff a casino operation. According to one recent study (Evans and Topoleski 2002: 48), however, this benefit is realized at the cost of "a ten percent increase in bankruptcies, auto theft and larceny rates, plus violent crime four or more years after a casino opens in a county." In broader terms, legalized gambling, whoever conducts it, is inseparable from the slow-motion demolition of progressive taxation policies and the U.S. social safety net. Gaming revenues are drawn disproportionately from low-income citizens and (as the tired joke goes) those who failed math in high school. One need not be a card-carrying

member of the Traditional Values Coalition, in other words, to regard the dramatic expansion of the gaming industry with a degree of moral ambivalence, regardless of whether it is managed by Indian nations, private corporations, or state lottery systems.

Even if one is convinced that legalized gambling is a Faustian bargain worth making, the cash flowing into gaming tribes has given their sovereignty a new robustness that inclines Indian nations to implement policies previously unfamiliar to them. Some of these are admirable—for instance, the impressive donations that wealthy tribes made to the National Museum of the American Indian and their efforts to direct financial support to less fortunate tribes. Others are disquieting:

- As sovereign nations, Indian tribes regard themselves as exempt from federal and state laws that permit labor unions to organize in tribal businesses. After a California tribe blocked a union's effort to organize casino employees, the National Labor Relations Board (NLRB) intervened on the union's behalf. The NLRB decision, which is certain to be challenged in federal court, prompted the newspaper *Indian Country Today* (2004) to insist in an editorial that "this is not a question of tribes being anti-union, or even more pertinently, anti-worker. In principle, it is a question of tribal sovereignty." Given prior federal court decisions, it is likely that tribes will retain the power to close their businesses to union organizers and to dismiss workers who demonstrate pro-union sympathies.¹¹ The sovereignty doctrine also puts tribal businesses beyond the reach of state or federal worker-compensation laws. In California, gaming tribes have apparently agreed to meet statewide worker-compensation standards, but as sovereign nations the tribes are responsible for policing their own compliance, a significant conflict of interest in view of the financial stakes. The lack of external oversight has given rise to credible accusations that prevailing standards are routinely ignored when workers (especially Mexican immigrants in the tribal workforce) suffer work-related injuries (Millman 2002: A1).
- Many Indian gaming operations have been financed by non-Native investors, who provide backing for the acquisition of land (a process known as "reservation shopping"), help effect its transformation from private property to trust status, and sell lucrative management services that may continue on a consulting basis long after the transition to local control required by the Indian Gaming Regulatory Act. One of these firms, owned by a controversial

South African entrepreneur, also managed similar operations in several tribal homelands in Southern Africa. Because disclosure requirements are routinely ignored, the true scale of consulting contracts with outside (i.e., non-Native) investors and management firms is not a matter of public record (Perry 2006: 125–126; *Time Magazine* 2002).

- Conversion to trust status of lands acquired for Native American business operations frees these firms from burdensome state and local environmental protection codes. This has led a land development firm to propose donating its property in Anne Arundel County, Maryland, to the Delaware Nation of Oklahoma, the tribe's goal being to secure conversion of the land to trust status and then to receive royalties from the developer's landfill operation on the site (Davenport 2004). (As I write, the issue has still not been resolved.) To my knowledge, the Delawares have made no claim that this transaction would restore to them tribal lands lost long ago. It is strictly a business arrangement in a place located hundreds of miles from their reservation.
- The doctrine of tribal sovereignty exempts tribes from state campaign-finance laws that limit contributions to political candidates and stipulate public disclosure of such contributions when they occur. It also invites influence peddling of the sort that came to public attention beginning in 2004, when it was revealed that Washington lobbyists with close ties to the Republican party had received payments exceeding \$66 million from a half-dozen Indian tribes for lobbying services that in some cases were never actually provided (Committee on Indian Affairs 2006).

It might be argued that these problems tell us less about sovereignty than about morally flawed leadership, which can afflict any community.¹² There is some truth to this, yet it is impossible to ignore the extent to which the implacable logic of sovereignty prompts decisions and policies that favor one's own citizens at the expense of others. Indeed, if I were serving as an elected official of a federally recognized tribe, charged with the responsibility to make decisions that primarily or perhaps even exclusively benefit members of my nation, I might be guilty of malfeasance if I pursued any policy *other* than opposing unionization, denying non-Native workers adequate compensation for injury, and so on. This is sovereignty's power and its tragic flaw.

Sovereignty of the micronational variety is clearly implicated in the rise of minimally regulated political spaces that are immensely useful

to global capital. The blandishments of well financed corporations may be irresistible to impoverished Native nations with no other obvious source of income for the provision of basic community needs, a situation illustrated by the courtship of the Goshutes of Utah by a consortium of utility companies interested in finding a permanent resting place for tons of highly radioactive waste from U.S. nuclear power plants (Fahys 2002; Johnson 2005). As is frequently observed, in a globalized economy one underregulated nation's success in manufacturing and resource extraction tends to push others in the same direction as part of a "geo-spatial race to the bottom" (Perry 2006: 126) involving the abandonment of burdensome environmental regulations, accounting rules, and worker benefits. There is no reason to expect that indigenous nations would be worse in this respect than nation-states; neither is there cause to believe that they would be better, especially considering their often stark economic circumstances. Rogue micronations located in settings characterized by a weakly developed civil society and a tradition of political corruption offer the prospect of becoming to commerce and resource extraction what Liberian registry is to the global shipping industry and the Cayman Islands are to international banking. Observers such as Richard Warren Perry contend that even in North America the "irruption of spectral sovereignties" is bringing on "new privatized and market-rationalized spatial regimes of enclosure and exclusion" (2006: 125, 127) that remain disquieting even if we acknowledge the economic benefits they have brought to the indigenous communities participating in them.

Another bundle of problems that have arisen during the past two decades concerns sovereignty's impact on relations *among* indigenous peoples. The rhetoric and practice of sovereignty drive a wedge between landed and landless indigenous peoples. Appeals to the notion of sovereignty make little sense without land, which helps to explain why a link between indigenous peoples and land has emerged, at least in some international venues, as the sine qua non of indigenous identity. But with thousands of indigenous people living in ethnically mixed rural regions and urban centers in Latin America, Africa, and Asia, it is hard to see how the struggle for indigenous rights is advanced by emphasizing a monolithic vision of indigenous territorial sovereignty that is likely to remain unattainable for many.

As noted earlier, advocates for indigenous rights often appeal to the principle of cultural sovereignty when discussing problems occasioned by unwanted flows of information and artistic productions between indigenous societies and the wider world. In this arena, indigenous

leaders increasingly speak the same language as nation-states, many of whom back the efforts of UNESCO to promote international conventions that validate the right of states to control importation of alien cultural products, including films, recorded music, and television programming, in the interest of "protecting cultural heritage."

These discussions address legitimate problems created by the growing power of global mass media and the predatory Information Economy (Brown 2005; Watkins 2005). Nevertheless, sovereignty logic leads down a blind alley when directed to matters of intellectual property. Was there ever a time in human history when peoples enjoyed "sovereign" control of their languages, biological knowledge, or forms of artistic expression? I find no evidence to suggest it. The metaphor of sovereignty implies that each culture's heritage is *sui generis*: unique, bounded, and subject to conscious control, none of which is true. A logic of sovereignty rooted in the 17th-century Treaty of Westphalia simply is not up to the task of dealing with problems arising from the exploitative potential of global information networks. Even the most muscular sovereign of the moment, the United States, struggles with limited success to defend its intellectual property resources from large-scale industrial piracy in China, Pakistan, Indonesia, and elsewhere, suggesting that sovereignty provides little purchase in this situation.

An example inspired by recent events illustrates the problem. When indigenous leaders or indigenous-rights advocacy groups denounce an alleged instance of biopiracy, as they did when the ICBG-Maya project was still under way in Chiapas prior to 2001 (Brown 2003: 114–125), they typically argue that the indigenous groups being studied have sovereign rights of control over traditional ethnobotanical knowledge. But one group or community alone rarely harbors this knowledge. It is likely that neighboring communities, indigenous or otherwise, also possess this information if they have occupied a biogeographic region long enough. If any one of these peoples decides to share the knowledge with outsiders, they violate the "sovereign" rights of their neighbors. Yet declaring an indefinite moratorium on all forms of bioprospecting (and increasingly, any kind of research that even vaguely resembles bioprospecting), as some activists insist, denies indigenous communities badly needed revenues they might have earned had they abandoned sovereignty discourse, with its misguided assumptions of absolute possession and control, in favor of more flexible approaches to the protection of their economic and moral rights in commercially valuable information.

After Sovereignty

The political scientist Anthony Burke has condemned sovereignty as a "complex and malign articulation of law, power, possibility and force," possessed of a "suffocating ontology" (Burke 2002: para. 6). Burke's language may be excessive, but like Taiaiake Alfred he voices the conviction that sovereignty is too burdened with connotations of arbitrary power, unrealizable ambitions, and the relentless policing of boundaries to help us imagine a world in which indigenous communities balance their collective sense of purpose with the legitimate needs and concerns of their neighbors. Admittedly, this leaves American Indians in an awkward position. Their political reality has been defined by the history of treaty making, a quintessential expression of the pragmatics of sovereignty played out in a colonial North America reshaped by European ideologies and expressions of power. For now, this is the logic by which American Indian aspirations are framed. American Indian sovereignty, like all institutions, is not a creation of the gods but of humankind, afflicted by human limitations and reshaped through time by individual choices and the Law of Unintended Consequences.

Less clear is whether those who support indigenous aspirations should encourage the viral spread of the idiom of sovereignty to new settings in which the appropriateness of its application is at best questionable—parts of Latin America, say, where Native people and others of mixed heritage live side by side or regions in Africa where deep histories of migration and ethnogenesis make it difficult to distinguish between "original" inhabitants and more recent arrivals (Nyamnjoh this volume). A rejoinder is that "modular" models of sovereignty (Biolsi 2005: 245) are but one facet of sovereignty's kaleidoscopic significance.¹³ As we have seen, the term is also deployed as shorthand for the collective freedom of one group to live unconstrained by the histories, values, and power of others. Complete sovereignty is obviously an unattainable ideal, but a case can be made that it provides a tactically useful goal for indigenous peoples to foreground when communicating their political demands, provided that they can resist the tendency to invest it with transcendent moral significance. Nevertheless, can a concept so burdened by history shed its dark legacy? On a shrinking planet, is any good purpose served by pretending that one people can stand alone from others? There are many reasons to think not.

If not sovereignty, then what? "Self-determination" is the current alternative of choice. It has obvious virtues. It emphasizes a group's desire to manage its own affairs and selectively perpetuate its own traditions.

Yet in common with sovereignty, it implies that any people is capable of “determining” itself independent of others, a dubious assumption in an interconnected world. It slides too easily into the language of cultural purification and forced sorting along ethnic lines.¹⁴ Another plausible candidate, James Clifford’s “articulation theory” (2001), offers intriguing suppleness, readily accommodating the contingencies of place and of history. But it may be too demanding and subtle for ready application in the policy world. Others insist that approaches focusing on cultural rights are superior to sovereignty rhetoric because they emphasize the immediate needs of indigenous peoples without directly challenging the territorial integrity of nation-states (Robbins and Stamatopoulou 2004). Still others propose rehabilitating sovereignty by recasting it in reciprocal terms that repudiate the concept’s legacy of hierarchical control (Hoffman 1998: 96–107).

Whatever approach emerges as an alternative to sovereignty in indigenous-rights discourse, to be convincing it must advance arguments in support of self-governance, freedom of religion, and the right to benefit directly from the use of local cultural or natural resources. It must also be flexible enough to accommodate certain realities of indigenous life that are widely recognized but rarely articulated: that countless individuals of indigenous descent live far from the lands that their ancestors called home; that their family lines are likely to be intertwined with those of nonindigenous populations; and that, in the context of many developing countries, their legitimate economic and social needs must be weighed against those of thousands of nonindigenous people who may be just as poor and politically marginalized, or nearly so. To lose sight of the wider context is to fall victim to sovereignty’s seductions yet again.

Afterword

Most scholars, I expect, experience moments when they fear that their work has sunk to the level of a word game, a worrying of subtle differences that count for little in the turbulence of human affairs. Writing about sovereignty’s betrayals has prompted me to wonder whether I have not fallen into this trap. Against the limits of words I weigh the promise of the locally controlled Navajo schools where I taught during the summers of my undergraduate years or the sense of optimism afforded by large land concessions given by the Peruvian government to a few lucky communities of Aguaruna Indians, with whom I lived in the Alto Río Mayo in the 1970s. In both situations there was a

palpable sense of hope and pride—complicated, of course, by internal strife and external meddling. Indigenous people were pleased to be in charge of some important aspect of their lives, and they struggled to acquire the skills that would allow them to succeed on their own terms despite a legacy of outside control by paternalistic colonial states. When indigenous people speak of sovereignty, the word’s meaning is shaped by context and by the aspirations of particular communities. Centuries of confrontation have given Native leaders an advanced education in the fine art of negotiation, and most recognize that absolute sovereignty of the sort claimed by nation-states (and rarely achieved in practice) is neither imminent nor desirable. Some indigenous people may embrace visions of sovereignty that, as Jessica Cattelino (2006: 723) puts it, are “based on interdependency, in which the multiple governments of reservation, tribal nation, and settler state exist in tension and mutual constitution.” Nevertheless, powerful words shape habits of mind. Inextricably tied to notions of sovereignty is a clear boundary between us and them. Sovereignty sets the terms by which this boundary is enacted in everyday life. In some situations a doctrine of sovereignty may clarify relationships in useful ways. Applied to the more ambiguous circumstances of indigenous identity in other settings, however, sovereignty becomes a mandate to exclude, a warrant to indulge the narcissism of small differences, and a license to advance one people’s goals at the expense of another’s. If the term is used at all, it should be deployed with awareness of the pathologies lying just beneath its glittering surface.

The global movement for indigenous rights today presents anthropology with knotty dilemmas. Must we accept or perhaps even promote the transfer of research records—field notes, audio tapes, photographs—to the indigenous communities that now claim them as cultural property? Should we hold our tongues when advocates for indigenous rights traffic in essentialist ideologies? To what extent, if any, should our political commitments trump intellectual detachment and impartiality? How do we maintain the double vision that allows us to see simultaneously the benefits that certain policies bring to Native communities and the harm these same policies may visit on others?

When perplexed by these difficulties, I find consolation in Max Weber’s 1918 meditation on the emotional and moral demands of scholarly life, “Science as a Vocation.” Anthropology and sociology may seem less like sciences today than in Weber’s time, and his masculinist language has not aged well. But we are no less obliged to communicate “inconvenient facts” (Weber 1958 [1918]: 147) than were the thinkers

of Weber's era, no less called to disenchant the world. And in the world of indigenous affairs, few words remain as resolutely enchanted as sovereignty.

Notes

Acknowledgments. This chapter benefited from the comments of other participants in the "Indigenous Experience Today" symposium at the Villa Luppis. I am especially grateful to the organizers, Marisol de la Cadena and Orin Starn, and to the Wenner-Gren Foundation for Anthropological Research, for bringing all of us together around a single table. Earlier versions of the chapter received critical readings by Thomas Biolsi, Molly H. Mullin, and Gary Wheeler, as well as an anonymous reviewer. My thanks in no way imply that these colleagues agree with my analysis, and all errors of fact or interpretation are my own.

1. The Seneca legal scholar Robert B. Porter (2002: 101) illustrates Tsing's point when he "rejects the notion that there is some universal definition of indigenous national sovereignty that applies across indigenous, colonial, and international perspectives."

2. The circulation of a UN subcommittee report entitled *Indigenous Peoples' Permanent Sovereignty over Natural Resources* (Daes 2004) suggests that the reluctance to talk about indigenous rights in terms of sovereignty may be changing even in international organizations.

3. In a recent review article, Les Field (2003: 448) observes that the range of concerns brought together under the rubric of sovereignty is expanding rapidly among indigenous activists. He also notes that indigenous commitment to the idea of sovereignty seems to be intensifying even as nation-state sovereignty has become more precarious.

4. In the context of women's rights, the legal scholar Madhavi Sunder has described culture (and religious elements of culture in particular) as the "New Sovereignty" because of what she sees as a growing inclination to claim that it must be insulated from law and the global discourse of human rights. Indeed, Sunder (2003: 1409) observes an "increasing use of law to protect and preserve cultural stasis and hierarchy against the challenges to cultural and religious authority emerging on the ground."

5. Robert Porter (1999) has labeled the 1924 assignment of American citizenship to American Indians a "genocidal" act because it undermined indigenous

sovereignty, the framework of American Indian social identity. Such language says a great deal about how the concept of sovereignty can colonize the imagination of a Native thinker.

6. For a less optimistic view of the recent trajectory of tribal sovereignty, see McSloy 2003, Wilkins and Richotte 2003, and Lambert, this volume. Those who perceive American Indian sovereignty as imperiled point to recent decisions of the U.S. Supreme Court that limit tribes' power, although it may be too early to say whether this is a durable trend or merely one of the cyclical reversals noted earlier. Without disputing the significance of recent legal decisions, I would argue that the perception that sovereignty is under siege arises because Indian nations now increasingly exercise elements of self-determination rarely tested in the past, thus provoking new conflicts with local governments. To some extent this issue has a glass-half-full-glass-half-empty quality.

7. Waldron briefly discusses the history of New Zealand's Chatham Islands (Rehoku), which were invaded in 1835 by two Maori groups, Ngati Tama and Ngati Mutunga. The islands' native inhabitants, the Moriori, a peaceful people poorly versed in the arts of war, were killed or enslaved by the Maori occupiers, reducing their population from 1600 to 200 in a generation. One of the issues under adjudication by the Waitangi Tribunal was the percentage of Rehoku that should be seen as belonging to surviving Moriori rather than to the more numerous Maori.

8. See also Burke 2002 and Clifford (2001: 482) for reflections on the political risks of the sovereignty doctrine or, in Clifford's words, an "absolutist indigenism" in which "each distinct 'people' strives to occupy an original bit of ground." Speaking specifically of American Indian tribal sovereignty, Fergus Bordewich (1996: 328) questions the "ideology of sovereignty [that] seems to presume that racial separateness is a positive good, as if Indian bloodlines, economies, and histories were not already inextricably enmeshed with those of white, Hispanic, black, and Asian Americans."

9. Critics of Native American sovereignty argue that the small size of many Indian tribes or bands militates against meaningful nationhood because the communities cannot provide public services associated with complete self-determination. See, for example, Flanagan 2000: 95–99.

10. James V. Fenelon (2000), a Native sociologist, offers a nuanced assessment of the social divisions that gaming has exacerbated on several reservations, usually between "traditional" and "progressive" factions, but he has little to say about whether corporate-scale gambling operations are compatible with traditional indigenous values.

11. Native American arguments against unionization of tribal workforces note the dependence of Indian communities on services funded by tribal

enterprises, usually in lieu of taxes. A strike could jeopardize the operation of these businesses—an argument, of course, that can be made by management anywhere, including the nation's municipal governments. From the perspective of tribal governments, says *Indian Country Today* (2004), "the prospect of incorporating such a potentially crippling element as a union (or unions) is most threatening." For a study of the successful unionization of Navajo health workers in the Navajo Nation, see Kamper 2006.

12. An example of abuse attributable largely to moral frailty is the practice of revoking the tribal membership of individuals and families to settle personal grudges and increase per capita distributions to remaining members. For a description of how this process has affected Indian nations in California, see Beiser 2006.

13. Biolsi (2005: 245) observes that "the modular model is very much the vision and goal of tribal advocates" in the North American context.

14. Self-determination may invite solutions as problematic as the circumstances it claims to rectify. A striking example, drawn from the proceedings of an international conference on the right to self-determination held in Geneva in 2000, is the proposal of a group called the Republic of New Afrika that the United States make reparations to the descendants of slaves by, among other things, ceding the states of Louisiana, Mississippi, Alabama, Georgia, and South Carolina to African Americans willing to establish their own nation there (Killingham 2001: 162). The proposal makes no mention of the fate of the region's two dozen federal and nonfederal Indian tribes were this new African American nation to be created.

References

- Alfred, Taiaiake. 2001. From sovereignty to freedom: Towards an indigenous political discourse. *Indigenous Affairs* 3: 22–34.
- . 2005. *Wasáse: Indigenous pathways of action and freedom*. Peterborough, ON: Broadview Press.
- Beiser, Vince. 2006. A paper trail of tears: How casino-rich tribes are dealing members out. *Harper's Magazine*, August: 74–77.
- Biolsi, Thomas. 2005. Imagined geographies: Sovereignty, indigenous space, and American Indian struggle. *American Ethnologist* 32 (2): 239–259.
- Bordewich, Fergus W. 1996. *Killing the White Man's Indian: Reinventing Native Americans at the end of the twentieth century*. New York: Doubleday.
- Bowen, John R. 2000. Should we have a universal concept of "Indigenous Peoples' rights?" Ethnicity and essentialism in the twenty-first century. *Anthropology Today* 16 (4, August): 12–16.
- Brown, Michael F. 2005. Heritage trouble: Recent work on the protection of intangible cultural property. *International Journal of Cultural Property* 12: 40–61.
- . 2003. *Who owns Native culture?* Cambridge, MA: Harvard University Press.
- Burke, Anthony. 2002. The perverse perseverance of sovereignty. *Borderlands* 1 (2). Electronic document, http://www.borderlandsejournal.adelaide.edu.au/vol1no2_2002/burke-perverse.html, accessed 20 January 2005.
- Cattellino, Jessica. 2006. Florida Seminole housing and the social meanings of sovereignty. *Comparative Studies in Society and History* 48: 699–726.
- Clifford, James. 2001. Indigenous articulations. *Contemporary Pacific* 13 (2): 468–490.
- Coffey, Wallace, and Rebecca Tsosie. 2001. Rethinking the tribal sovereignty doctrine: Cultural sovereignty and the collective future of Indian nations. *Stanford Law and Policy Review* 12: 191–221.
- Committee on Indian Affairs, U.S. Senate. 2006. "Gimme five"—*Investigation of tribal lobbying matters*. 109th Congress, Second Session, 22 June 2006. Washington, DC: Government Printing Office.
- Conquest, Robert. 2000. *Reflections on a ravaged century*. New York: W. W. Norton.
- Corntassel, Jeff J., and Tomas Hopkins Primeau. 1995. Indigenous "Sovereignty" and International Law: Revised Strategies for Pursuing "Self-Determination." *Human Rights Quarterly* 17 (2): 343–365.
- Daes, Erica-Irene A., Special Rapporteur. 2004. *Indigenous peoples' permanent sovereignty over natural resources (advance edited version)*. *Prevention of discrimination and protection of indigenous peoples*. Vol. E/CN.4/Sub.2/2004/30. 56th Session, 13 July. Geneva: United Nations.
- Davenport, Christian. 2004. Surprising ally joins landfill quest: Thwarted developer would make Indian tribe owner of Arundel Site. *Washington Post*, November 1: B1.
- Draft Declaration on the Rights of Indigenous Peoples*. 1994. United Nations Document E/CN.4/Sub.2/1994/2/Add.1. Geneva: United Nations.
- Eagleton, Terry. 2003. *After theory*. New York: Basic Books.
- Evans, William N., and Julie H. Topoleski. 2002. *The social and economic impact of Native American casinos*. National Bureau of Economic Research Working Paper, W9198. Electronic document, <http://papers.nber.gov/papers/w9198>, accessed January 20, 2005.
- Fahys, Judy. 2002. Drafts show seamy side of N-waste deal: Private fuel storage tried to get the Goshutes' land for bargain-basement rate. *Salt Lake Tribune*, September 29: A1.

- Fenelon, James V. 2000. Traditional and modern perspectives on Indian gaming: The struggle for sovereignty. In *Indian gaming: Who wins?*, edited by Angela Mullis and David Kamper, 108–128. Los Angeles: University of California, Los Angeles, American Indian Studies Center.
- Field, Les W. 2003. Dynamic tensions in Indigenous sovereignty and representation: A sampler. *American Ethnologist* 30 (3): 447–453.
- Flanagan, Tom. 2000. *First Nations? Second thoughts*. Montreal: McGill-Queen's University Press.
- Giddens, Anthony. 1991. *Modernity and self-identity: Self and society in the late modern age*. Stanford: Stanford University Press.
- Hannum, Hurst. 1996. *Autonomy, sovereignty, and self-determination: The accommodation of conflicting rights* (Revised Edition). Philadelphia: University of Pennsylvania Press.
- Harvey, David. 2000. *Spaces of hope*. Berkeley: University of California Press.
- Hoffman, John. 1998. *Sovereignty*. Minneapolis: University of Minnesota Press.
- Indian Country Today*. 2004. Steadily Come the Unions. Editorial, June 18. Electronic document, <http://www.indiancountry.com>, accessed January 20, 2005.
- Jackson, Jean E., and Kay V. Warren. 2005. Indigenous movements in Latin America, 1992–2004: Controversies, ironies, new directions. *Annual Reviews in Anthropology* 34: 549–573.
- Johnson, Kirk. 2005. A tribe, nimble and determined, moves ahead with nuclear storage plan. *New York Times*, February 28: A15.
- Kamat, Sangeeta. 2001. Anthropology and global capital: Rediscovering the noble savage. *Cultural Dynamics* 13 (1): 29–51.
- Kamper, David. 2006. Organizing in the context of tribal sovereignty: The Navajo Area Indian Health Service campaign for union recognition. *Labor Studies Journal* 30 (4): 17–39.
- Karlsson, Bengt G. 2003. Anthropology and the “indigenous slot”: Claims to and debates about indigenous peoples' status in India. *Critique of Anthropology* 23 (4): 403–423.
- Killingham, Marilyn Preston. 2001. The black nation in North America. In *In pursuit of the right of self-determination: Collected papers and proceedings of the First International Conference on the Right to Self-Determination and the United Nations*, edited by Y. N. Kly and D. Kly, 161–163. Atlanta, GA: Clarity Press.
- Köchler, Hans. 2001. Self-determination as a means of democratization of the UN and the international system. In *In pursuit of the right of self-determination: Collected papers and proceedings of the First International Conference on the Right to Self-Determination and the United Nations*, edited by Y. N. Kly and D. Kly, 133–142. Atlanta, GA: Clarity Press.
- Kuper, Adam. 2003. The return of the Native. *Current Anthropology* 44 (3): 389–402.
- Limerick, Patricia Nelson. 2005. Live free and soar. *New York Times*, June 29: A23.
- Mackey, Eva. 2005. Universal rights in conflict: “Backlash” and “benevolent resistance” to indigenous land rights. *Anthropology Today* 21 (2) April: 14–20.
- McSloy, Steven Paul. 2003. The “miner's canary”: A bird's eye view of American Indian law and its future. *New England Law Review* 37: 733–741.
- Millman, Joel. 2002. House Advantage: Indian Casinos Win by Partly Avoiding Costly Labor Rules. *Wall Street Journal*, May 7: A1.
- Perry, Richard Warren. 2006. Native American tribal gaming as crime against nature: Environment, sovereignty, globalization. *Political and Legal Anthropology Review* 29 (1): 110–131.
- Porter, Robert B. 1999. The demise of the *Ongwehoweh* and the rise of the Native Americans: Redressing the genocidal act of forcing American citizenship upon indigenous peoples. *Harvard Black Letter Law Journal* 15 (Spring): 107–183.
- . 2002. The meaning of indigenous nation sovereignty. *Arizona State Law Journal* 34 (Spring): 75–112.
- Robbins, Bruce, and Elsa Stamatopoulou. 2004. Reflections on culture and cultural rights. *South Atlantic Quarterly* 103 (2–3): 419–434.
- Smith, Andrea. 2005. Native American feminism, sovereignty, and social change. *Feminist Studies* 31 (1): 116–132.
- Sunder, Madhavi. 2003. Piercing the veil. *Yale Law Journal* 112 (6): 1399–1472.
- Taylor, Jonathan B., and Joseph P. Kalt. 2005. *American Indians on reservations: A databook of socioeconomic change between the 1990 and 2000 censuses*. Harvard Project on American Indian Economic Development. Cambridge, MA: Malcolm Wiener Center for Social Policy, Harvard University. 59 pp.
- Time Magazine*. 2002. Who Gets the Money? December 16: 48–50.
- Turner, Stephen. 2002. Sovereignty, or the art of being native. *Cultural Critique* 13 (Spring): 74–100.
- Waldron, Jeremy. 2003. *Indigeneity? First Peoples and last occupancy*. *New Zealand Journal of Public and International Law* 1 (1): 55–82.

- Watkins, Joe. 2005. Cultural nationalists, internationalists, and "intra-nationalists": Who's right and whose right? *International Journal of Cultural Property* 12 (1): 78–94.
- Weber, Max. 1958 [1918]. Science as a vocation. In *From Max Weber: Essays in sociology*, edited and translated by H. H. Gerth and C. Wright Mills, 129–156. New York: Oxford University Press.
- Wilkins, David E., and Keith Richotte. 2003. The Rehnquist Court and indigenous rights: The expedited diminution of native powers of governance. *Publius: The Journal of Federalism* 33 (3): 83–110.
- Young, Iris Marion. 2000. Hybrid Democracy: Iroquois Federalism and the Postcolonial Project. In *Political theory and the rights of indigenous peoples*, edited by Duncan Ivison, Paul Patton, and Will Sanders, 237–258. Cambridge: Cambridge University Press.

Part 3

Indigeneity Beyond Borders