NATIVE SOVEREIGNTY: A POTPOURRI OF DEFINITIONS

INDIGENOUS DEFINITIONS OF TRIBAL SOVEREIGNTY

One of Vine Deloria's Definition:

"Continued cultural integrity, more so than of political powers and to the degree that a tribal nation loses its sense of cultural identity, to that degree it suffers a loss of sovereignty. Cultural integrity involves a commitment to a central and easily understood purpose that motivates a group of people, enables them to form efficient, albeit informal social institutions, and provides them a clear identity which cannot be eroded away by the passage of events. Sovereignty, then, revolves about the manner in which traditions are developed, sustained, and transformed to confront new conditions. It involves most of all a strong sense of community discipline and a degree of self-containment and pride that transcends all objective codes, rules, and regulations" (1982).

Several of my definitions:

I define tribal sovereignty as having several manifestations: First, it has a political/legal dimension (the power to determine its own government, citizenry, to administer justice, collect taxes, etc.). More importantly, it entails a cultural/spiritual dimension (which I define as the spiritual, moral, and dynamic cultural force within a given tribal community empowering the group towards political, economic, and cultural integrity. It is epitomized by a Mohawk word, "tewatowie," which means "we help ourselves." This means each indigenous community is responsible for maintaining a balanced relationship within the community, with other people and their governments, and with the natural world.

Or: Tribal sovereignty is the relative independence of a tribal nation combined with the right and power of regulating its internal affairs without undue foreign dictation. This is expressed in Indian diplomatic accords with foreign nations (which confirms our international or external status); in tribal commercial, political, and social relations with the United States and the state governments (which confirms our domestic status); and in indigenous relations within their own borders (which confirms our internal status).

Or: Tribal sovereignty is synonymous with nationhood and entails our spiritual and cultural identity and relatedness to all life forms. Furthermore, it manifests itself in our exercise of legal powers, political self-determination, economic decision-making, collective and individual social conscience, and our kinship with the environment.

Or: Tribal sovereignty entails the unique soul of each First Nation striving for self-fulfillment and maturity, and on every level--governance, economy, cultural integrity, etc.

Or: Tribal sovereignty is self-government.
An Ojibwe (Lac Courte Oreilles) Elder's Definition:

"We define and accept sovereignty as 'Spiritual Sovereignty.' We do not accept the assertion that sovereignty had its origins in the political ideologies of medieval European nations. We believe and accept that we practiced spiritual sovereignty long before the arrival of Europeans on this American continent ... sovereignty cannot be given or bestowed from one nation to another" (U.S. Senate Testimony, 1998).

Frantz Fanon's Definition:

"The African peoples were quick to realize that dignity and sovereignty were exact equivalents, and in fact, a free people living in dignity is a sovereign people."

JUDICIAL DEFINITIONS OF TRIBAL SOVEREIGNTY:

John Marshall's Definition:

"Indian nations [are] distinct political communities, having territorial boundaries, within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged, but guaranteed by the United States ... Indian nations had always been considered as distinct, independent political communities, retaining their original rights, as the undisputed possessors of the soil from time immemorial .... The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and the citizens of Georgia, have no right to enter, but with the assent of the Cherokee themselves, or in conformity with treaties, and with the acts of Congress." (Worcester v. Georgia, 1832)

Thurgood Marshall's Definition:

"To state that Indian sovereignty is different than that of Federal, State, or local Governments, ... does not justify ignoring the principles announced by this Court for determining whether a sovereign has waived its taxing authority in cases involving city, state, and federal taxes imposed under similar circumstances. Each of these governments has different attributes of sovereignty, which also may derive from different sources. These differences, however, do not alter the principles for determining whether any of these governments has waived a sovereign power through contract, and we perceive no principled reason for holding that the different attributes of Indian sovereignty require different treatment in this regard. Without regard to its source, sovereign power, even when unexercised, is an enduring presence that governs all contracts subject to the sovereign's jurisdiction, and will remain intact unless surrendered in unmistakable terms" (Merrion v. Jicarilla Apache Tribe, 1982)."
NON-INDIAN DEFINITIONS OF SOVEREIGNTY

Black's Law Dictionary Definition:

"The supreme, absolute, and uncontrollable power by which any independent state is governed; supreme political authority; paramount control of the constitution and frame of government and its administration; the self-sufficient source of political power, from which all specific political powers are derived; the international independence of a state, combined with the right and power of regulating its internal affairs without foreign dictation. The power to do everything in a state without accountability, to make laws, to execute and to apply them, to impose and collect taxes and levy contributions, to make war or peace, to form treaties of alliance or of commerce with foreign nations, and the like."

Charles Wilkinson's Definition:

"While sovereignty now, as then, presupposes a culturally distinct people within defined territorial limits, it connotes legal competence rather than absolute power. It is used in the narrow sense of the power of a people to make governmental arrangements to protect and limit personal liberty by social control. Thus sovereignty, among other things, is utilized as a means of distinguishing the formation of a government from the creation of a business entity or a social organization." (1987: 54-55).

Sharon O'Brien's Definition:

"Sovereignty is the force that binds a community together and represents the will of a people to act together as a single entity. A sovereign community possesses certain rights, including the rights to structure its government as it desires, to conduct foreign relations and trade with other nations, to define its own membership, to make and enforce its own laws, and to regulate its resources and property" (1989: 14).

J. Edward Chamberlin's Definition:

"Sovereignty, for example, is understood on the one hand as underwriting political and constitutional power. In the case of the Americas, this power was historically realized by both European and indigenous nations in the circumstances of contact, including contact before Columbus, was then qualified after European settlement by peace treaties and land cession agreements. On the other hand, sovereignty is affirmed as the inviolable expression of a people's collective identity transcending particulars of time and place and the irrelevant polemic of treaties. It does not need anyone else's validation, indigenous or non-indigenous; and it is inextinguishable, like an individual's conscience" (1997).
Basic Reading List for Indigenous Politics, Law, and History


Deloria, Vine, Jr. and David E. Wilkins, *Tribes, Treaties, and Constitutional Tribulations* (Austin, TX: Univ. of Texas Press, 1999).


1968 Indian Civil Rights Act
and Its Equivalent U. S. Constitutional Provisions

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<thead>
<tr>
<th>1968 Act Provision</th>
<th>U. S. Constitutional Provision</th>
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<td>1. Free Speech</td>
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<td>3. Free Press</td>
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<td>4. Peaceful Assembly &amp; Petition Power</td>
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<td>8. Just Compensation</td>
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<td>9. Speedy &amp; Public Trial</td>
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| 10. Right to Confrontation & Cross-
   Examination                            | 6th Amendment                        |
| 11. Right to Counsel (at defendant's own
   expense)                               | 8th Amendment                        |
| 12. Trial by Jury (criminal only)        | 14th Amendment                       |
| 13. No Excessive Bail                     | 5th & 14th Amendments                |
| 14. Cruel and Unusual Punishment         | Art. 1, Sect. 9                      |
| 15. Equal Protection of the Laws         | Art. 1, Sect. 9                      |
| 16. Due Process of Law                   |                                       |
| 17. No Ex Post Facto Law                 |                                       |
| 18. No Bill of Attainder                 |                                       |

The Civil Rights Act of 1968 confers all of the fundamental rights except five:
1) Does not prohibit tribes from establishing a religion
2) Does not prohibit tribes from discriminating in voting because of race
3) Tribes are not required to convene a jury in civil trials
4) Tribes are not required to issue grand jury indictments in criminal matters
5) Tribes are not required to appoint counsel (attorneys) for indigent defendants.
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To determine degree of blood of children, find degree of one parent in left column and of the other parent in top row. Read across to right and down the column to the proper degree.

"N.I." means non-Indian. Example: child of one parent 11/16, the other 5/8, would be 21/32 degree Indian.

Indigenous Nations and the American Political System

We, the People of the United States

Indians are citizens of sovereign tribal nations (extra-constitutional)
Indians are citizens of the U.S. and the state in which they reside (constitutional)

U.S. Constitution

Tribal Constitutions

Commercial relations
Treaty-making process
Property Clause (trust relations)
Congressional plenary (exclusive) power

Tribal Governments

Tribal Codes and Charters

Legislative—Commerce, treaties, appropriations
Executive—Treaties, executive orders
Judicial—Plenary interpretive power
Bureaucracy—Delegated authority, administrative discretion

State Governments

Legislative—Tribal-State Compacts (PL280, ICWA, Class III Gaming)
Executive—Sovereignty accords
Judicial—Limited jurisdiction
Bureaucracy—Intergovernmental agreements, memorandum of understanding

Counties

CITIES

Memorandum of Understanding, Professional Service Agreements, etc.
A Very Partial List of Sources for Indian Treaties

Ratified Indian Treaties File (National Archives) [Wilson Library should have these on Microfilm under Record Group 11: M668]

Record Group 46 (National Archives), Records of the United States Senate. Records of the Executive Proceedings, Presidents' Messages—Indian Relations. (This material pertains to the Senate's ratification of Indian treaties.)

Record Group 48 (National Archives), Records of the Department of the Interior.

Record Group 75 (National Archives), Records of the Bureau of Indian Affairs.


Serial Set of Congressional Documents

Annual Reports, Board of Indian Commissioners.

Annual Reports, Commissioner of Indian Affairs.

Annual Reports, Secretary of the Interior.

Annual Reports, Secretary of War.

Department of State. Treaties of the United States of America and Several Indian Tribes from 1778 to 1837, with a Copious Table of Contents. (Wash: Langtree and O'Sullivan, 1837. Reprint ed. Kraus Reprint, 1975.)

Senate Executive Documents and Reports

Congressional Debates.


U.S. Statutes at Large (see volume 7, published in 1846 for treaties from 1778 to 1842. Later treaties are found in volumes 9-16 and 18 at the end of the volume.


Charles Kappler, comp. Indian Affairs: Laws and Treaties, vol. 2, Treaties. Wash. GPO, 1904 (this is the standard collection of treaties)

Vine Deloria, *A Chronological List of Treaties and Agreements Made by Indian Tribes with the United States* (Wash: Institute for the Development of Indian Law, 1973)


Decisions of the Indian Claims Commission.


TYPES OF INDIGENOUS GOVERNMENTS

1. **Representative**: Native citizens elect a governing body that operates under a written constitution which members have approved. (e.g., Ute; Jicarilla Apache)

2. **Representative/Traditional**: *(operating under written constitution)* Under these systems, government officials are elected by tribal members, but some governmental positions are reserved for traditional leaders by virtue of their traditional lineage. (e.g., Red Lake; Warm Springs of Oregon)

3. **Representative/Traditional**: *(operating without a written constitution)* In these systems the nation’s citizens elect government officials, but some branches of government are connected or based on traditional customs, values, or institutions. (e.g., Navajo Nation)

4. **Other forms of Representative Government**: Articles of Association, Governing Resolution, Charter, and Tribal Council. (e.g., Wichita Tribe, Eastern Band of Cherokee)

5. **General Council**: The tribal membership establishes a governing body (typically a Tribal or Business Council) and also frequently adopts by-laws which govern and control the tribal officers, but these tribal officials usually have no substantive authority. When a major issue arises, this usually gets resolved during a regularly scheduled General Council meeting of the entire community’s eligible members who vote on the issue. (e.g., San Manuel Band of Serrano Indians).

6. **Theocracy**: Both the civil leaders and officers of the nation are selected by the religious leaders. (Most Pueblo communities in New
7. **Confederacy**: Haudenosaunee or Iroquois (Also known as the Six Nations of New York State)

8. **Alaskan Native Corporation**: Indigenous peoples in Alaska who via the congressional Alaskan Native Claims Settlement Act of 1971 organized under state chartered corporations (225 village level corporations and 12 regional level bodies).

9. **Village Council**: These are typically found in remote parts of Alaska. They coexist alongside their corporate counterparts.

10. **Customs & Traditions**: Several Nations in the “lower 48” and Alaska adhere to what they say are their historic means or social organization that dates back to the pre-contact era. (e.g., Cahuilla Band of Indians and Viejas Band of Kumeyaay).