

NEW MODALITIES OF SOVEREIGNTY: AN INDIGENOUS PERSPECTIVE

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Good afternoon, everyone. I want to thank the organizers of the symposium, to acknowledge the traditional peoples of the homeland here for allowing me to speak in their territory, and I also would like to acknowledge the panelists that I am speaking with today. Thank you to Siegfried and to Valerie Phillips for inviting me down here to speak on sovereignty or new modalities of sovereignty.

My people are the Ned'u'ten. We have a language that is Athabaskan or Dene in origin. Our creation stories are one of our sources of sovereignty. We are located in mountains, rivers and lakes in Northern British Columbia. I am a member of the Grizzly Bear Clan and hold a hereditary title. It is through our mother's line that we are connected to our territories, although we do have mechanisms such as adoptions and transfers to our father's line to ensure clan membership and populations are continuous.

Engaging with the term "sovereignty" as one of the descriptors for the power Indigenous peoples inherently possess, is problematic,¹ confusing,² and an emotionally charged³ endeavor. The meaning of "sovereignty" has yet to undergo significant Indigenous and political treatment, definition and elaboration, especially with respect to its coordinate relationship to the right to

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¹ Taiaiake Alfred, *Sovereignty*, in SOVEREIGNTY MATTERS: LOCATIONS OF CONTESTATION AND POSSIBILITY IN INDIGENOUS STRUGGLES FOR SELF-DETERMINATION 33 (Joanne Barker ed., 2005).

² Joanne Barker, *For Whom Sovereignty Matters*, in SOVEREIGNTY MATTERS, *supra* note 1, at 1-31.

³ J. Edward Chamberlain, *From Hand to Mouth*, in RECLAIMING INDIGENOUS VOICE AND VISION 127 (Marie Battiste ed., 2000).

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self-determination and Indigenous world views.⁴ Perhaps it is all a matter of good timing and being strategic about what language can best portray what sovereignty means. It depends whether there is an open, safe, and positive environment for such discussion to take place. Sacred dimensions of Indigenous sovereignty may never be discussed. Yet, we are seeing Indigenous scholarship in its embryonic stage begin to engage the “S” word.⁵ If that opportunity, is not seized now because Indigenous peoples feel it would threaten their cultures, land base or lead to further human rights violations, in my view the opportunity to do so will come around in the future. In the colonial context, Robert Yazzie describes sovereignty as nothing more than “the ability of a group of people to make their own decisions and control their own lives.”⁶ All aspects of Indigenous notions of sovereignty cannot be treated as the same. But relations to land, experiences of being colonized and oppressed, and the outright state denial that Indigenous peoples have the confidence to possess jurisdiction and land on an equal level of state actors remains a fact that can be essentialized.

In 2006, we can chart how this backdrop of state-Indigenous peoples relations will lead to liberating dimensions of sovereignty that can include decolonization precepts and the birthing or rebirthing of responsibilities that can foster how Indigenous peoples can freely authorize their future destinies and relations to their land and polity. These current modalities of sovereignty formulations must be relevant, animate, and experiential to Indigenous peoples. In my view, Indigenous understandings of sovereignty are best articulated and transmitted in the languages of the Indigenous

⁴ Val Napoleon, *Extinction by Number: Colonialism Made Easy*, 16 CAN. J. L. & SOC’Y 113-145, 127-128 (2001).

⁵ In one of his last academic presentations at the University of British Columbia, Harold Cardinal advocated to everyone listening that “we must begin to say the ‘S’ word.” Harold Cardinal, Address at the First Nations House of Learning, University of British Columbia (Spring, 2005). *See also* scholarship by Indigenous scholars such as John Borrows, Larry Chartrand, Gordon Christie, Darlene Johnston and Patricia Monture, Robert Williams, Matthew Fletcher and Valerie Phillips.

⁶ Robert Yazzie, *Indigenous Peoples and Postcolonialism*, in RECLAIMING INDIGENOUS VOICE AND VISION 46 (Marie Battiste ed., 2000).

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peoples. While some Indigenous peoples have latched on to “sovereignty” to restore control of their lives and to use it to convey an option to restore Indigenous cultures and found relations with states, others have found its strict Western conceptualization confining.⁷

Taiiaki Alfred argues that one of the main obstacles to achieving peaceful co-existence between peoples is the uncritical acceptance of the classic notion of sovereignty. In his critical analysis of sovereignty or what he calls “de-thinking” sovereignty, he states:

Unlike the earth, social and political institutions were created by men and women. In many indigenous traditions, the fact that social and political institutions were designed and chartered by human beings means that people have the power and responsibility to change them. Where the human-earth relationship is structured by the larger forces in nature outside human prerogative for change, the human-institution relationship entails an active responsibility for human beings to use their own powers of creation to achieve balance and harmony. ...

Sovereignty, then, is a social creation. It is not an objective or natural phenomenon, but the result of choices made by men and women, indicative of a mindset located in, rather than a natural force creative of, a social and political order. The reification of sovereignty in politics today is the result of a triumph of a particular set of ideas over others – no more natural to the world than any other man-made project.

Indigenous perspectives offer alternatives, beginning with the restoration of a regime of respect. This ideal contrasts with the statist solution, still rooted in a classical notion of sovereignty that mandates a distributive rearrangement but with a basic maintenance of the superior posture of the state. True indigenous formulations are non-intrusive and

⁷ LARISSA BEHRENDT, *ACHIEVING SOCIAL JUSTICE: INDIGENOUS RIGHTS AND AUSTRALIA'S FUTURE* 94-106 (2003).

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build frameworks of respectful coexistence by acknowledging the integrity and autonomy of the various constituent elements of the relationship. They go far beyond even the most liberal Western conceptions of justice in promoting the achievement of peace, because they explicitly allow for difference while mandating the construction of sound relationships among autonomously powered elements.⁸

Alfred's views on sovereignty are insightful.

In its traditional Western legal context, classical sovereignty meant divine authority from God and absolute power over territory. It evolved in Europe as an expression of political relations between state institutions and individuals. Today, sovereignty includes more populist dimensions and has come to mean the legal competence of states or the legal personality of statehood, which includes the general power of government administration and disposition of territory.⁹ In the Canadian context, the constitution is the expression of the sovereignty of the people of Canada which transforms imperial Crown and written parliamentary sovereignty over colonies into something exercised from the people rather than over them.¹⁰ The European notion of sovereignty represents the inherent authority of a nation, the ability to protect rights justifying assertions of power. It has been classically cast as a whole or absolute term of power. It has also come to mean the power of a particular nation to exercise governing authority over a particular territory.¹¹

At international law, the concept of sovereignty has evolved from the state having absolute power to manage or control its own internal affairs, which no other nation could interfere with. It has now become a sovereignty that now can be limited by human rights

⁸ Taiaiake Alfred, *Sovereignty*, *supra* note 1, at 46. *See also* Taiaiake Alfred, *Sovereignty: An Inappropriate Concept*, in *SOVEREIGNTY, COLONIALISM AND THE INDIGENOUS NATIONS: A READER* 67-71 (Robert Odawi Porter ed., 2005).

⁹ IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 287, 289 (6th ed. 2003); *see also* *ABORIGINAL TENURE IN THE CONSTITUTION OF CANADA* 90-94 (James Henderson, Marjorie Benson, & Isobel Findlay eds., 2000).

¹⁰ *ABORIGINAL TENURE IN THE CONSTITUTION OF CANADA*, *supra* note 9, at 429.

¹¹ *Id.*; JOHN CURRIE, *PUBLIC INTERNATIONAL LAW* 428 (2001).

law and the self-determination of peoples.¹² It also includes an increasing connection between nations and the decline of territorial sovereignty in the advent of new commerce, communications, and technological practices.¹³ Today, sovereignty is used by nationalists to prevent erosion of state authority.¹⁴ From my perspective, the Western notion of sovereignty has evolved in direct proportion to Europeans' ongoing contact with Indigenous peoples.

Joanne Barker says that the meaning of sovereignty is situated within the historical and cultural relationships in which it is articulated; it is given meaning through the social conditions of the people; and it is dependent upon the political subjects that define relationships with one another, their political agendas, strategies for decolonization, and social justice.

She further states that:

Sovereignty carries the horrible stench of colonialism. It is incomplete, inaccurate and troubled. But it has also been rearticulated to mean altogether different things by indigenous peoples. In its link to concepts of self-determination and self-government, it insists on the recognition of inherent rights to the respect for political affiliations that are historical and located and for the unique cultural identities that continue to find meaning in those histories and relations.¹⁵

Quechua scholar Sandy Grande understands "red pedagogy" as a manifestation of sovereignty. When educators use indigenous frameworks of nationhood, she states, "sovereignty becomes a project organized to defend and sustain the basic right of indigenous peoples to exist in 'wholeness' and to thrive in their relations with other peoples. Local (tribal) and global aims come together in

¹² S. JAMES ANAYA, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW* 109 (2d ed. 2004).

¹³ ROBERT ODAMI PORTER, *SOVEREIGNTY, COLONIALISM AND THE INDIGENOUS NATIONS: A READER* 4 (2005).

¹⁴ *Id.*

¹⁵ Joanne Barker, *supra* note 2, at 26.

solidarity around the shared goal of decolonization.”¹⁶

I can connect sovereignty and self-determination within the distinct context of my people by making an analogy to the trees on my Clan or house territory. The roots, trunk, and bark of the trees represent sovereignty to me. The special sap, food, medicines and seedlings that come from our trees are symbiotic with the life force or energy of my people and the land, united in a consciousness and connected through the web of life. To me, this is like self-determination or the exercise of sovereignty. The specific species of the trees represents the sovereignty and self-determination inherently and uniquely intertwined within the culture of my people. We have traditional methods to keep our trees strong, healthy, productive and secure. Like trees, we have continued to stand despite clear-cut logging and other unsustainable natural resource practices by state and industry, insect infestations, and diseases brought about through contact and climate change. We have also survived the fact that states have tried to attempt to change the way we use, regulate, and connect to our territories. Despite colonization, our sovereignty, self-determination, and cultures live.

Indigenous conceptions of sovereignty are found in the respective traditions of Indigenous peoples and their relationships with their territories. The power to exercise sovereignty flows from their laws, customs, and governing systems and their interconnectedness with the Earth. When I use the term sovereignty, I mean the way that my people governs itself in accordance with our clan/potlatch system regardless of past, ongoing, and future colonizing state conduct. The continuous exercise of sovereign jurisdiction of my people, the Ned'u'ten, is exercised and renewed:

- within our potlatch system, our clan and house structures as units of polities/territories;
- when our hereditary leaders fulfill their responsibilities and obligations; and
- when there is a transmission of oral histories and traditions, principles, customs and ceremonies from one

¹⁶ SANDY GRANDE, *RED PEDAGOGY: NATIVE AMERICAN SOCIAL AND POLITICAL THOUGHT* 171, 175 (2004).

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generation to the next.

My people's power is sourced or rooted in our creation stories, our spirituality and our organic and peaceful institutions. Sovereignty requires the energy of the land and the people and is distinct about locality. It is this fundamental difference from Western notions of sovereignty that represents new modalities of Indigenous sovereignty.

From an Indigenous prospective, sovereignty is not just human-centered and hierarchical; it is not solely born or sustained through brute force. Indigenous sovereignty must be birthed through a genuine effort to establish peace, respect, and balance in this world. Indigenous sovereignty is interconnected with self-determination. Non-Indigenous formulations of sovereignty treat states as artificial entities that hold sovereign rights such as territorial integrity or sovereign equality. Self-determination is severed as a right possessed by peoples which can limit state powers. Finally, Indigenous sovereignty is sacred and renewed with ceremonies that are rooted in the land.

Clan members and hereditary chiefs are guided by the attributes of peace, respect, generosity, balance, harmony, compassion, sharing, gifting, and discipline in their relations with all that is alive, all that is gone before, and all that has yet to come. These attributes are inalienable, inherent, and sacred. My people's way of life is tied to the land and waters in our traditional territories and to past and future generations. The power that vests in the chiefs, clans and houses is adaptable to the changing needs of the people and their relationship to their lands. It is not static and can only be limited temporarily by a deliberate self-interest intent to reject or violate such attributes. This happens when accountability and dispute resolution mechanisms are not used or enforced to address such a deviation.

In this sense, sovereignty can be seen as the frame that houses the life force or energy that can flow at high or low levels depending on how the people are living at any given particular moment in their territories. Such sovereign attributes are renewed each and every time we use our potlatch system and when clan members choose to fulfill their roles and responsibilities to each other and to their

neighbors. These attributes are renewed when we act as stewards for our ecological spaces. These sovereign attributes do not negate the fact that my people also exercise attributes of sovereignty similar to those upon which Western societies found their state systems – such as protecting and defending territorial boundaries, and engaging in external foreign relations with trade and commerce. I would add peacemaking, possessing governing institutions for the people, a citizenry or permanent population with a language, and powers of wealth and resource redistribution amongst our clans. The comparative inquiry is rather one of the priorities and whether or not conduct or behaviors of the people are coordinate with our principles of living a good life and maintaining and securing peaceful good relations.

I also view sovereignty as having a dimension of decolonization. Indigenous sovereignty gives legitimacy to the exercise of jurisdiction by our chiefs to take back control over our colonized lands and reenergize our traditional governing systems. These systems have been subordinated by colonial systems such as the Indian Band Council System and Canadian federal, provincial or municipal governments. It is important for Indigenous peoples to understand how states unilaterally exercise sovereignty and maintain monopolies of power over Indigenous territories and peoples. Currently, Indigenous peoples use sovereignty in both offensive and defensive advocacy. Rob Porter argues that rather than protecting state authority from foreign intrusions, Indigenous peoples can use sovereignty to achieve consensual authority as a way to prevent unilateral assertions of state authority.¹⁷ For example, states such as Canada have asserted that they alone hold the sovereign attribute to defend the boundaries and territories of the country. This monopoly of security power is confirmed in policies and laws created by the legislatures and judiciary and through the executive. How does this exercise of state sovereignty impact Indigenous peoples and Indigenous lands? Self-determination on its own may offer rights for Indigenous peoples to limit the negative impacts of the exercise of state power in the security context. However, the exercise of

¹⁷ Porter, *supra* note 13, at 4.

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sovereignty, as understood by Indigenous peoples, could lead to relations where the state could no longer unilaterally exercise jurisdiction over security matters that impact Indigenous peoples over lands, territories, and resources. The operation of the principle of free, prior informed consent of the people as an expression of their will is essential to sovereignty's decolonizing dimension. Restoring Indigenous peoples' sovereign, self-determining rights to security over their peoples and lands is, in my view, one of the first steps we need to take to bring Indigenous peoples' visions of peace to the world. Constitutional reform, the development of new conventions, and progressively developing both international and domestic law to make space for Indigenous sovereignty and self-determination is necessary for peace between Indigenous peoples and states. It is also necessary for fashioning respectful security relations. In this first step, Indigenous peoples and states need to go through simultaneous but independent transformations, too.

Now, if I were to take that language and apply it to how respect and peace are the key attributes of my people's sovereignty, how would we talk about that law of respect? In my culture, we have two different dimensions of the word "respect." There is respect that is authorized and used by hereditary chiefs. That respect takes place within the potlatch system. It carries with it duties and responsibilities to ensure that offices are held in a good way. That respect is also exercised on their particular clan territory and house territory. We also have another dimension of respect that operates between one another on an everyday basis in business transactions, in family relations, in ceremonial events, etc.

Talking about security and securing my land and my people and talking about respect with one another, we have a principle of protecting everyone's heart, and when you protect everyone's heart and that heart is happy, then you're fulfilling your sovereignty. For example, if I were to go and talk to my mom, and I have a very pressing issue that is a matter in relation to my clan or relating to the land, I have to first ask her how her heart is doing in her language, and if her heart is not doing well, then I have to wait until she finds a solution to whatever is troubling her in her heart, mind and spirit. It may be at that time that I have to help her work through whatever

she's going through until I can actually get some communication back on what I'm concerned about.

So, securing the heart of people is part of our responsibility. It is embedded in our sovereignty. If you look to Western notions of sovereignty, where you're looking at a state-individual relationship, the individual is relating with the state, they're not relating with one another. This is a critical difference between Indigenous notions of sovereignty and Western notions of sovereignty. We also have a concept of working together with one another, critical for sovereignty to be effective.

If I were to look at how sovereignty is exercised between my people and our neighbors, the Gitksan and Wet'suwet'en, we have similar clan structure systems, similar potlatches. We relate not so much as nations with one another but on a clan level. We have, through the centuries, been able to create a braided framework around our territories that is marked by intermarriages and feasting with one another. This is kept strong by our respect – a key principle for our expressions of sovereignty.¹⁸ These different dimensions of sovereignty, or the ways we secure our land and our territories, are different from Western notions of sovereignty.

This generation of Indigenous peoples has responsibilities to meet, and this includes the exercise of their peoples or nations' self-determination and sovereignty. By re-energizing Indigenous world views of ways of relating to the Earth and others, Indigenous peoples can contribute to peace and harmony. I'm not worried about getting caught up in the semantics over power and controlling one's land and destiny. What concerns me is the acceptance by Indigenous peoples "of the colonized state of being," where sovereignty is exercisable only by non-Indigenous entities such as states at the expense of human and ecological diversity. My hope for the future is that Indigenous peoples bring forth and unearth their modalities of sovereignty at the right times so that the development of humanity takes place holistically, respectfully, and with peace.

In Canada, the notion of sovereignty is set within a federation

¹⁸ Don Ryan, Gitksan Hereditary Chief, Personal communication of the "braided framework" concept for securing territorial and jurisdictional boundaries between neighboring peoples (2005).

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framework. Traditionally, the federation, in its Western classical sense, was looked at when you only had one identity of people. If there were other identities of people, they weren't recognized. Even if there were dual identities of people, they weren't recognized. What we're seeing now with federalism evolving in Canada are efforts to make room for a multi-national federalism. For example, Québec representatives lobby for more power as a province within Canada. The Inuit people up North have been able to express their identity within the Canadian federal system. For me, what would be challenging is for states like Canada to recognize sovereignty as exercised in the way that my people developed their governing systems. Sovereignty, to me, is not focused on economic exploitation; but rather establishing peaceful relations. In order for this world to have a different structure other than just states, there has to be a respect for the diversity of how Indigenous peoples structure their relations with one another and the Earth.

That is my future work. If my people are forced to accept Canada's federal notion of sovereignty, then our cultures and our ways of life and our linkages to the land are in jeopardy. We will require a remedy internationally because domestic laws currently do not provide that remedy. Therefore, we have to also work at the international level to develop relationships with other peoples, other states and NGOs. Again, my hope for the future is that Indigenous peoples bring forth and unearth their modalities of sovereignty at the right times so that the development of humanity is holistic, respectful, and with peace. All my relations.