CHAPTER THREE

Tribal Sovereignty:
Roots, Expectations, and Limits

R. David Edmunds, Robert Burnette, Hank Adams

John Marshall, in one of his landmark opinions, remarked on the arrogance of the “doctrine of discovery” which held that one European ship landing on the East Coast would entitle that sovereign to ownership of a vast territory of land. I do not know of a clearer case on the earth of this than the arctic region. I cannot think of a civilized argument why the native people, who live in this area, should not have the right to constitute an independent nation if that is their desire. They are the only ones who have adapted to the environment of the arctic. We really need to determine if large countries are justified in keeping these people under their jurisdiction.

Philip S. Deloria, Standing Rock Sioux, director, American Indian Law Center

From 1951 until early 1970, the leaders of tribal governments knew about their treaties. They exercised as much authority and power as they could from those documents. But the term sovereignty was never used. We knew that we were part of the United States and that our people were subject to the plenary powers of Congress, and we knew that our constitutions and bylaws and charters were issued by the secretary of the interior. To exert pressure to obtain total tribal sovereignty would have meant directly opposing the United States of America and everything that it stood for. Indian tribes have used sovereignty as a goal for publicity purposes since 1971. This has attracted a lot of attention and made Europeans and other people begin to ask questions.

Robert Burnette, Rosebud Sioux, former director, National Congress of American Indians
I am not as optimistic about the issue of Indian sovereignty as some people. It depends upon how you define sovereignty and what makes a people sovereign. From my understanding of the term and the way it is generally used it means the ability to completely control one's own affairs regardless of intervention by outside powers. Given that sort of framework, I am pessimistic about restoring tribal sovereignty.

During the very earliest periods of Indian-white contact and surely before the European invasion of America, Indian people were sovereign. There is no doubt about it. They controlled all aspects of their lives. The unfortunate historical reality is that as the white frontier rolled westward Indian cultures were either overwhelmed or controlled to a certain extent by the federal government. Their sovereignty diminished. By 1871, the government recognized this, and it stopped making treaties with the tribes. The government then began to dictate to the tribes its decision to establish reservations and other aspects of tribal policy.

The government of the United States is really a government of pressure groups. It is the groups who have political power, especially economic power, that run this country. Until Native American people have a greater economic power base from which to build, their sovereignty is going to be very limited. You must have a viable economic base if you are going to influence a government that essentially functions in response to economics. That is the key issue. Sometimes, we hear people talk in mystical terms about sovereignty, but it does not put pork chops on the table.

There are many definitions of the word sovereignty in Indian America. It seems to me that the majority of Indians mean "the maximum amount of self-control for the Indian people under the existing system" when they use this term. I doubt whether there will ever be complete tribal sovereignty in the United States.

What we need to do is look at the different groups inside the United States who have a tremendous amount of influence on the federal government and on the economic structure in this country and at how they influence those particular structures. We are talking about pressure groups such as big industry, organized labor, arms manufac-
turers, and farmers. You can even point to certain racial ethnic minority groups in the late 1960s.

Blacks, for example, gained considerable sovereignty in the civil rights movements in the late 1960s and early 1970s. They gained substantially more control over their destinies than they had previous to that time. Now that does not mean, of course, that blacks as a group of people, exist free from government control.

Indian people will probably never be divorced from those kinds of controls. One of the interesting things about all of the groups that have been able to gain political and economic power is that they have done it through very sophisticated and centralized political organizations. That is where Indians have been at a big disadvantage. Indian organizations have not been able to match the economic and political power of groups that have opposed them. The nature of Indian people and the structure of tribal governments make it all but impossible to develop that particular type of response.

Robert Burnette

The issue of tribal sovereignty has been misused and abused by Indian leaders in the last few years. In the period when I was the executive director of the National Congress of American Indians and president of the Rosebud Sioux tribe, I had no use for the word sovereignty. I believe that tribes had legal sovereignty, but they certainly do not enjoy the benefits of sovereignty because they do not have an armed force with which to enforce it. If Indians had an army as big as the Soviet Union, they might be sovereign. But they do not have an army.

We are part of the United States of America. We are within its jurisdiction and subject to the plenary powers of Congress. So we are not, in a sense, sovereign, except that we do have treaties and the United States has usually tried to honor those treaties. The notion of tribal sovereignty is wishful thinking on the part of most modern day tribal leaders.

The talk about tribal sovereignty reveals the desire by Indians to exist in the midst of our tremendously complex nation. The United States is, for all practical purposes, an economic entity. If we cannot
exist economically, then we are not going to exist at all. We are going to be overrun sooner or later. Unfortunately, when economic progress occurs on reservations you often attract a lot more people than you actually need, and you are taking another chance. So economic progress is a pretty dangerous thing if that is where the tribes want to go.

Not one tribe, in my estimation, has utilized economic progress to its real advantage. I believe that tribes could develop, if they wanted to, their coal resources and their oil and gas resources. They could joint venture those resources. It makes little sense to throw out a contract to ARCO, or whoever it may be, and let thousands of people come onto a reservation and establish a big town. Then, the Indians lose all the political powers that they have and all the rest that goes with it.

I hope that tribes will open their eyes and begin to deal with reality instead of crying and moaning about something that is happening to them. They need to make things happen their way. If they would do that, then whatever happened on a given reservation, they would be responsible and would have to deal with it. Expecting the United States to come in and do all your business and protect you is like wishing that all the gold in the Black Hills was in your back pocket. We have to do those things that are practical in government.

The War on Poverty did not just happen by accident. Somebody made it happen. Indians were part of that social justice movement. The Indian heirship bill did not lay down and die, we killed it. This is the way to do things. I have always tried to be one of those people who makes things happen in Indian country. From 1956 until 1964, I played a major part in deciding what was going to happen in the Indians' world. Expectations are one thing; achieving them is another thing.

The IRA, in my estimation, provides tribes with limitless opportunities. They are only limited by the boundaries of what one can accomplish in the financial, economic, and industrial world. The IRA provides a platform from which many tribes could spring and enter the economic system of the country. But once tribes show their economic ability, Congress will most likely move in and start limiting their actions. I know this because at one time we almost reached that point at Rosebud. We drew back because of it. We were afraid of termination. We could have done a lot more things, but we decided to wait and let everybody else catch up. Unfortunately, OEO came along, and every-
body forgot where they were going except to chase federal dollars. But I still think there are virtually no limits on any of the tribes if they want to really move up.

Hank Adams

The IRA, in general, has been metaphorically America’s twentieth century Ghost Dance for American Indians. And John Collier has been it metaphysical Wovoka. It is not very useful to celebrate the last fifty years under the flawed vision of John Collier. Instead, we should shed the Ghost Dance shirts, which have not afforded protection to the Indians at places such as Wounded Knee in 1973.

I first became involved in Indian affairs about twenty-five years ago. When I was fourteen years old, I went to a tribal council meeting with my stepfather on the Quinault Reservation. The Quinault were an IRA tribe from the standpoint of the Bureau of Indian Affairs, but they were also a non-IRA tribe from the standpoint of many tribal members. The Quinault had held two elections, one which rejected the IRA and one which accepted it. Even today, it remains an unresolved dispute between the tribe and the BIA as to whether the Quinault are an IRA tribe.

At the meeting that I first attended when I was fourteen, the tribe voted on the issue of extending state jurisdiction over the Quinault Reservation under Public Law 280. The vote was either thirty-eight to three or forty-two to one. There were no more than three persons in the tribe who favored going under state jurisdiction. The following Monday, the chairman of the tribe, the tribal claims attorney from Washington D.C., and the BIA superintendent met at the agency and petitioned the state of Washington to assume jurisdiction over the Quinault Reservation. That action was a violation of Quinault sovereignty, and it revealed a fundamental problem between Indians and the federal government. Invariably, external forces contrive to get what they want at the sacrifice of Indian people, Indian rights, and Indian sovereignty.

Shortly after that, the tribal chairman committed suicide. His suicide was caused, in part, by guilt for violating the tribe’s governing institutions and the will of the Quinault people. He was spared the
problem that he had created, but his people suffered under the effects of that action for more than a dozen years.

The roots of tribal sovereignty are written in antiquity, but for most people of the earth the concept of sovereignty is relatively new. Europeans and Americans formulated legal concepts of sovereignty during the later stages of the Enlightenment. One of its strongest expressions in a conceptual form came in 1758 in a book by Emmerich de Vattel, a Swiss jurist, called *The Law of Nations*. In that treatise were the concepts of government and sovereignty that were adopted by the United States in its Constitution. The Constitution also drew from some of the governmental forms that were employed by Indian nations on the East Coast, primarily the Iroquois confederacy, but also two tribes to the south, the Creek confederacy and the Cherokee nation.

When Chief Justice John Marshall began defining the rights of Indians under the Constitution of the United States, the Supreme Court used *The Law of Nations* as its basic legal authority. This book had drawn upon universal human experiences to formulate international law. It took into account the development of law that was found to exist in Persia and South America and the law that was found to exist among the American Indians.

During the Iranian hostage crisis, the Iranians said, "Why should we abide by international law when we had no hand in writing it?" They failed to recognize that they had a part in writing international law prior to the Enlightenment. Indians in the New World also made a contribution to the writing of *The Law of Nations*, and Indian experience played an important part in the law that the United States both recognized and was founded on.

One expression of sovereignty is the notion of equality among all men and nations. Another attribute of sovereignty is the authority over one's self at the personal level, or the sovereignty of the individual. Sovereignty also means the authority of people over themselves as a society or a nation free from external direction. That is basic. Beyond that, one of the utilitarian values of sovereignty is in forming the relationship that exists between one sovereign entity and another.

There is a tendency to think of sovereignty as being an absolute quality that exists. In reality, it is just a question of whether or not the
sovereignty is completely there or has drained away in some part. In fact, sovereignty is a dynamic concept whether it exists at the individual level or whether it exists at some higher level, particularly at the level of nations.