

An Issue of Sovereignty

BY JOSH LOHMER

A grainy photograph taken after the Wounded Knee massacre of 1890 captures a U.S. soldier sitting on a horse surrounded by frozen Lakota bodies lying in the snow.

A snapshot of the Pine Ridge Reservation in South Dakota today shows slumped trailers and yards strewn with crumpled soda bottles and plastic bags.

An Internet ad for the Mystic Lake casino in Minnesota depicts rows of flashing, clinking slot machines and, outside, a virtual hologram of a teepee created by a circle of spotlights shining skyward.

Although highly charged and somewhat skewed, these images are all part of Indian Country's past and present, and they tend to dominate the popular viewpoint of Native Americans.

But over the last few decades, tribal governments have made significant progress toward reclaiming their independence. Tribes are rewriting their constitutions, choosing their own leaders, and asserting control over their lands. Two-hundred and seventy-five tribes now have formal court systems, and similar advances have been made in other areas.



JOHN ECHOHAWK

This is what John Echohawk sees when he thinks about the tribes and their future.

A Pawnee Indian and executive director of the Native American Rights Fund since its inception in 1970, Echohawk was named

one of the nation's most influential lawyers every year since 1988 by the *National Law Journal*. For 40 years he has been fighting to define and uphold Indian rights and one right is key.

"Sovereignty is clearly the most important thing," he says, reflecting the view of many tribal leaders when asked what is behind the recent rise of Indian Country. "If you don't know anything about tribal sovereignty, then you don't know anything about Indians. It's that simple. We're nations. We're Pawnees and Navajos and Sioux. That's who we are,

that's the way we see the world."

Echohawk says it's a mistake to think of Native Americans as a homogenous group, and it's misleading to portray Indian Country as a monolith. America is home to 562 different tribes that range in population from a few hundred to more than 200,000. And although these tribes share a sad history, the diversity that distinguishes Shakopee from Apache and Crow from Choctaw has reemerged as tribes have retaken control of their own affairs.

"Indians are nations, not minorities," says David Wilkins, chair of American Indian

The independence of Native American nations, an idea long undermined by dependency and deprivation, is again a reality.



Studies at the University of Minnesota.

His point is echoed by Deron Marquez, former chair of the San Manuel Band of Mission Indians in California. “Each tribe is sovereign, and each tribe is different,” he says. “Each tribe has its own way of deciding who they are and what they will become.”

Decades of grinding conditions, however, have left their mark on Indian Country. Poverty still hovers near 40 percent—more than triple the national rate. Incomes remain about half the U.S. average. Chronic health problems such as heart disease and diabetes have

become a scourge on reservations, and deaths from liver disease and cirrhosis surpass national rates by 500 percent.

Despite daunting challenges, Indian sovereignty is again a reality. And that, tribal elders say, will change the way future generations view themselves.

“This is about putting a new memory in the minds of our children,” says one Indian leader.

THE FIRST NATIONS

Native sovereignty predates the establishment of European settlements in North America. When colonists arrived, Indians were divided among hundreds of sophisticated societies with their own languages, cultures and systems of government—thriving nations that traded and warred. As the United States formed and pushed westward, it acknowledged the sovereign status of Indian nations by signing hundreds of treaties with these native governments, the same form of agreement made with countries such as France and Spain.

Eventually, this recognition of the tribes’ inherent sovereignty made its way into the U.S. Constitution and informed a series of landmark Supreme Court decisions. In 1832, Chief Justice John Marshall defined Indian Nations as “distinct political communities, having territorial boundaries, within which their authority is exclusive.”

Although established along similar lines today, Indian sovereignty is the one thing people have trouble appreciating about tribes, Indian leaders say.

The realities of tribal sovereignty can get complicated. Marshall called the tribes “domestic, dependent nations,” a phrase that has proven difficult to put into practice as federal, tribal and state governments jockey for position within different jurisdictions, from taxation to law enforcement to land use.

For starters, tribal governments—like the states—cannot raise an army or issue currency. They do have the authority to write their own constitutions, make and enforce laws, and regulate the use of their land.

More than 4.3 million people in the last census—1.5 percent of the total U.S. population—identified themselves as Native American or Alaska Native. In addition to being tribal members, they are citizens of the United States and the state where they live.

To really understand Indian sovereignty,

however, you have to realize it is more than a legal designation. It is the lifeblood of a people.

HISTORY OF CONFLICT

On a wall at Wa He Lut Indian School in Olympia, Wash., Billy Frank Jr.’s gnarled cedar canoe hangs as a testament to the tribes’ struggle for their sovereign rights. In December 1945, Frank, a Nisqually Indian, paddled that canoe out on the Nisqually River to go fishing.

“We always fished, that’s just what we did,” says Frank.

Only 14 at the time, Frank was pulling steelhead and chum salmon from his net when game wardens arrested him for violating state fishing regulations. During a similar incident in 1964, state officials confiscated Frank’s canoe after they rammied into it, knocking him into the river.

In the 1950s and ’60s, “termination” had become the federal government’s policy toward Indian Country. More than 100 tribes lost their political status during those years, as did thousands of individual Native Americans.

In such an environment, treaties were often ignored. The 1854 Medicine Creek agreement, which gave the U.S. government 2.2 million acres of land but guaranteed Nisqually Indians the “right to take fish at usual and accustomed grounds and stations,” meant little to state officials bent on protecting the exploding commercial and sport fishing industries.

In the three decades following Frank’s first arrest, he was beat up, spit on and arrested 50 more times. His oldest son was first arrested at age 9. These were the “fish wars” of the 1960s and ’70s, part of a broader Indian sovereignty movement erupting across the country. Eventually, the tribes got their day in court.

In 1974, the U.S. District Court for western Washington issued what became known as the Boldt decision. It found that treaties like Medicine Creek remained valid, and that the tribes had rights to half the annual Puget Sound salmon take. The ruling also bolstered tribal sovereignty by declaring the tribes co-managers of the fisheries, allowing them to set their own rules and regulations.

“For me, it was one of the biggest decisions in U.S. history—in world history,” says Frank.



Billy Frank Jr., chairman of the Northwest Indian Fisheries Commission, stands in the atrium of the Wa He Lut Indian School in Olympia, Wash. Frank's canoe hangs in the background.

Washington fishermen, furious that 1 percent of the population now controlled 50 percent of the fish, hanged effigies of Judge George Boldt from trees. But as Boldt's decision and others were upheld, the tribes slowly increased their management capacity. Soon after Boldt's ruling, the Puget Sound tribes formed the Northwest Indian Fisheries Commission, which today comprises 20 members. Each of these tribes now operates its own natural resources department with support from the commission, which conducts ongoing laboratory and field work.

Billy Frank's father used to tell him that if

the salmon disappeared, the Indians would, too. In 2006, 20 tribal hatcheries around the Sound released more than 31 million salmon into the rivers. Since 2000, the tribes have restored hundreds of miles of streams and thousands of acres of wetlands and estuaries.

Since his protest days, Billy Frank has signed agreements at the White House and received prestigious recognition for his ability to bring people together, including the 2004 American Indian Visionary Award and the 1992 Albert Schweitzer Humanitarian Award, an honor he shares with past winners such as President Jimmy Carter and South African activist Desmond Tutu. He even picked up a couple of Emmys along the way for movies about the Indian worldview.

"Those trophies won't buy you a cup of coffee," says Frank, whose smile softens

a face that looks like it was carved from a cedar block.

For all his honors, perhaps the most fitting symbol of what Frank and the tribes have accomplished is his canoe, which the state returned to Frank in 1991 on his 60th birthday.

Stories like Frank's help explain why tribes, often willing to negotiate and enter power-sharing agreements these days, refuse to compromise when they sense a threat to their underlying sovereignty.

"We are willing to die for this country," says Marquez. "But we are also willing to die for what is now a one-square-mile reservation. When you're told of the years that your people fought, suffered and died to maintain their culture, their identities, their language, their political practices, it sounds ridiculous to say, 'I'll just give it up.'"



PHOTO BY DAN DELONG/SEATTLE POST-INTELLIGENCER

SELF-DETERMINATION

Much of the Native American history taught in schools focuses on the human tragedy, but as tribes were uprooted and forced to assimilate, their traditional forms of government also were torn apart.

Without their political structures—the unifying architecture of their societies—Native Americans began to rely on federal agencies and the small amount of government aid provided to the tribes as part of the United States’ trust responsibility.

The simplified version of the trust relationship goes like this: 56 million acres of tribal reservation land is held in trust by the federal government that, in turn, has an obligation to protect and advance the tribes’ best interests.

In the absence of legitimate tribal authority, however, federal agencies such as the

Bureau of Indian Affairs too often ran reservations like an arm of the U.S. government.

“In the case of the BIA, bureaucratic standards of success, such as protecting a budget or expanding authority, tend to be given more weight than tribal standards of success,” said Joseph Kalt, director of the Harvard Project on Native American Development, in testimony to Congress.

This is part of the reason some Native Americans like to say that BIA stands for “boss Indians around.”

But things are changing. One year after the Boldt decision, the federal government formally switched its Indian policy from termination to self-determination. The Indian Self-Determination and Education Assistance Act of 1975 and the Tribal Self-Governance Act of 1994 made it easier for tribes to call their own shots, and they have since responded by reconstructing functioning governments.

“States really need to keep in mind the amazing set of things tribes have on their plate right now,” says Miriam Jorgenson, an associate director of the Native Nations Institute at the University of Arizona. “Like all governments, they’re handling a host of day-to-day operations and long-term planning activities. But at the same time, they’re also building the institutional and executive capacity to manage it all.”

It is not happening everywhere, but in the best cases, the bureau now plays a mostly supportive role.

“So much has really changed for us,” says Liz Mueller, vice-chair of the Jamestown S’Klallam Tribe, whose members live along the shores of Sequim Bay near Washington’s Olympic National Park.

“We’re actually governing. We’re doing things with our dollars that make sense for us,” she says. “If we hadn’t taken control, we wouldn’t have come nearly this far.”

In the first 25 years after the self-determination act, energized tribes such as the Jamestown S’Klallam took over three-quarters of all Indian health centers.

Mueller went even further. Using a combination of tribal and federal funds, the S’Klallam purchased health insurance for every one of its more than 500 members. This approach to health care, says Mueller, is worlds apart from the convoluted program run by the federal Indian Health Services, which, like the BIA, has historically lacked funding.

SOVEREIGNTY IS FUNDAMENTAL

“Tribes are the oldest and most misunderstood governments in this nation,” says Jamie Pinkham, a longtime tribal resources manager and former member of the Nez Perce executive committee. “Our sovereignty is fundamental. The reservations were created as our homelands for the exclusive, sole benefit of Indian people. Sovereignty keeps a political boundary in place, so that we’ll always be our own true leaders.”

“Who else is going to watch out for us, but us?” says Billy Frank, as he pulls off busy Interstate 5 near Olympia and points to a spot of land where the Medicine Creek treaty was signed by his ancestors. By the early 1900s, dikes and dams had dried up this part of the Nisqually River delta, and 1,000 acres of marshland teeming with marine life was cut off from the sound and turned into farmland.

In partnership with U.S. Fish and Wildlife, the tribes in July began work on a plan that will almost completely recreate this section of the delta. Bulldozers are leveling dikes and filling ditches so that soon the tides will again flow into the restored estuary, once a major source of the Nisqually tribe’s livelihood.

“It’s taken a while, but we’re going to get this done,” says the 77-year-old Frank, looking out at the estuary. His statement carries the kind of profound hope and resolve that has characterized the Indian sovereignty movement and its leaders from the beginning. And as strange as the idea of sovereignty seems to many non-natives, it remains a part of the American landscape.

“Our ancestors fought for this land, and they signed treaties so that there would be no more killing of our people,” says Mueller. “They signed treaties so that they could live in peace with the promises of their sovereignty, their fishing rights, their education rights and their health rights. And that just doesn’t go away.

“Some people don’t like that idea; they think that tribes are a privileged group. But I think such attitudes come from people who either don’t understand history or are uncomfortable with it.”

CHECK OUT a discussion about relations between Native American tribes and state governments, and information about NCSL’s State-Tribal Institute at www.ncsl.org/magazine.