

NARF

Review

Native American Rights Fund

The Idea of Sovereignty: Native Peoples, Their Lands, and Their Dreams

Editors Note: The following article is a speech presented by Charles F. Wilkinson at the Native Hawaiian Rights Conference held in Honolulu, Hawaii on August 5, 1988. Wilkinson is a professor at the University of Colorado's School of Law.

Before beginning my formal talk, I would like to make these brief comments.

First, I want to thank you from the bottom of my heart for having me here. I think that I, and my colleagues from the Mainland who are here today, feel joy at being in Hawaii for considerably different reasons than do most of the seemingly countless people who come here each year. I am moved by the physical aspects of Hawaii -- I think no one could be immune from that -- but I am ultimately stirred by something different and deeper. What has touched my soul is the Hawaiian people, your warmth, your spirit, your cause, your *mana*. So I thank you, more than I could ever fully say, for the great honor and privilege of being with you today.

Second, I want you to know how sensitive I am -- as, I think, is the case with all of us who have come over -- to the fact that you have complex historical and contemporary problems that call for unique approaches and solutions. It will not do -- absolutely will not do -- simply to transplant approaches from the Mainland to Hawaii. Thus my references to developments from the Mainland are offered only with the belief that in some cases you can take very general legal and constitutional tools and adapt them to your special circumstances, much as you have already done by using Congress and the federal courts as levers to provide solutions to your highly individualized situation.

Third, I will make these preliminary comments about the topic of my talk, sovereignty. Like every one of you, I am ultimately a practical person and, frankly, I am not much interested in theory except when it has hard, on-the-ground results. In that spirit, I will say without any equivocation that Hawaiian Native sovereignty -- your right to a substantial land base and to control the destiny of your people -- is no abstraction. It can happen -- it absolutely can happen -- if you choose to make it happen. In a similar vein, I hope that what I have to say will help dispel the idea argued by some that Native Hawaiian sovereignty is somehow radical. Directly to the contrary, your sovereign rights are profoundly traditional and fully supported by a dignified, well-respected body of legal, political, and philosophical thought that has represented the mainstream of European and American thinking from the time of Francisco de Victoria in the early 1500's right through August, 1988.

Finally, I will add this personal note. I give quite a number of public lectures on issues that I care deeply about -- Native rights, federal public lands, water, wilderness, development in the American West, and what



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I call an "ethic of place", the general idea that our society needs to do a much better job of protecting distinctive places and cultures.

Each year, I find that one talk emerges as my own favorite talk of the whole year, the one that is most important to me personally. This year this talk is for me my favorite public occasion. The reasons for that follow from what I have already said: your ideals, your respect for the land, your personal grace and warmth, and your cause embody the things that I believe to be the highest and best calling of society.

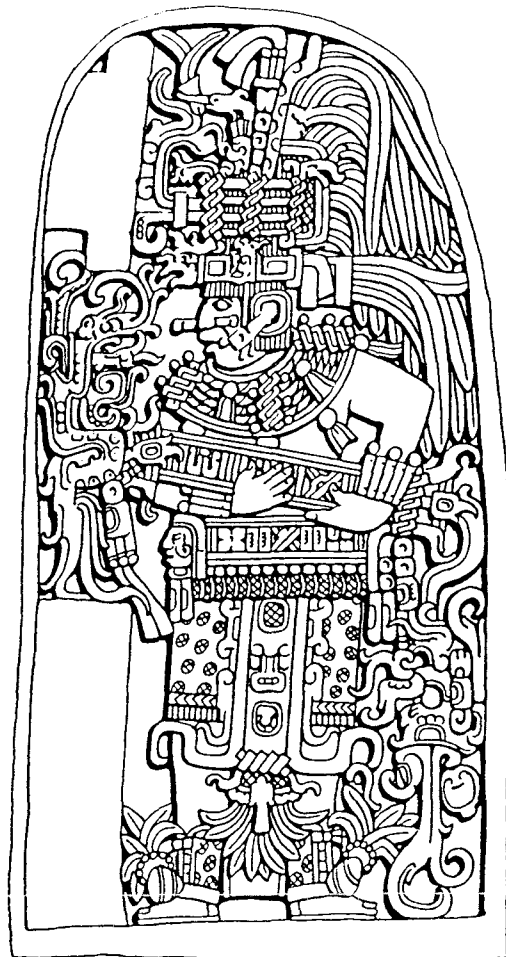
As a result, I very much hope that my following remarks will be of some use to you.

Since the end of the Second World War, and especially during the last generation, Native peoples the world over have engaged in one of the most stirring and profound movements in all of global public policy. It is a movement born of many things but fundamentally it is charged by a deeply-held insistence to preserve their identities as discrete peoples; to preserve the distinctive qualities of the geographic places from which they arose; and to maintain, to some significant degree, control over their political, economic, and cultural destinies.

This movement is carried aloft by those objectives, those dreams. The movement is also in significant part defensive. It seeks to defend against economic oppression -- against the dark, exploitive side of capitalism that grinds under lands and resources and peoples. The worldwide Native movement also seeks to defend against racism, the malignancy that such a great part of the majority society denies but that every person of color, every Native person, must take to bed each evening and awake to each new morning. And the movement seeks to defend against religious oppression that has mindlessly sought to stamp out Native religions holding beautiful, lilting ideas that sustain their proponents and inspire all spiritual people who take the time to listen.

The worldwide Native movement has those goals and seeks to barricade against those things. But, underlying it all is an ever deeper thing. It is a belief that this nation and this world are becoming too homogeneous, too gray; that the pressures for sameness are overbearing; and that those forces are destructive of some of the finest qualities of civilization. For to be human is to be creative and to be creative is to search out differentness and distinctiveness, to make this brief human existence a kaleidoscope of individuality and mystery and color.

The forces that would make us a nation of just one culture would deny these things. Native cultures would celebrate those things by standing for vibrant gods that answer only their prayers; for bright ceremonies that exist only in their places; for traditions, rules, and laws that they themselves have set; for a tie with nature -- with her waters, mountains, magma, forests, and



animals -- that is respectful, that is built of awe, not arrogance; and for a slow and easy and humane and caring -- again, a respectful -- way of dealing with other humans.

Those things are not phony or romantic or just talk. They are real things, they are great ideas that must remain in the theater of the intellect -- ideas as great and distinguished as the scientific method or the free market or democracy itself. And, remember, the ideas behind the modern Native movement ultimately call out to our genus and species to realize the greatest capabilities of humanity -- the capabilities that only human beings possess -- the ability to learn from the far back, to plan wisely for the far ahead, and to invent, to create. The Native movement stands for the very highest: it asks that we fulfill ourselves.

I have spoken of the Native movement as though it were monolithic, as though it were one integrated thing, but of course it is not. The traditions and frustrations and dreams can be painted on the same broad canvas but, by definition -- because Natives stand for individuality and creativity -- each Native people may be related to one worldwide struggle but each Native people is also separate. While there is unquestionably a global movement and unquestionably a national movement, and while each Native people can gain sustenance from those broad movements, there are also countless individual movements of Native peoples. Thus one must give careful attention to the circumstances of each Native people, whether in the hundreds of tropical islands in the South Pacific that were the home of your ancestors; the Maori communities of New Zealand; the vast, high desert of the aborigines of interior Australia; the pockets of indigenous self-determination in China and Russia; the brutal case of Nicaragua; the far frozen-over back country of Canada; the deep woodland and river country of the Menominee in Wisconsin; or the tundra of bush Alaska.

Each has its own individual story and dreams and set of circumstances. So, too, of course, is there a special story here in the magic place -- the magic set of places -- that has brought us here, the rain forests of Kauai; the bombed-out



but still sacred hills of Kahoolawe; the spiritual places of Pele; and many others. It is these places that bring us here. They are, to be sure, set in a national and even global context, a context that we cannot ignore because it can give us fuel. But it is the places of your Hawaii that bring us here.

The topic of my talk, and of a good part of this conference, is Native sovereignty. I would like to take a few minutes to discuss the notion of sovereignty as it developed in Europe; American Indian tribal sovereignty as it has played out in modern times on the Mainland; and the applicability of the idea of sovereignty to Hawaii.

Many of you have a good sense of the classic debate over sovereignty and how hopelessly metaphysical those debates were. The phrase "how many angels can dance on the head of a pin" must have been invented to describe the convoluted body of literature involving sovereignty. Beginning with the 16th-century Frenchman Jean Bodin, philosophers and theologians went through great intellectual contortions to identify the specific place where ultimate, complete authority resided. Some said God. Others said the King. Still others said -- and this was getting risqué for the time -- the ultimate power resided in the people. But the touchstone for the classical notion of sovereignty was that The Sovereign -- whoever

or whatever that was -- had to possess absolute power. Thus a person regularly hears today, when the subject of Native sovereignty is raised, the rejoinder that no Native government is a sovereign because it does not have absolute power.

But the fact is that we regularly use the word sovereignty today and we use it in a way markedly different from the classical definition. Of course Native governments do not possess absolute power. Neither does the City of Honolulu or the City of New York, the State of Hawaii or the State of New York, the nation of Luxembourg or the Republic of Mexico, or, for that matter, the United States of America or the Union of Soviet Socialist Republics. None of them possesses complete power -- world politics and internal national politics are far too complicated for that -- yet we refer to all of them as sovereigns. In doing so, we have moved beyond the angels-on-the-head-of-a-pin notion absolutist sovereignty recognized by long-ago European academics and implicitly recognize what Thomas Jefferson recognized when he said that sovereignty in its absolutist sense was "an idea belonging to the other side of the Atlantic." Today, we intuitively understand that sovereignty simply refers to an entity that possesses governmental powers. The working dictionary definition of sovereign is "an independent government."

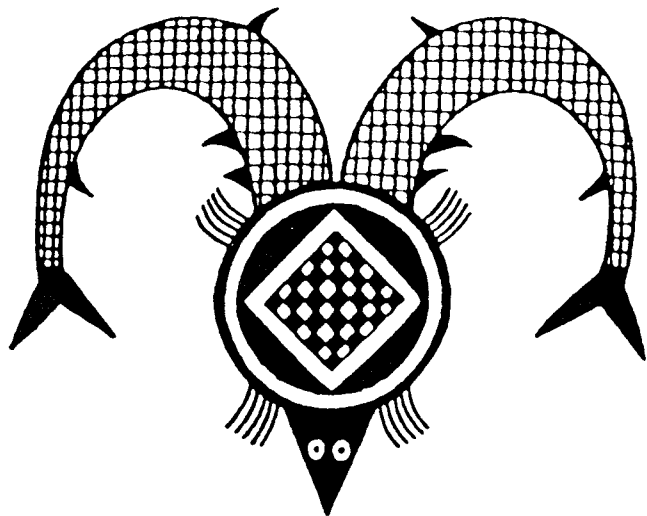


A sovereign is a national, state, city, county, or Native government that can make laws and enforce them. Some sovereigns -- such as Russia -- have enormous power. They have nearly all of the possible aspects of sovereignty. Other sovereigns -- such as the City of Lahaina or a rural county in Iowa -- possess relatively few of the total sticks in the bundle that a sovereign could possess. Others -- one might give as examples the City of Honolulu or the Navajo Nation -- are somewhere in between. But all of them share important things in common. They are not merely corporations or some kind of voluntary organization, such as a social club. They can make laws and enforce them.

Sovereignty, therefore, is easy to define in the real world. When one parses sovereignty out in this manner, there is nothing mystical or extraordinary about it. At the same time, however, sovereignty does have an elevated and dignified, almost mystical, quality about it. The reason is that sovereignty means power and when a people bands together to exercise its sovereignty that people is empowered. And the fact is that political power is precisely the thing that majority societies have always been least willing to accord to minorities. The political questions asked by minorities and the majority's answers have always been much the same. Market participation? Sure. Welfare and education benefits? All right. Freedom of speech and freedom of the press? OK. The right to vote in your elections and proportional representation in your governments? Well, let's think about that -- no, we can arrange that, after a while. Our own independent sovereignty with legislatures, courts, and authority over members of your majority society who come within our territory? At this point, there is no one left to answer because everyone has headed for the door.

This is why the accomplishments of American Indians on the Mainland during the last quarter of a century have been so remarkable. Yes, they have established some important rights to federal benefits for education, health, and economic development. Yes, they have won back a considerable amount

of land. Yes, they have established important rights to natural resources, even to natural resources so important as Pacific salmon in the Northwest and water in the Southwest.

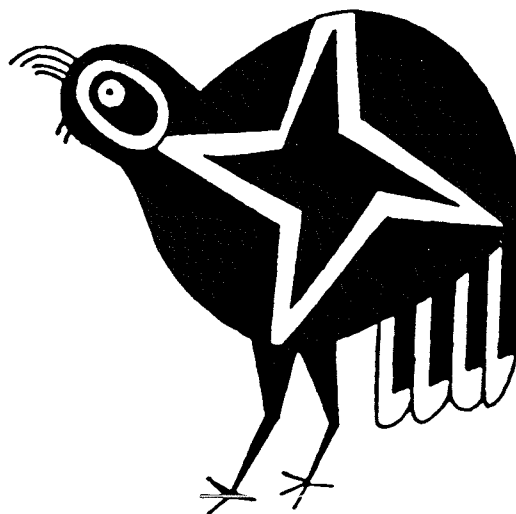


Far and away the greatest achievement, however, has been the attainment of political power. The overriding point of constitutional law and political science made by the United States Supreme Court in modern times is that there are three -- not two, as we all were taught from grade school on -- there are three sovereigns in our federal constitution system: the federal government, the states, and Native governments. American Indian tribes not only own their reservations, they rule them. Tribal laws govern land use, hunting, fishing, religious exercise, environmental protection, economic development, marriage, divorce, and adoption and custody of children. Indian tribes can tax in order to raise revenue. They have administrative agencies to regulate natural resource use, zoning, and numerous other activities. They have police and courts to enforce the laws. All of this has to do with political power and cultural values, for a people's highest values are lodged in their laws. In Indian country, the dominant laws are tribal laws, not state laws, and they are enforced by tribal officials, not by state officials.

In no sense do I mean to overstate this. There are seemingly intractable problems in

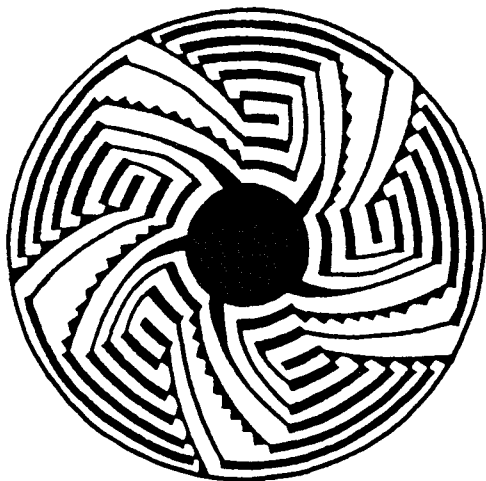
Indian country. Income is low and unemployment is high -- not uncommonly reaching 40 or 50 percent. Alcoholism and a great many other diseases take dead aim on Indian people. And there are plenty of reminders that Indian sovereignty is not complete, that Indian tribes are "domestic dependent nations." The Bureau of Indian Affairs continues to see its authority diminish each year, but the BIA presence in Indian country is still far greater than it ought to be; there are still some reservations in which the decisions of the Bureau mean more than the rulings of the tribal council. There are tribes still operating today under constitutions, foisted upon them by the BIA during the 1930's, that are antagonistic to traditional forms of governing. There are a number of federal statutes restricting the use of tribal land, resources, and funds that date from the era when Indian people were considered incompetent and the BIA was considered their guardian. Those archaic laws ought to be repealed or modified, but they have not been.

There are some significant limits on tribal powers. The Supreme Court has held that Indian tribes lack the authority to exercise criminal jurisdiction over non-Indians, although tribes do possess broad civil jurisdiction over



non-Indians in matters such as hunting and fishing regulations, taxation, zoning, and many other areas. Congress continues to have extensive power within Indian country -- not literally "plenary," which means absolute, but federal power is broad indeed. Further, even the states continue to reach their tentacles onto reservations in regard to some issues.

But, even considering these limitations, the rise of Native sovereignty on the Mainland has been a real thing and a powerful thing. State power in Indian country is minimal. Indian lobbyists in Washington, D.C., are able and numerous, and have been able to fend off the confiscatory proposals that continue to be made. Most basically, Indian tribes have been



able to turn the historical use of federal power directly around: whereas in the past Congress had used its broad powers to strip Indian tribes of their rights, in modern times the broad federal power has been used by Indian people to pass progressive legislation codifying Indian-drafted initiatives to promote Indian health, education, resources, economic development, and self-government.

Sovereignty, as exercised by Indians on the Mainland, has almost certainly been a highly productive thing for them. Still, American Indians ask questions and Native Hawaiians would ask them even louder and more pointedly. Most basically, "sovereignty" is a word that comes from Europe, not from America, and certainly not from Native

cultures. It bears heavy connotations of a European-style monarchy, even of a European-style God. How can it fit with Native cultures, law ways, and religions? I have asked these questions and I am sure that many of you have.

Let me briefly pass along to you the answers that have been most satisfying to me. They were given to me by two of the people whom I respect most.

Delbert Frank has long been a tribal council member of the Warm Springs Tribe in central Oregon. They are fishing people and -- just as much of your lives revolve around the ocean -- their life has always revolved around the great runs of salmon and steelhead on the Columbia River and its tributaries such as the Deschutes, which forms the northeastern border of the Warm Springs reservation. Last month Delbert and I spent a long day together talking about his people and about sovereignty. In the final analysis, as Delbert explained it to me, this new word sovereignty is the modern embodiment of a concept that his people have believed in for millennia. Tommy Thompson, the tribal leader who had ultimate responsibility for the regulation of fishing at the traditional tribal stations on the Columbia River, instructed Delbert on the old tribal ways. The most basic concept was embodied in the Sahaptin phrase, "*tee-cha-meeng-mee sin-wit na-mee ah-wa-ta-man-wit.*" Delbert explained to me that this is a very complex set of thoughts, but that it basically means "at the time of creation the Creator placed us in this land and He gave us the voice of this land and that is our law." As Tommy Thompson explained it to Delbert, and as Delbert explained it to me, this is the phrase that explains how the law rose up from the land and how all of the people of the land must obey the laws of the Creator. And from that complex set of thoughts has come a great many tribal rules and strictures and obligations that constitute the basic set of mores of the Warm Springs people. The word may be different, but that is Native sovereignty, real Native sovereignty.

David Warren is a member of the Santa Clara Pueblo, located northwest of Santa Fe along the Rio Grande River. His people, like

Native people everywhere, are very place-oriented and they have obligations to that place. Thus a traditional Santa Claran would say that he or she was a person from "*Ka-po o-wen-geh*," which means "the place near the willows where the hearth of the community is," probably meaning near the Rio Grande. Tewa, the Native language of the Santa Clarans, also has a word that embraces the idea of sovereignty within it. "*Po-wa-ha*" literally means "the breath" but, as David explains it to me, it is so symbolic, so metaphorical, so powerful, that it is both a song and a prayer to the Santa Clarans and its more expanded meaning is "in and over the hills and through the breath your authority returns and comes to you again."

Thus, in traditional Santa Clara dances, the lead dancers will scoop up the air in front of them with both hands and bring it into their faces. By doing that, they are gathering in the breath of authority and power -- not to dominate the earth, but rather to live in harmony with it and to replenish and refurbish the earth. Religious leaders who receive *po-wa-ha* are custodians of the authority and possess what is essentially a theocratic authority. *Po-wa-ha* carries with it a set of ideas and required acts and any civil government must be complementary with those acts and ideas.

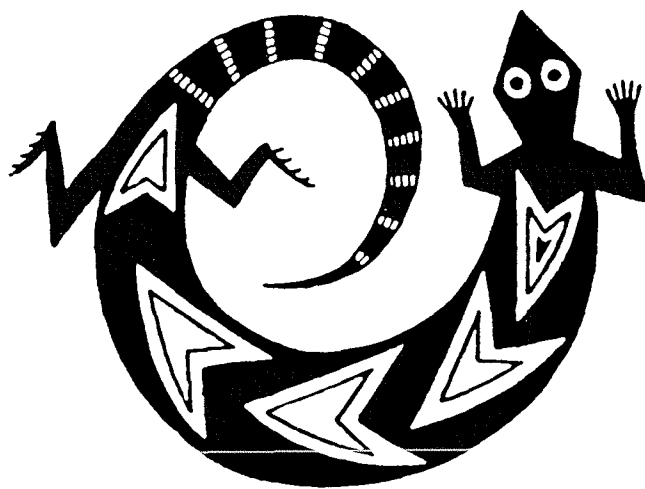
David Warren is a careful, sophisticated person and he roots out the differences between European and traditional Native thinking. He believes that the structure of aboriginal living is so tied to clan and family relationships and to real will power that a European phrase such as "sovereignty" or even "government" doesn't really fit. But, on balance, he believes that *po-wa-ha* does explain the ultimate authority of his people and that, whatever terminology is used, it embodies some notion of Santa Claran self-determination.

Thus sovereignty, as conceived of by Europeans and as adapted by federal and state governments, is not exactly the same thing as the rich, full, set of cultural and religious ideas and mores explained to me by Delbert Frank and David Warren. Among other things, the law ways of Native people mix religion and

secular obligations in a way that European governments are simply not accustomed to doing. In addition, Native decision making is accomplished by means other than one-person, one-vote. Some decisions are made by less than a majority -- by a leader or leaders, usually religious people -- while other decisions are made by more than a majority -- by a full consensus.

But an interesting thing has happened to sovereignty. Native people have breathed new life into it, just as Thomas Jefferson and other Americans breathed new life into the European concept of sovereignty. Native governments have taken the old European concept and infused it with their close-to-the-ground vision -- with the breath, as David Warren or another Santa Claran might put it -- and have rejuvenated sovereignty and taken it to new levels.

Sovereignty, as practiced by many Indian tribes, has proved to be exceedingly flexible. Importantly, Native governments are not bound by the establishment of religion clause of the Constitution: some Native governments are theocracies -- the only operating theocracies within the borders of the United States of America. Further, Native governments need not have a republican form of government and thus are not bound by one-person, one-vote: they can make decisions through religious or



hereditary leaders, or by consensus. Understood in this manner, sovereignty is a rough but useful concept that can encompass the full range of Native law ways and mores because Native people have so enriched the idea of sovereignty during the last quarter of a century.

The idea of sovereignty, therefore, has imposed no shackles on Native people because they have rejuvenated the old doctrine. They have made it broader and better. They have infused and reconstructed sovereignty with their own traditions and creativity, but they have employed the word as a useful means of communicating the high status of Native governments to other governments. Indian tribes, therefore, have altered traditional notions of sovereignty to encompass their own traditions but, at the same time, have used the phrase sovereignty as a shorthand way to explain that they belong within the community of governments. And that recognition has brought with it the political power that majority societies have always accorded to Native people so begrudgingly.



Let us ask, then, how all of this applies to Hawaiian Natives.

First, there is no principled argument that Hawaiian Natives cannot assume sovereign powers within the federal constitutional system. Hawaiian Natives are culturally distinct from Indians on the Mainland, but the constitutional authority of Congress to deal with aboriginal peoples does not extend to Indians: it extends to Natives. Thus, for example, Congress has recognized Aleuts and Eskimos even though they are not ethnologically Indians. The legal requirement for congressional recognition, and for Native sovereign status, is simply that (1) the group have some ancestors who lived in what is now the United States before discovery by Europeans and (2) the group be a "people distinct from others." Hawaiian Natives meet those requirements and there can be no reasoned dispute about it.

Second, as a historical and equitable matter, there are important aspects in which Hawaiian Natives have literally the strongest claim to sovereignty of any indigenous group in the United States. As recently as 1893, Hawaiian Natives exercised sovereign authority. The sovereign authority exercised by your Kingdom, however, was not as a "domestic dependent nation," as Chief Justice John Marshall described Indian tribes on the Mainland. Rather, as you well know, the Kingdom of Hawaii was a complete international sovereign. Your Kingdom made formal treaties with numerous nations and acted as a sovereign in the full international sense. To put it another way, had there been a United Nations at the time, the Kingdom of Hawaii would have been a full participating member in it.

Like you, I would wish with all my heart that you could assume once again the full international sovereign status which you once held and to which you are, in my view, morally entitled. This would be manifested, I suppose, by membership in the U.N. Unfortunately, such a status may not be realistically achievable. You know the bare facts as well as I do. Complete international sovereign status depends ultimately not upon law or morality but upon power. The United States of America is

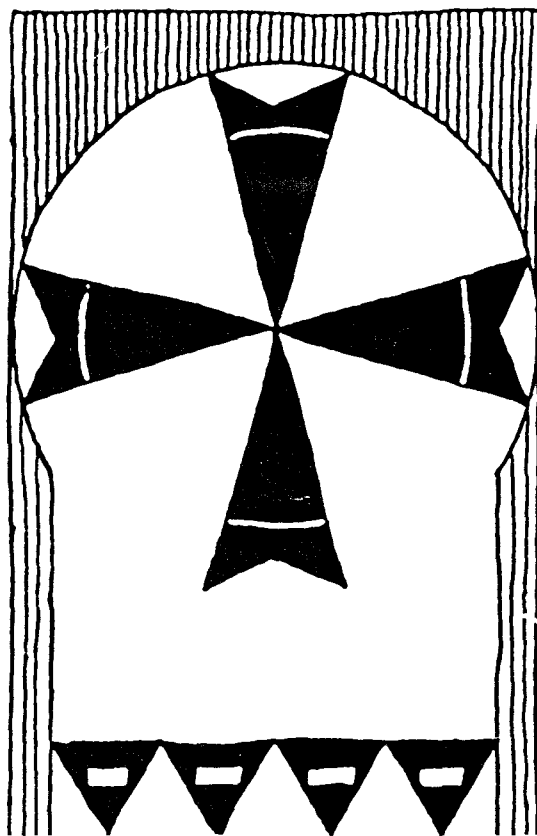
infinitely more powerful than any force that Hawaiian Natives could assemble. And the United States is simply not going to relinquish this key military outpost in the Pacific. You are not alone in this. If the state of Hawaii sought to secede, that movement too would be denied.

But, whether or not true international sovereignty is beyond your grasp, I urge you to proceed together. Do not at this point be divided by labels. International sovereignty; recognition of your sovereignty by the federal government; perhaps even recognition of your sovereignty by the state of Hawaii -- any of these mechanisms can assure you a genuinely powerful degree of sovereignty if you structure it right. You can build a substantial land base comprised of villages, beach access points, and inland regions where your laws -- not the laws of the State of Hawaii or of non-Natives -- where your laws as to wise resource use, education, culture, religion, economic development will control.

It follows from what I have already said that sovereignty in your terms would be separate from, and different than the sovereignty of any tribe on the Mainland. You have your own special law ways, traditions, and dreams. You can build a sovereignty that is truly Native Hawaiian sovereignty, unrelated to any structures that exist on the Mainland.

Let me give a few brief examples of the kind of flexibility that is available to you. First, and foremost, you can structure a sovereignty that simply has no room for the Bureau of Indian Affairs in it. Your legislation can -- and probably should -- provide that the Bureau of Indian Affairs will never set foot in Hawaii. Second, you can with your own ingenuity resolve one of your basic problems, which is: how much power should go to an island-wide nation and how much power should go to each island? As I understand your history, you traditionally had a federal system. Chiefs on each *ahupuaa* and island had basic authority but there was also an island-wide kingdom. You could replicate that kind of Native federal system by having a national legislature with specific powers as well as island legislatures which themselves would have specific powers.

There are variants within such a federal framework. If you wish, you can create a relatively powerful centralized national government, or you can delegate most power out to the islands. Or you can go still further and have no island-wide government at all. You can simply organize separate, wholly independent island governments. You can



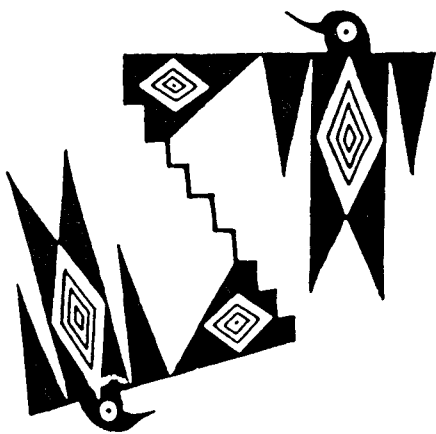
organize around one or several of the fine grass-roots organizations now in existence or you can form a new one. The choice is yours. Sovereignty is a broad concept that allows you to be creative and flexible.

And let me underscore one other point. There can be no reasoned argument that the assertion of your sovereignty would not add to your total power. Even if you want to exercise some corporate powers and to pursue some degree of economic development, your sovereign powers would supplement the corporate powers. No lawyer can properly advise you that a corporate entity has as much power as an entity that is both corporate and

sovereign. Sovereignty can empower you many times over.

Any actual, working sovereignty must be tied to a Native land base. It is easy in theory to rhapsodize about sovereign powers operating without land but in the real world such talk is an illusion.

Hand-in-hand with your movement for sovereignty must go your movement to expand dramatically the Hawaiian Native land base by activating the Hawaiian Homelands trust, by obtaining a fair share of the ceded lands trust, by reacquiring Kahoolawe, and, as events begin to move quickly on reparations, by insisting that reparations legislation must include the return of a substantial amount of Native lands. By doing that you will respond to the overriding point made by the research of Dr. Naleen Andrade and the experience of Dr. Emmett Aluli and Dr. Kekuni Blaisdell -- that the loss of Native land in Hawaii has caused a wide range of deep-seated emotional and medical



problems that must be borne by your people. That set of problems will begin to be resolved when, and only when, you achieve your rightful return of land and control over that land.

Some ask -- many of you ask -- "how can we achieve these things when we are not united?" The answer is that you are united on the key issue, that you share a common sense, however general, of what things bind you together and of what your people ought to be. You have a shared sense of a sacred mission. I understand

that you have divisions, in some cases deep divisions, on the basis of one island against another, of one personality against another, of one tactical approach against another. But those kinds of divisions are found within every sovereign. Does Chicago have divisions? Does Illinois? Does the United States of America? Of course they do, but each of those sovereigns resolves those differences -- many of which are much deeper than yours -- within a working governmental structure.

Do not allow your divisions to be an excuse for inaction. Agree that you are a people. Agree that, whatever your differences, it is infinitely more preferable for Native Hawaiians rather than the state to own land and legislate over it. Then agree that you will agree on a governmental structure and a political strategy for land restoration and sovereignty. Agree, in other words, to stay in the same room until you reach consensus. Then use the disparate ideas within your numbers as a source of strength to build an open, diverse, humane governmental structure that respects the ideas of its minority components. By agreeing that you are a sovereign nation, and by agreeing to resolve disagreements within the nation, you can build a strategy and a coalition that will achieve your sacred mission.

When you have built that coalition, which you can do within a few hard years, you will have created understanding. You will have proved the central point to the public. You will have proved that it is not just a bitter irony, although surely it is that, but that it is also irresponsible and irrational rhetoric to brand native sovereignty as radical and extreme -- native sovereignty, a set of ideas and dreams that has graced this earth since the twilight of aboriginal times; a set of ideas and dreams that has been embraced by the Nixon-Reagan Supreme Court during the 1980's; a set of ideas and dreams that flourished on these very islands just a short century ago until displaced by a coup that really was radical and extreme in the true sense.

I know that what I have said is general and I hope you appreciate that a talk like this necessarily must be general. But, by being

general about your goals and your ability to achieve them, I do not mean to be simplistic or to make it sound that your road is an easy one. It will not be. You have a great deal to learn about how to lobby in Congress, which is the body that holds the ultimate authority to assist you. Powerful interests, literally some of the most powerful interests in the world, among them multinational corporations and the Pentagon, will oppose you every step of the way. It will be an enervating, gut-wrenching process. There will be too many meetings, too many trips, too much haggling over interminable details and technicalities, and, if the truth be told, too many compromises. But you can do it if you have the will to do it. Other Native groups have done somewhat similar things, although in my view your situation is more complex and the obstacles facing you more daunting.

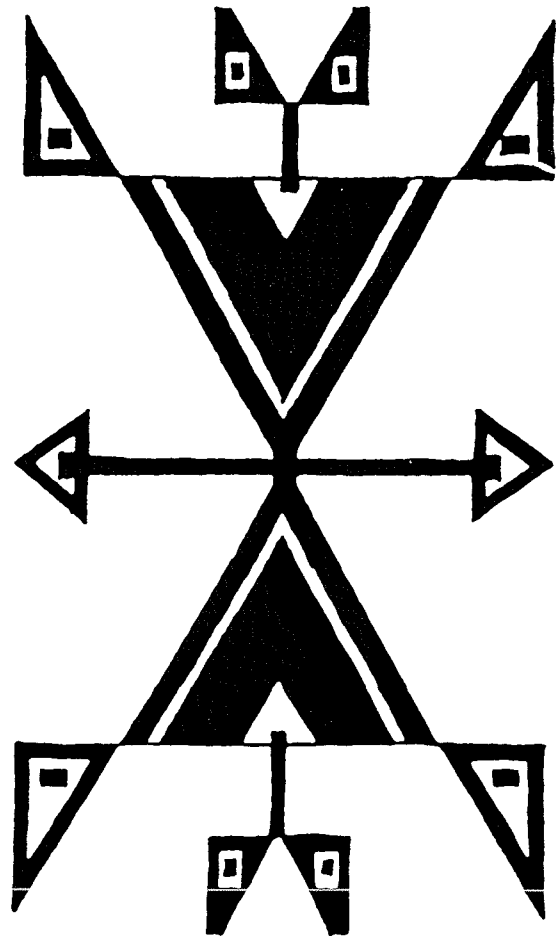
But you have advantages they did not. Yes, your governor and your senators are politicians and must respond to other constituent groups, but can you realistically imagine a time when you would have three better people in their key positions at once? You have other advantages that will count for far more. You have numbers -- you have the highest percentage of Native people in any state as well as the largest indigenous population, in absolute numbers, of any state. You have, as an equitable cause, raw wrongs that cry out to be corrected. You have the pressure of time to rally around: things are moving very, very fast on these islands, things have really winched up here. And most of all -- by far, most of all -- you have yourselves, a vibrant, warm, traditional culture. You have your *mana*. You are a people.

I believe there are times in history when peoples are called. Your people from the South Seas a millennium ago. The Navajos across the land bridge. The French during the gushing up of the Renaissance. America in 1776. Israel in 1948. The Menominee in 1969.

You must decide whether this is your time, although I will tell you that I think it is. If you believe that this is your time, seize the time. Seize it not for yourselves but for all of those who stand under your arching rainbow of time.

You stand at midpoint under the rainbow and you must look out in both directions. At one end of the rainbow are those long-gone, those who first came here, all of your kapuna, people who have given you hundreds of generations of wisdom but who now look to you for wisdom. At the other far end of the rainbow of time are many hundreds of thousands and more who have yet to be born, who look up to you with their round, brown, inquiring eyes and implore you to fulfill their possibilities and their dreams. Look into the eyes of all the people at both ends of the rainbow of time and decide whether, at this pivotal time in your history, you will set aside your differences and take the necessary actions to realize your destiny and theirs by restoring your sacred lands; by reinstating your sacred sovereignty; and by fulfilling your sacred dreams.

Mahalo.



CASE UPDATES

Federal Appeals Court Upholds Jurisdiction of Tribal Court

On September 20, 1988, in *Twin City Construction Co. v. Turtle Mountain Band of Chippewa Indians*, the United States Court of Appeals for the Eighth Circuit issued an opinion upholding a decision of the Turtle Mountain Chippewa Court of Appeals that the Tribal Courts have jurisdiction over a suit by a tribal member against a non-Indian doing business on the Turtle Mountain Reservation.

The non-Indian, Twin City Construction Company of Fargo, North Dakota, had contracted with the Bureau of Indian Affairs to build a school on the Turtle Mountain Reservation. Under a subcontract, Twin City hired a tribal member, Ernest V. Parisien, to do the sewer work. When a dispute over the subcontract arose, Parisien sued Twin City in Tribal Court. While the Tribal Court dismissed for lack of jurisdiction, the Tribal Court of Appeals reversed. Twin City then sought, and obtained, an injunction in federal district court against further proceedings in the Turtle Mountain Tribal Courts.

In its September 20 opinion, the Eighth Circuit Court of Appeals reversed the lower federal court's decision and held for the Tribe, ruling on three issues. First, it held that the federal district court had jurisdiction to hear Twin City's challenge to the Tribal Court of Appeals decision. This was because Twin City alleged that federal law had limited the jurisdiction of the Tribal Court.

Second, the Eighth Circuit held that federal law has not limited the jurisdiction of the Tribal Court over the action against Twin City. This confirmed what the United States Supreme Court held last year in *Iowa Mutual Insurance Co. v. LaPlante*, that tribal courts "presumptively" have jurisdiction over reservation-based civil actions involving non-Indians, "unless affirmatively limited by a specific treaty provision or federal statute." The Eighth Circuit did not find any specific federal law limitations on tribal court jurisdiction.

Third, the Eighth Circuit held that the federal district court had jurisdiction to construe the Tribal Court's jurisdictional statute, but that the district court "was bound, in exercising such jurisdiction, to accept and apply the law on the matter was declared by the highest tribal court." Therefore, the Turtle Mountain Court of Appeals decision that the Tribal Courts had jurisdiction over the action against Twin City under the Tribal Code, was binding on the federal courts.

Tax By Village Tribal Government in Alaska Delayed

The Ninth Circuit Court of Appeals upheld an earlier ruling that prohibits the Native Village of Venetie from enforcing a business activity

Case Updates Continued

tax on its lands. The Ninth Circuit found that the ruling was appropriate pending resolution of the Village's status as a tribal entity.

The Village levied a tax on the contractor when it commenced construction on an addition at the local public high school. The contractor refused to pay the tax and the State of Alaska came in to represent the contractor. The Village then filed a complaint in the Venetie Tax Court. Rather than answer the complaint, the State and the contractor sued for declaratory and injunctive relief in federal district court claiming that the Village was not an Indian tribe and that it did not exist on a reservation and did not have the authority to impose a tax on non-members. The Village argued that it was immune from suit and the State and contractor had failed to exhaust tribal remedies. The district court imposed an injunction prohibiting enforcement of the tax.

In *The State of Alaska v. Native Village of Venetie*, the appeals court sent the case back to the district level to make a determination of the village's status. NARF represents the Village in the case.

Voting Rights Case Settled

In *Buckanaga v. Sisseton School District, South Dakota*, a settlement was reached providing for implementation of a cumulative voting scheme that would give Indians a better opportunity to elect candidates of their choice to the local school board. The case first started when NARF's clients challenged the at-large voting system that prevented minority representation on the school board.

St. Croix Lands Placed in Trust

On July 29, 1988, the Secretary of the Interior placed land in trust for the St. Croix Band of Chippewa Indians of Wisconsin for the purpose of conducting a tribal bingo enterprise. The action occurred after NARF successfully challenged the Secretary of the Interior's refusal to place certain off-reservation lands in federal trust status for the Tribe. The Tribe claimed the refusal was unlawful because the United States relied on an illegal rule adopted in violation of the Administrative Procedure Act. A federal court ordered the Department of Interior to review the Tribe's trust land petition under its previous policy and without any recourse to the illegal rule. After the land was placed in trust status, the Department of the Interior declared the subject land a reservation pursuant to the Indian Reorganization Act of 1934.

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A Manual for Protecting Indian Natural Resources. Designed for lawyers who represent Indian tribes or tribal members in natural resource protection matters, the focus of this manual is on the protection of fish, game, water, timber, minerals, grazing lands, and archaeological and religious sites. Part I discusses the application of federal and common law to protect Indian natural resources. Part II consists of practice pointers: questions to ask when analyzing resource protection issues; strategy considerations; and the effective use of law advocates in resource protection. (151 pgs. Price \$25).

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A Self Help Manual for Indian Economic Development. This manual is designed to help Indian tribes and organizations on approaches to economic development which can ensure participation, control, ownership, and benefits to Indians. Emphasizing the difference between tribal economic development and private business development, the manual discusses the task of developing reservation economies from the Indian perspective. It focuses on some of the major issues that need to be resolved in economic development and identifies options available to tribes. The manual begins with a general economic development perspective for Indian reservations: how to identify opportunities, and how to organize the internal tribal structure to best plan and pursue economic development of the reservation. Other chapters deal with more specific issues that relate to the development of businesses undertaken by tribal government, tribal members, and by these groups with outsiders. (Approx. 300 pgs. Price \$35).

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ANNUAL REPORT. This is NARF's major report on its programs and activities. The Annual Report is distributed to foundations, major contributors, certain federal and state agencies, tribal clients, Native American organizations, and to others upon request.

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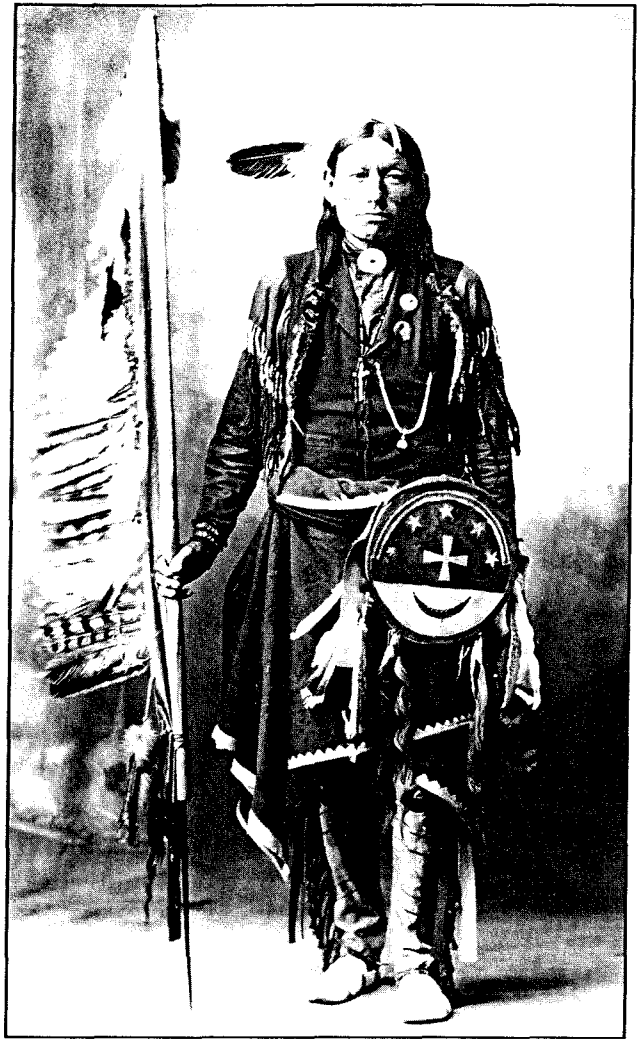
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