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## The Challenge of Indigenous Self-Determination

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## **THE CHALLENGE OF INDIGENOUS SELF-DETERMINATION†**

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Russel Lawrence Barsh\*

*Those who ought to know better nourish our crazy dreams  
of resurrection and redemption; those safely beyond the  
borders of our madness underwrite our lunacies.<sup>1</sup>*

Last year world leaders met in Rio de Janeiro to agree on the terms of a global compact on the environment.<sup>2</sup> The final document of the "Earth Summit" is potentially far-reaching and as ponderous as it is complex. It breaks new ground on a number of fronts, including the conservation of the world's forests, and the establishment of a United Nations Commission on Sustainable Development.<sup>3</sup> It also recognizes for the first time that the world's indigenous peoples "have a vital role in environmental management and development because of their knowledge and traditional practices,"<sup>4</sup> and directs every national government and United Nations agency to develop a procedure for involving indigenous peoples in all relevant decisionmaking.<sup>5</sup>

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† In Volume 25 of the *University of Michigan Journal of Law Reform*, Dean Suagee, in *Self-Determination for Indigenous Peoples at the Dawn of the Solar Age*, described the new opportunities for self-determination of indigenous peoples that are opening up under international law. See 25 U. MICH. J. L. REF. 671 (1992). In this Article, Russel Barsh presents a less optimistic view of the short-term prospects for American Indian tribes. This view is based on an assessment of social and political trends within the Indian community, as opposed to Mr. Suagee's critique of international law.

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1. SHIVA NAIPAUL, *BLACK AND WHITE* 16-17 (1980).
2. See 1 *Report of the United Nations Conference on Environment and Development*, U.N. Doc. A/Conf. 151/26/Rev. 1 (1992).
3. See *id.* ch. 38, at 459-460.
4. *Id.* "Rio Declaration," Principle 22, at 7.
5. *Id.* ch. 26, at 385-88.

The Earth Summit at Rio was the first global negotiation in which indigenous peoples participated directly. They did so with the aim of advocating land rights and greater self-determination in the fields of natural-resource management and development.<sup>6</sup> They justified these claims by arguing that indigenous peoples are superior stewards of the land and that strengthening indigenous peoples' traditional economies would contribute to solving global ecological and economic problems.<sup>7</sup> This approach succeeded all too well. Jaded diplomats and environmental ministers seized on the hopeful possibility that indigenous economics actually might work better than discredited socialism and overextended capitalism, and they invited indigenous peoples to accept a leadership role, nationally and globally. A few weeks after Rio, Latin American presidents announced the establishment of a regional development fund to be managed jointly by indigenous peoples and governments.<sup>8</sup>

Can indigenous peoples deliver on their commitments at Rio? What role, in particular, can be played by American Indian tribes, who were conspicuously underrepresented in the preparatory negotiations for the Earth Summit and other

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6. See, e.g., Francois Coutu, *Les autochtones veulent leur organisme de l'ONU*, 3 CROSSCURRENTS 4 (1992); Declaration of the Indigenous People in Paris 1991 (Indigenous Network trans.) (unpublished manuscript, prepared for the Paris United Nations Conference on Environment and Development, Non-Governmental Organizations, on file with the *University of Michigan Journal of Law Reform*); Final Proposal of the Indigenous Peoples Representatives Attending PrepCom IV (Mar. 1992) (unpublished manuscript, concerning U.N. Doc. A/Conf. 151/PC/100/Add.13, on file with the *University of Michigan Journal of Law Reform*) (endorsed by 16 organizations); National Maori Congress, *Inter-generational Responsibility: Position Paper for United Nations Conference on Environment and Development (1992)* (unpublished manuscript, on file with the *University of Michigan Journal of Law Reform*); World Council of Indigenous Peoples, *Declaración de Panajachel: A los Pueblos del Mundo* (Feb. 20, 1992) (unpublished manuscript, on file with the *University of Michigan Journal of Law Reform*).

7. See Russel L. Barsh, *Indigenous Peoples, Racism and the Environment*, 49 MEANJIN 723, 725, 728 (1990); Russel L. Barsh, *Indigenous Peoples' Role in Achieving Sustainability*, 1992 GREEN GLOBE Y.B. (Fridtjof Nansen Inst.) 25, 31-33.

8. AGREEMENT ESTABLISHING THE FUND FOR THE DEVELOPMENT OF THE INDIGENOUS PEOPLES OF LATIN AMERICA AND THE CARIBBEAN, (1992) (available from the Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean, Inter-American Development Bank Office, Wash., D.C.), see also *Letter Dated 30 July 1992 from the Permanent Representative of Spain to the United Nations, Addressed to the Secretary-General*, at 13, U.N. Doc. A/47/356 (1992).

recent international meetings?<sup>9</sup> The answers to these questions are suggested by a critical assessment of what American Indian tribal governments have achieved after sixty years of "self-government" and twenty years of "self-determination."<sup>10</sup> We begin with a threshold problem: the characteristic isolationism of American Indian leadership in the twentieth century.

## I. AGAINST ISOLATIONISM

American Indians were not always isolationists. There are Mikmaq stories about the first Europeans who stumbled ashore on what today is called Nova Scotia. After their long ocean voyage and miserable diet of dried bread and peas, they were a pretty sorry sight, and American Indians took pity on them. Not only did they feed these visitors, but they began to wonder what kind of terrible country they must have come from, to be willing to cross the ocean to escape from it. Emissaries were sent to Europe to meet European princes, study the situation, and report back to their communities.<sup>11</sup>

North American Indians had visited Europe in the 1500s, even before the Jamestown and Plymouth settlements were

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9. The author participated in the negotiations in which the indigenous peoples of Canada, New Zealand, the Nordic countries, and the Circumpolar and Amazonian regions were represented by national organizations or coalitions. From the United States' territory only the Six Nations (Haudenosaunee) were actively involved in the meeting.

10. These terms refer to the Indian Reorganization Act of 1934, 25 U.S.C. §§ 461-479 (1988), and the "self-determination" policy inaugurated by President Nixon in 1970. See generally AMERICAN INDIAN POLICY IN THE TWENTIETH CENTURY (Vine Deloria, Jr. ed., 1985); ROBERT L. BEE, THE POLITICS OF AMERICAN INDIAN POLICY (1982); FELIX S. COHEN'S HANDBOOK OF FEDERAL INDIAN LAW (Rennard Strickland ed., 1982). For a recent presidential policy statement on this subject, see Statement Reaffirming the Government-to-Government Relationship Between the Federal Government and Indian Tribal Governments, Pub. Papers 662, 662 (June 14, 1991), which describes relations between the Federal Government and tribal governments as "a vibrant partnership in which over 500 tribal governments stand shoulder to shoulder with the other governmental units that form our Republic."

11. Marie Battiste, *A History of the Grand Council to 1800*, in 1 MIKMAQ STATE PAPERS (FOREIGN AFFAIRS) 1977-1984, at 1, 3-4 (Russel L. Barsh, Sakej Henderson, and Bernie Francis eds., 1984).

established.<sup>12</sup> There are no firsthand written records of their observations, but it is probably safe to assume that they were not positively impressed by the dirt, disease, overcrowding, violence, and poverty that they witnessed in Paris and London. They returned to their families in America with stories of a terrible imbalance in the world, which they feared could destroy all life.<sup>13</sup>

Their compassion for the earliest European explorers and settlers was not confined to the care of individuals whom they found stranded, starving, or lost on their shores. It was also a wider concern for balance and justice in the world. Their traditions taught them that all living things and every human family share responsibility for maintaining this fragile planet, that a plague in Lisbon was as much their concern as the sickness which was beginning to blow through their own villages. Everything in the world was connected. Hence, the struggle to restore harmony was necessarily a global one.

American Indians still believed in these principles in 1918, when nearly a third of all Indian men served in the armed forces, half of whom were volunteers.<sup>14</sup> Indians saw the European war as a contest over respect for treaties and the self-determination of nations. It was natural, then, for Levi General, or Deskaheh, the Speaker of the Six Nations, later to seek an audience with the League of Nations.<sup>15</sup> It also was natural for American Indians to be involved in the evolving international labor movement in the 1910s and 1920s, when

12. See CAROLYN T. FOREMAN, *INDIANS ABROAD 1493-1938*, at 3-21 (1943) (noting that a great many Indians reached Europe as victims of kidnappings for research or for the slave trade); cf. RICHMOND P. BOND, *QUEEN ANNE'S AMERICAN KINGS* (1974) (recounting the positive treatment of a few Indian visitors to Europe in the 1700s); DAVID H. CORKRAN, *THE CREEK FRONTIER 1540-1783*, at 85-89 (1967) (same).

13. Although Indian visitors reportedly were awed by the sheer size of European cities and the opulence of the royal courts, it was clear to the missionary Pierre Biard, writing in 1616, that they preferred "their own kind of happiness to ours." 3 *THE JESUIT RELATIONS AND ALLIED DOCUMENTS* 135 (Reuben G. Thwaites ed. & John C. Covert trans., Cleveland, Burrows Brothers Co. 1897). A Mikmaq likewise told Christien LeClercq in 1690 that "there is no Indian who does not consider himself infinitely more happy and more powerful than the French." CHRISTIEN LECLERCQ, *NEW RELATION OF GASPEZIA* 106 (William F. Ganong trans., 1910).

14. See Russel L. Barsh, *American Indians in the Great War*, 38 *ETHNOHISTORY* 276, 277 (1991).

15. LAURENCE M. HAUPTMAN, *THE IROQUOIS AND THE NEW DEAL* 16 (1981). Although Deskaheh was unsuccessful in his plea for recognition by the League, some member states defended his claim and Canada felt obliged to make a formal response. *APPEAL OF THE "SIX NATIONS" TO THE LEAGUE*, 5 *LEAGUE OF NATIONS O.J.* 829 (1924).

the movement was still committed to world socialism.<sup>16</sup> After the long darkness of colonialism and threatened extermination, Indians were reemerging, in the 1920s, as a social force and universalist voice.

### A. *From Integration to Nationalism*

Somewhere along the path to this reemergence, however, American Indian consciousness turned inwards. While Indians in the United States have the highest per capita income and education levels of indigenous peoples anywhere in the world, they have the lowest level of involvement in both the world indigenous struggle and the global campaign for the environment.<sup>17</sup> Those Indian leaders who continue to assume global responsibility, such as Haudenosaunee chief Oren Lyons and Hopi messenger Thomas Benyaca, Sr., represent relatively small, traditionalist communities which are viewed as marginal by most elected tribal councils and mainstream Indian associations. A "tribal summit" on United Nations

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16. The "Wobblies," members of the Industrial Workers of the World, supported the Mexican revolution and the Mexican Liberal Party (PLM) founded by that country's first Indian president, Benito Juarez. They went so far as to land a military force of Wobblies—including several Indians—in Baja California in 1911. JAMES A. SANDOS, *REBELLION IN THE BORDERLANDS: ANARCHISM AND THE PLAN OF SAN DIEGO, 1904–1923*, at 27 (1992). Indian rights also formed a major plank in the 1915 Plan of San Diego, prepared by pro-Revolution elements in the Southwest. *Id.* at 80–82. For the text of the plan, see OSCAR J. MARTINEZ, *FRAGMENTS OF THE MEXICAN REVOLUTION: PERSONAL ACCOUNTS FROM THE BORDER* 145–48 (1983). Yaqui Indians, who routinely obtained their guns and ammunition in Arizona, played a major role in Villa's army. LINDA B. HALL & DON M. COERVER, *REVOLUTION ON THE BORDER: THE UNITED STATES AND MEXICO, 1910–1920*, at 41–42, 143–44 (1988). On the other hand, Pershing used Apache scouts in his 1917 punitive expedition against Villa and the Yaquis. *Id.* at 36, 58.

17. Indian income figures from the 1990 census are not yet available. In 1980, Indian income levels were roughly 80% of white income levels. Unless this ratio has fallen to 50% or less, U.S. Indians today are enjoying incomes greater than the per capita GDPs of any of the non-OPEC developing countries. See UNITED NATIONS DEVELOPMENT PROGRAMME, *HUMAN DEVELOPMENT REPORT 1992*, at 160–61, 197. See generally Leonard A. Carlson & Caroline Swartz, *The Earnings of Women and Ethnic Minorities, 1959–1979*, 41 *INDUS. & LAB. REL. REV.* 530 (1988); C. Matthew Snipp & Gary D. Sandefur, *Earnings of American Indians and Alaskan Natives: The Effects of Residence and Migration*, 66 *SOC. FORCES* 994 (1988) (examining the effect on income of residence in, and migration to, metropolitan areas). This is not to belittle the relative and absolute poverty on U.S. reservations. See Judith Valente, *A Century Later, Sioux Still Struggle, and Still Are Losing*, *WALL ST. J.*, Mar. 25, 1991, at A1.

strategy, convened in Denver last June at the suggestion of several Canadian aboriginal organizations, only attracted representatives of four United States tribal governments.<sup>18</sup>

This is not merely a question of isolation from the struggles and peoples of other continents, but from the peoples of this continent as well. When Europeans arrived, North American Indian tribes were in a process of integration, and great tribal confederacies continued to bridge the Canadian border as late as the 1800s. The Great Council Fire combined the Iroquois, Wabanaki, Anishinawbe, and Wyandot leagues,<sup>19</sup> while the Blackfoot Confederacy and Great Sioux Nation spanned the border in the west.<sup>20</sup> It took a number of punitive expeditions, ending only in 1918, to divide the Indians of the Southwest from their kinsfolk in Mexico.<sup>21</sup> Today, the Mexican and Canadian borders are cultural and political barriers. Moreover, there is no longer an effective *national* coalition of American Indians.<sup>22</sup>

Isolationism is a peculiarly American problem. In Latin America, Indians are forming national political parties and building regional coalitions spanning the Andes. Although frictions occur, these represent ideological and leadership

18. The meeting was organized by the Council of Energy Resource Tribes (CERT), the only major United States tribal organization with Canadian members. See UNITED NATIONS, ECONOMIC AND SOCIAL COUNSEL, SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES, STANDARD SETTING ACTIVITIES: EVOLUTION OF STANDARDS CONCERNING THE RIGHTS OF INDIGENOUS POPULATIONS, REPORT OF THE TRIBAL SUMMIT ON THE DRAFT DECLARATION OF THE RIGHTS OF INDIGENOUS PEOPLES, DENVER, JUNE 1992, U.N. Doc. E/CN.4/Sub.2/AC.4/1992/3/Add.1 (1992). One of Canada's aboriginal leaders, George Manuel, was organizing the World Council of indigenous peoples at the same time that Vine Deloria, one of the best-known U.S. Indian writers and activists, was arguing unsuccessfully for an Indian political appeal to other nations. See VINE DELORIA, JR., BEHIND THE TRAIL OF BROKEN TREATIES: AN INDIAN DECLARATION OF INDEPENDENCE (1974); GEORGE MANUEL & MICHAEL POSLUNS, THE FOURTH WORLD: AN INDIAN REALITY (1974).

19. See THE HISTORY AND CULTURE OF IROQUOIS DIPLOMACY (Francis Jennings et al. eds., 1985) (detailing the pre-19th-century structure and function of the confederacy); FRANCIS JENNINGS, THE AMBIGUOUS IROQUOIS EMPIRE (1984) (same).

20. See JOHN C. EWERS, THE BLACKFEET: RAIDERS ON THE NORTHWESTERN PLAINS (1958); HANA SAMEK, THE BLACKFOOT CONFEDERACY 1880-1920: A COMPARATIVE STUDY OF CANADIAN AND U.S. INDIAN POLICY (1987); C. FRANK TURNER, ACROSS THE MEDICINE LINE (1973).

21. See generally HALL & COERVER, *supra* note 16, at 42.

22. Canada's Assembly of First Nations is recognized by the press and government as a national political force, comparable to a major opposition political party. Statements by the National Chief of the Assembly routinely receive national press coverage. By comparison, the National Congress of American Indians (NCAI) is almost invisible. Most of the tribes divided by the border have evolved separate tribal governments and programs, even if linguistic and social links remain.

disputes, rather than a lack of commitment to regional solidarity. At least one of these emerging organizations, composed of Indian parliamentarians, includes Canadians but not Americans. Global summits of indigenous leaders have recently been convened in Mexico City, Lima, Quito, and Rio de Janeiro. In the Pacific, likewise, there has been a growing regional mobilization that involves both indigenous peoples and small island States. The Sami people of Norway, Sweden, Finland, and Russia have established a single representative organization, the Nordic Sami Council. Alaskan Eskimos, together with their counterparts in Greenland, Russia, and Canada, are part of the Inuit Circumpolar Conference but this only highlights the relative isolation of indigenous Americans south of Fairbanks.

A critical case in point is Guatemala, where a succession of regimes backed by the United States have conducted a vicious war of extermination against a Mayan Indian majority for nearly thirty years.<sup>23</sup> Guatemalan Indians have flocked to the United States as refugees, but have received no official support or recognition from American Indian tribal governments. How can American Indian tribal leaders pretend to have achieved any measure of "sovereignty," when plainly they are either powerless or unwilling to respond to the murder of so many Indians, just a few hundred miles south of the Rio Grande? Indeed, if tribes have a "government-to-government relationship" with Washington, as they routinely boast, do they not share blame for United States-financed genocide in Central America? American Indian tribal leaders have taken a direct stand in support of their Latin Indian cousins only once, and that was to condemn the Sandinista government's policies in Nicaragua—a convenient convergence with United States foreign policy which joined the National Tribal Chairmen's Association and the American Indian Movement together for the first and last time.<sup>24</sup>

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23. See SUSANNE JONAS, *THE BATTLE FOR GUATEMALA: REBELS, DEATH SQUADS, AND U.S. POWER* (1991); see also Pierre L. van den Berghe, *The Ixil Triangle: Vietnam in Guatemala*, in *STATE VIOLENCE AND ETHNICITY* 253, 253–54, 277–78 (Pierre L. van den Berghe ed., 1990).

24. This is not to defend the Sandinistas; their original plans for the Indians of the Atlantic Coast were heavy-handed and paternalistic, and perhaps a little naive. It is only to suggest that American Indian tribes are incapable of defining an independent, indigenous foreign policy.



This political isolationism underscores the extreme vulnerability of American tribal institutions to federal government retaliation. Most tribes continue to be heavily dependent on discretionary federal aid.<sup>25</sup> Paradoxically, this dependence increased in the 1980s as federal Indian spending dwindled because tribes meanwhile had built a costly administrative infrastructure that they needed to maintain. As a consequence of this growing fiscal squeeze, tribal leaders grew increasingly competitive in their demands for federal aid, and in desperation agreed to more conditions.<sup>26</sup> Such intensified pork-slicing obviates any measure of national Indian unity on basic policy issues, domestic or foreign. At the same time federal officials, who never had hesitated to interfere in tribal decisions,<sup>27</sup> found themselves possessed of even greater leverage. It is no wonder, then, that tribal leaders hesitate to embarrass the United States abroad, while damning it privately at home.

I recently saw a staff memorandum prepared for the elected chairman of one of the largest tribes in the United States, urging participation in a United Nations program to help North and South American Indian communities work together on environmental protection. He returned it marked, "We have our own problems—NO!" His tribe is widely perceived as strongly traditional and enjoys a multimillion-dollar annual operating budget. What does this say about the roots of American Indian isolationism?

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25. See Russel L. Barsh & Katherine Diaz-Knauf, *The Structure of Federal Aid for Indian Programs in the Decade of Prosperity, 1970–1980*, 8 AM. INDIAN Q. 1 (1984); George P. Castille, *Federal Indian Policy and the Sustained Enclave: An Anthropological Perspective*, 33 HUM. ORGANIZATION 219 (1974).

26. See Russel L. Barsh, *Indian Policy at the Beginning of the 1990s: The Trivialization of Struggle*, in AMERICAN INDIAN POLICY: SELF-GOVERNANCE AND ECONOMIC DEVELOPMENT (Fremont J. Lyden & Lyman H. Legters eds., forthcoming); see also C. Patrick Morris, *Termination by Accountants: The Reagan Indian Policy*, in NATIVE AMERICANS AND PUBLIC POLICY 63 (Fremont J. Lyden & Lyman H. Legters eds., 1992).

27. See, e.g., *Occupation of Wounded Knee: Hearings Before the Subcomm. of Indian Affairs of the Senate Comm. of Interior and Insular Affairs*, 93d Cong., 1st Sess. (1973) [hereinafter *Occupation of Wounded Knee*]; JAMES J. LOPACH ET AL., *TRIBAL GOVERNMENT TODAY: POLITICS ON MONTANA INDIAN RESERVATIONS* 44, 50, 90, 126–29, 183 (1990); Felix S. Cohen, *The Erosion of Indian Rights, 1950–1953: A Case Study in Bureaucracy*, 62 YALE L.J. 348 (1953).

*B. Cultural Abuse and Self-Rejection*

If there is a fundamental cause of American Indian isolationism, it is 500 years of abuse. Colonialism and oppression operate at a personal, psychological, and cultural level, as well as in the realms of political and economic structures. The children of dysfunctional, abusive parents grow up in a capricious world of arbitrary punishment, humiliation, and powerlessness. They suffer from insecurity, low self-esteem, and a loss of trust in others.<sup>28</sup> Colonialism is the abuse of an entire civilization for generations. It creates a culture of mistrust, defensiveness, and "self-rejection."<sup>29</sup> The effect is greatest on women, who already are suffering from patriarchal domination in some cultures, and in others, are subjected to patriarchal domination for the first time by the colonizers.<sup>30</sup> This can produce a politics of resignation, reactiveness, and continuing dependence on outsiders for leadership.<sup>31</sup>

Arguably the worst abuse of indigenous peoples worldwide has taken place in the United States, which not only pursued an aggressive and intrusive policy of cultural assimilation for more than a century, but also has preserved a particularly self-confident cultural arrogance to this day, denying Indians

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28. See generally RACHEL CALAM & CRISTINA FRANCHI, *CHILD ABUSE AND ITS CONSEQUENCES* 6-8 (1987); ALICE MILLER, *BANISHED KNOWLEDGE: FACING CHILDHOOD INJURIES* (1990).

29. See ALBERT MEMMI, *DOMINATED MAN: NOTES TOWARDS A PORTRAIT* 16-20, 107 (1968). In his famous study of the psychiatric casualties of French colonialism in Algeria, Frantz Fanon observed: "Because it is a systematic negation of the other person and a furious determination to deny the other person all attributes of humanity, colonialism forces the people it dominates to ask themselves the question constantly: 'In reality, who am I?'" FRANTZ FANON, *THE WRETCHED OF THE EARTH* 203 (Constance Farrington trans., 1966).

30. See TRINH T. MINH-HA, *WOMAN, NATIVE OTHER*, 79-80 (1989). Women played distinct and critical roles in most original American Indian cultures. See PAULA G. ALLEN, *THE SACRED HOOP: RECOVERING THE FEMININE IN AMERICAN INDIAN TRADITIONS* (1986).

31. See OSCAR LEWIS, *LA VIDA: A PUERTO RICAN FAMILY IN THE CULTURE OF POVERTY—SAN JUAN AND NEW YORK* (1966). But see Charles A. Valentine, *The "Culture of Poverty": Its Scientific Significance and Its Implications for Action*, in *THE CULTURE OF POVERTY: A CRITIQUE* 193 (Eleanor B. Leacock ed., 1971) (criticizing Lewis's data and theory). There is no disputing, however, that poverty and powerlessness can, through the power of self-fulfilling prophecy, grow into a vicious circle of self-rejection and failure.

the recognition that they need to begin healing themselves.<sup>32</sup> The negative effects of cultural abuse are proportional to the thoroughness with which the colonizer intervenes in the daily lives of ordinary people. Intense warfare can be less damaging than the captivity and daily "disciplining" of an entire population, which characterized reservation life at the end of the last century.<sup>33</sup> Under these conditions, the only avenue of escape permitted is to embrace the habits and values of the oppressor, leaving people with a cruel choice between being victimized as "inferior" Indians or as second-class whites. In either case, much more was lost than cultural knowledge. Also lost was confidence in the possibility of genuine self-determination.

Global action is an act of faith and self-confidence. Prolonged exposure to the perspectives of others casts a long, critical shadow on one's own beliefs and actions. It shatters assumptions about what is, what ought to be, and what may be possible. People confident in their identity and values have nothing to fear from this, and much to gain. People stricken with self-rejection and doubt, on the other hand, prefer to remain safely within familiar orbits, avoiding what they fear will be the definitive confirmation of their inferiority. Isolated within the borders of the United States, American Indian leaders can perpetuate the illusions of "sovereignty" and self-determination among themselves, without risk of challenge by indigenous peoples who come from other, less damaging experiences. It is no wonder, then, that they avoid participating in international political activities, and it is equally clear why the next generation of American Indians must begin their political education far away from North America. Without a comparative perspective, today's anaesthetic illusions can persist indefinitely.

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32. Cf. ANN H. BEUF, *RED CHILDREN IN WHITE AMERICA* (1977) (explaining the development of negative self-images in Native American children). Australia, however, with its systematic removal of aboriginal children from their communities, marketing of aboriginal children as domestic servants, and "breeding-out" policies, is also a strong competitor for first place. See generally BARBARA CUMMINGS, *TAKE THIS CHILD . . . FROM KAHLIN COMPOUND TO THE RETTA DIXON CHILDREN'S HOME* (1990); J.J. FLETCHER, *CLEAN, CLAD AND COURTEOUS: A HISTORY OF ABORIGINAL EDUCATION IN NEW SOUTH WALES* (1989); ANNA HAEBICK, *FOR THEIR OWN GOOD: ABORIGINES AND GOVERNMENT IN THE SOUTHWEST OF WESTERN AUSTRALIA, 1900-1940* (1989).

33. See, e.g., WILLIAM T. HAGAN, *INDIAN POLICE AND JUDGES: EXPERIMENTS IN ACCULTURATION AND CONTROL* (1966); FREDERICK E. HOXIE, *A FINAL PROMISE: THE CAMPAIGN TO ASSIMILATE THE INDIANS, 1880-1920* (1984); D.S. OTIS, *THE DAWES ACT AND THE ALLOTMENT OF INDIAN LANDS* (Francis P. Prucha ed., 1973).

### C. Isolationism as a Culture

Indian isolationism is a symptom of Americanization, and American Indians are more assimilated than they would like to believe. This is evident at many levels, from personal values to political culture. It is apparent symbolically in the prominent place given to the U.S. flag at tribal meetings and pow-wows, for instance. National flags are not seen at indigenous meetings in other countries; aboriginal Australians meet under the red, yellow, and black Land Rights Flag, just as Mikmaq display the Mikmaq Grand Council's red sun-moon-and-cross flag, rather than the red maple leaf of Canada. National flag worship is inconsistent with the rhetoric of independent tribal sovereignty.

At the level of personal values, the materialism that makes bingo<sup>34</sup> a more important policy issue than environmental health or substance abuse<sup>35</sup> for contemporary tribal governments also is reflected in their sense that other countries have nothing to offer except trade dollars. Americans return from abroad thankful for the high standards of material comfort that they enjoy at home, and this is true even of Indians, who continue to be among the very poorest Americans.<sup>36</sup> Little matter that this American material superiority was achieved at the expense of Indians' own land<sup>37</sup> and has been maintained by dominating the economies of other countries and destroying the land of other indigenous

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34. For examples of tribal enthusiasm for gambling, see David Holmstrom, *Bingo! Indian Tribes Find Way to Make Money*, CHRISTIAN SCI. MONITOR, Sept. 4, 1991, at 8; Wayne King, *Atlantic City Shivers at Indians' Casinos to Come*, N.Y. TIMES, May 28, 1991 at B4; Pauline Yoshihashi, *Indian Tribes Put Their Bets on Casinos*, WALL ST. J., Aug. 5, 1991, at B1. Gambling has become a bitter election issue on New York reservations. See e.g., *Sovereignty and Casino Beckon to a Tribe*, N.Y. TIMES, Oct. 29, 1992, at B8.

35. On the growing reservation problems of substance abuse and violence, see Michael Dorris, *THE BROKEN CORD* (1991); MICHAEL S. MONCHER et al., *Substance Abuse Among Native-American Youth*, 58 J. CONSULTING & CLINICAL PSYCHOL. 408; Thomas J. Young, *Poverty, Suicide, and Homicide among Native Americans*, 67 PSYCHOL. REP. 1153 (1990) [hereinafter Young, *Poverty, Suicide, and Homicide*]; Thomas J. Young, *Suicide and Homicide among Native Americans: Anomie or Social Learning?* 68 PSYCHOL. REP. 1137 (1991) [hereinafter Young, *Suicide and Homicide*].

36. See *supra* note 17.

37. Russel L. Barsh, *Indian Resources and the National Economy: Business Cycles and Policy Cycles*, in NATIVE AMERICANS AND PUBLIC POLICY, *supra* note 26, at 193.

peoples.<sup>38</sup> As they prosper, albeit only comparatively, American Indians share the benefits of the United States' economic expansion; hence, they also should share some of the blame and take responsibility for change. Instead, it seems that Indians today *like* being "number one" in the world as part of the United States, and that they rely on the military power that once oppressed them to protect them from others.<sup>39</sup>

On the political plane, American Indians seem to have assimilated the American perception that global affairs are basically irrelevant, because all real power is found in Washington and all truly important decisions are made there. The egocentrism of American textbooks and journalism certainly has laid the foundation for this parochial view. Americans learn very little even about their closest neighbors, Canada and Mexico, and most Indians have been taught from the same books and have watched the same television programming for a generation. Years of domination by federal bureaucrats and sending tribal officials off to plead for money on Capitol Hill, no doubt have helped reinforce the nationalist prejudices Indians share with other Americans.

Indeed, American Indians seem to think of themselves as superior to other indigenous peoples, not in terms of traditional culture, but because they believe they have made so much progress gaining political and economic power within

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38. Two recent United Nations documents detail the impact of United States and international developments on indigenous peoples. See UNITED NATIONS, ECONOMIC AND SOCIAL COUNSEL, SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES, DISCRIMINATION AGAINST INDIGENOUS PEOPLES: TRANSNATIONAL INVESTMENTS AND OPERATION ON THE LANDS OF INDIGENOUS PEOPLES, REPORT OF THE UNITED NATIONS CENTRE ON TRANSNATIONAL CORPORATIONS PURSUANT TO SUB-COMMISSION RESOLUTION 1990/26, U.N. Doc. E/CN.4/Sub.2/1992/54 (1992) [hereinafter DISCRIMINATION AGAINST INDIGENOUS PEOPLES 1992]; UNITED NATIONS, ECONOMIC AND SOCIAL COUNCIL, SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES, DISCRIMINATION AGAINST INDIGENOUS PEOPLES: TRANSNATIONAL INVESTMENTS AND OPERATIONS ON THE LANDS OF INDIGENOUS PEOPLES, REPORT OF THE UNITED NATIONS CENTRE ON TRANSNATIONAL CORPORATIONS PURSUANT TO SUB-COMMISSION RESOLUTION 1990/26, U.N. Doc. E/CN.4/Sub.2/1991/49 (1991) [hereinafter DISCRIMINATION AGAINST INDIGENOUS PEOPLES 1991]; cf. JOHN H. MAKIN, THE GLOBAL DEBT CRISIS: AMERICA'S GROWING INVOLVEMENT 57-71 (1984) (examining American dependence on raw materials).

39. It should be noted that Europeans are fascinated with Indians and annually go to great lengths to attract Indian performers and speakers. See INDIANS AND EUROPE (Christian F. Feest ed., 1987) (offering a variety of views on this phenomenon). Some American Indians find this attention and flattery redemptive and thus Europe continues to be a favored travel destination, as opposed to Latin America or Southeast Asia, where there is great poverty—and where there are other indigenous peoples.

the United States.<sup>40</sup> They offer themselves, their contemporary tribal institutions, and current United States Indian policy and law as a global standard of comparison and evaluation, with little self-criticism. No effort is made to search for better models abroad; it is assumed that none can be found. Of course, this is not true of all American Indians. A handful annually travel to the United Nations to condemn the United States' treatment of its own people, but they generally are individual dissidents, academics, or traditional religious elders.<sup>41</sup> U.S. diplomats dismiss them by pointing out that only malcontents bother to make these pilgrimages; the elected tribal chairpersons and mainstream organizations such as the National Congress of American Indians and Native American Rights Fund, stay home.<sup>42</sup>

#### *D. The Price of Isolationism*

Isolationism deprives American Indians of international political support, which they need to compensate for their numerical inferiority and the extraordinary power and arrogance of the non-Indian majority. It also leaves U.S. institutions relatively free to exploit indigenous people elsewhere. American industry plays a major role in development projects affecting indigenous lands in other regions, particularly in Latin America.<sup>43</sup> The United States government, meanwhile, staunchly resists the United Nations'

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40. See generally Russel L. Barsh, *Political Diversification of the International Indigenous Movement*, 5 EUR. REV. NATIVE AM. STUD. 7 (1991) (discussing the different strategic approaches of indigenous peoples).

41. No summary statistics of participation in United Nations meetings are published, but a sense of geographic distribution can be gleaned from the annual reports of the Working Group on Indigenous Populations, most recently *Report of the Working Group on Indigenous Populations*, at 3-4, U.N. Doc. E/CN.4/Sub.2/1992/33 (1992).

42. One U.S. case, the Navajo-Hopi relocation dispute, which was raised by community leaders from the affected areas, has been on the U.N. human rights agenda for several years. UNITED NATIONS, ECONOMIC AND SOCIAL COUNCIL, COMMISSION ON HUMAN RIGHTS, REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-FOURTH SESSION at 87-88, U.N. Doc. E/CN.4/1993/2 (1992). The tribal councils have avoided direct involvement in the United Nations process, however, and the State Department has actively discouraged it.

43. See DISCRIMINATION AGAINST INDIGENOUS PEOPLES 1992, *supra* note 38; DISCRIMINATION AGAINST INDIGENOUS PEOPLES 1991, *supra* note 38.

efforts to recognize indigenous peoples' collective rights as distinct societies, contending that such recognition would be "fundamentally inconsistent" with international law.<sup>44</sup> The United States repeatedly has opposed funding for United Nations programs aimed at indigenous communities, threatening to vote against establishing 1993 as the International Year of the World's Indigenous People if it involved any spending; opposing the launching of a United Nations study of indigenous treaties on the grounds that it was anti-American; and at one point hinting that it would try to have the United Nations' ten-year-old Working Group on Indigenous Populations dissolved because it had the poor taste to discuss Navajo relocation.<sup>45</sup> Other governments have tried to slow the United Nations' work in this field, among them Canada and Brazil, but their indigenous peoples are well-organized nationally and respond quickly and effectively to any threat in the national press and legislature.<sup>46</sup>

More is at stake than the protection of indigenous rights. Since the disintegration of the Soviet Union in 1989, the United States, unimpeded by other superpowers, has been able to dominate international politics as never before. This may be only temporary. Europe eventually will get beyond its current preoccupation with regional integration, and Japan may emerge more self-consciously as a political and ideological rival, particularly in Asia.<sup>47</sup> As the American deficit soars,

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44. U.S. Delegation Statement at the Tenth Session of the Working Group on Indigenous Populations 6-7 (July 23-31, 1992) (speech draft, on file with the *University of Michigan Journal of Law Reform*).

45. I was personally involved in these discussions. Because of the financial and military power of the United States, its opinions carry a disproportionate weight in negotiations and need only be expressed at an informal level to be effective.

46. In the case of the treaty study, for example, Canadian resistance was exposed at a press conference of national Indian leaders, leading to the questioning of the responsible minister in parliament and, in less than two days, a reversal of position.

47. Japan already is by far the largest investor and aid-donor in East and Southeast Asia, and a close runner-up to the United States and Europeans in other regions. Japanese diplomats, meanwhile, have taken a surprisingly progressive stance on a number of humanitarian, aid, and environmental issues at the United Nations and have positioned Japanese nationals in two key U.N.-system directorships—the World Health Organization (WHO) and the U.N. High Commission for Refugees. See Lawrence K. Altman, *Head of U.N. Health Agency Is Embroiled in Battle for Re-election*, N.Y. TIMES, Aug. 10, 1992, at A3. WHO Director General Hiroshi Nakajima was reelected in a bitter campaign that reportedly was financed heavily by his government; Sadako Ogata remains as U.N. High Commissioner for Refugees.

U.S. borrowing no longer can be fully absorbed by European and Japanese lenders. The weakness of the American economy has been noted even by the International Monetary Fund, a steadfastly conservative institution that the United States long controlled.<sup>48</sup> In the meantime, a great deal of lasting damage may be done. A case in point is the Earth Summit last June, where the United States distinguished itself as the only industrialized country to oppose *combating poverty* as a strategy for achieving "sustainability."<sup>49</sup> American diplomats also blocked consensus on a plan to enable all countries to tackle their environmental problems with comparable resources, on the grounds that it cost money and required the free sharing of "green" technology.<sup>50</sup>

Some American Indian tribal leaders flew to Rio to be part of the American entourage but did nothing to influence President Bush. Although world leaders had kind words for indigenous peoples and adopted an important declaration recognizing indigenous rights, their hopes for indigenous peoples' guidance and support were seriously misplaced—at least as far as American Indians were concerned.

American Indian tribal leaders could play a pivotal international role as the voice of conscience, reason, and generosity within the United States itself, not only with respect to the fate of other indigenous peoples, but the fate of the planet, too. Instead, they continue to be preoccupied with domestic issues, competing with one another for larger shares of federal program dollars and bigger bingo halls. Global consciousness, which was central to aboriginal religion and philosophy, has collapsed into competitive capitalism.

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48. See Steven Greenhouse, *I.M.F. Head Scolds U.S. and Bonn for Deficits*, N.Y. TIMES, Sept. 23, 1992, at D6. For background on the impact of U.S. deficits on developing countries, see UNITED NATIONS, ECONOMIC AND SOCIAL COUNCIL, REPORT OF THE COMMITTEE FOR DEVELOPMENT PLANNING ON ITS TWENTY-SEVENTH SESSION, U.N. Doc. E/1991/32 (1991); Charles F. Meissner, *Debt: Reform Without Governments*, 56 FOREIGN POL'Y 81 (1984).

49. The author was present at the negotiating session in which U.S. representatives broke the consensus on this issue. See generally Laura Paull, *'Finger-pointing' in the Charter Debate*, CROSSCURRENTS at 5, Mar. 12, 1992; *US Seeks to Axe Global Consumption Sections*, CROSSCURRENTS at 8, Mar. 16, 1992.

50. See Steven Greenhouse, *Ecology, the Economy and Bush*, N.Y. TIMES, June 14, 1992, § 4, at 1; *The Road from Rio*, N.Y. TIMES, June 15, 1992, at A18; Keith Schneider, *Bush Aide Assails U.S. Preparations for Earth Summit*, N.Y. TIMES, Aug. 1, 1992, at A1.



## II. DECOLONIZATION WITHOUT COMMITMENT

Apart from their potential role as American citizens and voters in restraining the immature political excesses of non-Indian Americans abroad, do American Indians have a substantive contribution to make to the liberation and development of other indigenous peoples? Answering this question leads unavoidably to another. Have American Indians any special wisdom or successful experience to share in rebuilding other indigenous societies racked by racism and colonialism? The answer to that question depends on whether American Indians genuinely have succeeded in liberating or decolonizing themselves.

Anticolonial struggles are preoccupied with wresting power from the colonizer. Little serious thought is given to the problem of what to do with power once it is obtained. A vacuum lies at the end of nearly every revolution which quickly fills with borrowed slogans and ideas. There is some truth in Ambrose Bierce's observation, nearly a century ago, that revolution is "an abrupt change in the form of misgovernment."<sup>51</sup> Indigenous peoples everywhere like to believe that the critical difference, in their case, is culture. Traditional cultures, which are diametrically opposed to the competitive individualism and insatiable appetite of industrialized societies, supposedly will insulate leaders from the corrupting influences of power and the "demonstration effect" of Western prosperity. But Africa's leaders made the same arguments a generation ago when they launched the idea of "African socialism," the beautiful dream behind which a number of oppressive dictatorships have safely lurked.<sup>52</sup>

Will the world's indigenous peoples escape Bierce's futile loop? The United States is a critical test case. American Indian tribes are wealthier and have enjoyed greater powers of internal self-government far longer than indigenous peoples anywhere else. The rhetoric of sovereignty, antimaterialism, and traditionalism is stronger here than anywhere else. But

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51. AMBROSE BIERCE, *THE DEVIL'S DICTIONARY* 161 (1957).

52. See generally KWAME A. APPIAH, *IN MY FATHER'S HOUSE: AFRICA IN THE PHILOSOPHY OF CULTURE* (1992) (rendering a more philosophical view of African Socialism); AHMED MOHIDDIN, *AFRICAN SOCIALISM IN TWO COUNTRIES* (1981) (providing a critical assessment of African Socialism); JULIUS K. NYERERE, *UJAMAA—ESSAYS ON SOCIALISM* (1968) (presenting a classical exposition on African Socialism).

is this rhetoric meaningful, or is it merely rhetoric? To what extent have American Indian tribal governments achieved the ideals of community responsibility and ecological stewardship so often expressed in public debates? Are they truly decolonized at all? The answers to these questions explain American Indian tribes' marked isolationism in world affairs, and pose a serious challenge for future generations of indigenous leaders in all countries.

### A. Symbolic Development

What has been achieved after fifty years of nominal self-government under the Indian Reorganization Act<sup>53</sup> and twenty-five years of federal financing of tribal programs and development?<sup>54</sup> Are reservations more democratic or ecologically sound than other North American communities? Are tribal schools, courts, and social programs better, or just different? Do they really differ at all, other than being staffed by Indians?

The number of books in print extolling traditional Indian values and beliefs grows exponentially,<sup>55</sup> but Indian tribal governments do not seem to put any of these beliefs into practice. It is also difficult to find published studies of the effectiveness of contemporary tribal institutions in relation to traditional values. Analysts simply seem to assume that anything run by Indians is more effective, and culturally appropriate, than the same institutions run by whites.<sup>56</sup>

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53. 25 U.S.C. §§ 461-479 (1988).

54. For data on the distribution of federal aid at its peak, see Barsh & Diaz-Knauf, *supra* note 25, at 21.

55. See, e.g., DAVID MAYBURY-LEWIS, *MILLENNIUM: TRIBAL WISDOM AND THE MODERN WORLD* (1992); DAVID SUZUKI & PETER KNUDTSO, *WISDOM OF THE ELDERS: HONORING SACRED NATIVE VISIONS OF NATURE* (1992). Although genuinely traditional knowledge still holds great scientific and ethical value, enthusiasts should take caution from DANIEL FRANCIS, *THE IMAGINARY INDIAN: THE IMAGE OF THE INDIAN IN CANADIAN CULTURE* 109-43 (1992), which depicts "celebrity Indians" and "plastic shamans."

56. Differences in cultural values are highlighted in *Native Americans and Public Policy*, particularly in the essays by Trosper and by Lyden, which argue that tribal governments *could* accommodate Indian values by making them explicit in their planning documents and econometric models. See Fremont J. Lyden, *Value Orientations in Public Decision Making*, in *NATIVE AMERICANS AND PUBLIC POLICY*, *supra* note 26, at 295; Ronald L. Trosper, *Multicriterion Decision Making in a Tribal Context*, in *NATIVE AMERICANS AND PUBLIC POLICY*, *supra* note 26, at 223. As to the

Indian policy literature is preoccupied with the *quantity* of Indian control, rather than the *quality* of its exercise.<sup>57</sup> This lack of self-criticism shifts all blame to the residual elements of colonialism and relieves tribal leaders of responsibility for the conditions in which Indians continue to live.<sup>58</sup>

Indian and non-Indian institutions have converged far more than tribal leaders or scholars want to admit. Reservation economies are centralized, industrialized, and bureaucratic. They measure success in terms of industrial through-put: budgets, payrolls, office space, and prison cells. Gross domestic product has replaced unity, family integrity, personal dignity, and mutual respect as a standard of good government. Tribal officials proudly show visitors their police cars, jails, mines, and factories. They do not discuss the growing frequency of child abuse or elder neglect, or ask the Indians in those jails whether they believe they live in a just society. The majority of tribal governments steadfastly refuse to collect and publish social statistics on which objective assessments of changing welfare could be based. They publish financial reports, like the business corporations they emulate.

These are all examples of what John Kenneth Galbraith once aptly described as "symbolic modernization."<sup>59</sup> The official visitor to any Third World capital will get the same kind of tour: office blocks, factories, armies, and airports. These are symbols of success, in Western terms, but they do not necessarily reflect self-determination or development. On the contrary, they demonstrate the increasing power of "indigenous" governments to oppress their own people, and they tend to mask growing gaps between rich and poor and among ethnic groups in society—which, incidentally, create the need for those armies and jails. A society that can parade

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extent to which this kind of accommodation is actually pursued, however, they are silent. Moreover, adjusting the weighting of target outputs as a planning tool falls far short of adopting a culturally appropriate planning process. It is something Western-trained technocrats can do without changing the basic parameters of their jobs.

57. See, e.g., MARJANE AMBLER, *BREAKING THE IRON BONDS: INDIAN CONTROL OF ENERGY DEVELOPMENT* (1990); Lynne Duke, *Indians Appeal to U.S. to Preserve Tribal Rule*, WASH. POST, Apr. 22, 1991, at A4 (illustrating the focus tribal leaders place on self-governance).

58. LOPACH ET AL., *supra* note 27, at 186.

59. Galbraith defined symbolic modernization in part as "a form of monument building by which politicians have undertaken to commemorate their existence (and perhaps ultimately their inadequacy) at the public expense." JOHN K. GALBRAITH, *ECONOMIC DEVELOPMENT* 5 (1964).

an army or build office towers is not a fairer, freer, or happier one as a result. Nor is it "progress" to have the ability, and the need, to control people. From a traditional Indian viewpoint, the accumulation and use of power is evidence of social breakdown and decay, not progress, and the number of battered children, inmates, and suicides is a better measure of social welfare than public budgets and payrolls.

Financing the symbolic accumulation of elite payrolls and public buildings takes more than aid flows. Emerging governments, whether in Africa or the Americas, must help pay their own way. Because their appetite far exceeds their fledgling industrial capacity, they must raise funds by borrowing and by exporting raw materials. This leads to a cycle of growing indebtedness and resource liquidation that is environmentally destructive and gradually forecloses every other development option.<sup>60</sup> In the case of American Indian tribes, the driving force was less debt than a reduction in aid flows, beginning in the late 1970s. Cutbacks were not across-the-board, but targeted resource-rich reservations on the theory that they could afford to pay for a larger share of program costs.<sup>61</sup> Many tribal governments had to choose between shutdowns and accelerated natural resource extraction.<sup>62</sup> The net effect has been to reduce the environmental assets of reservations without replacing them with industrial assets.

Some observers are prescribing even *greater* authoritarianism, and more technocratic decisionmaking, to remedy the reservations' sluggish economies and endemic corruption.<sup>63</sup> It is implied that having adopted a capitalist path, tribal governments have no choice but to engage in *good*

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60. The relationship between debt, poverty, and ecological destruction has been underscored by the leaders of developing countries. See, e.g., UNITED NATIONS, ECONOMIC AND SOCIAL COUNCIL, CARACAS DECLARATION OF THE MINISTERS OF FOREIGN AFFAIRS OF THE GROUP OF 77, DEVELOPMENT AND INTERNATIONAL ECONOMIC CO-OPERATION ¶ 34, U.N. Doc. A/44/361 (1989); UNITED NATIONS, ECONOMIC COMMISSION FOR AFRICA, AFRICAN ALTERNATIVE FRAMEWORK TO STRUCTURAL ADJUSTMENT PROGRAMMES FOR SOCIO-ECONOMIC RECOVERY AND TRANSFORMATION ¶ 38, U.N. Doc. A/44/315 (1989); cf. ROBERT DEVLIN, DEBT AND CRISIS IN LATIN AMERICA: THE SUPPLY SIDE OF THE STORY 254-58 (1989) (discussing economic reform as a development option).

61. See Morris, *supra* note 26, at 75.

62. For a description of historical trends in reservation-resource outputs, see Russel L. Barsh, *Indian Resources and the National Economy: Business Cycles and Policy Cycles*, in NATIVE AMERICANS AND PUBLIC POLICY, *supra* note 26, at 207-13.

63. Cf. LOPACH ET AL., *supra* note 27, at 121-29 (detailing one reservation's problems with its decision making).

capitalism, even if this conflicts with the personal autonomy, kinship loyalties, and political values embedded in tribal traditions. "Modern tribalism," in this view, is equated with the collective self-interest of shareholders in a joint-stock company. It is pure materialism with all countervailing, inefficient cultural elements deleted. This, too, is symbolic development. An Indian tribe that is run like a Fortune 500 company appears successful to visitors, and the foreign press may praise its leaders,<sup>64</sup> but to its own citizens it still may be an insufferable tyranny. American economists promoted the same authoritarian prescription in the Third World a generation ago.<sup>65</sup> While it worked in some parts of Southeast Asia, such as Singapore and South Korea, it was a disaster nearly everywhere else.<sup>66</sup> More democratic and less culturally disruptive development paths have worked about equally as well as the corporatist solution.<sup>67</sup>

American Indian tribal leaders and their academic supporters are locked in a conspiracy of denial. They fear that should white Americans discover that there is nothing qualitatively different, or substantially better, about Indian self-government, they will abolish it. There is plentiful historical evidence to support this proposition.<sup>68</sup> Thus, tribal leaders pretend that their governments are culturally distinct when they are not. Simultaneously, they insist that the right to self-government does not depend on whether or not it

64. See, e.g., Carmella M. Padilla, *Picuris Indians Acquire a Subsidized Stake in Hotel*, WALL ST. J., Sept. 13, 1991, at B2; Yoshihashi, *supra* note 34.

65. See Russel L. Barsh, *Democratization and Development*, 14 HUM. RTS. Q. 120, 125-26 (1992).

66. See DIRK BERG-SCHLOSSER & RAINER SIEGLER, *POLITICAL STABILITY AND DEVELOPMENT: A COMPARATIVE ANALYSIS OF KENYA, TANZANIA, AND UGANDA* (1990); Ralf Dahrendorf, *Transitions: Politics, Economics, and Liberty*, 13 WASH. Q. 133, 138-39 (1990). This approach has been laid to rest officially by the non-aligned countries. See *The Challenge to the South: An Overview and Summary of the South Commission Report*, 45th Sess., Agenda Item 79, at 8-9, 12, U.N. Doc. A/45/810 (1990).

67. For a critique of this model, see Vernon W. Ruttan, *What Happened to Political Development?*, 39 ECON. DEV. & CULTURAL CHANGE 265 (1991).

68. The "termination" of tribal governments in the 1950s was justified on the grounds that convergence had rendered them superfluous: Indians were ready to be absorbed into white communities and governed by white governments. RUSSEL L. BARSH & JAMES Y. HENDERSON, *THE ROAD: INDIAN TRIBES AND POLITICAL LIBERTY* 123, 127 (1980). Ironically, the Supreme Court is convinced that tribal courts are culturally distinct and argued that this required limiting their jurisdiction over non-Indians. See *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978); Russel L. Barsh & James Y. Henderson, *The Betrayal: Oliphant v. Suquamish Indian Tribe and the Hunting of the Snark*, 63 MINN. L. REV. 609 (1979).

works, either in Indian or Western terms. This strategy may prolong tribal autonomy in the short run. If the contradiction between cultural ideals, rhetoric, and practice persists for another generation, however, American Indian governments may self-destruct without any help from outsiders. In the long run, tribal governments will survive only by becoming culturally and spiritually superior governments.

### *B. Tradition and Materialism*

What makes a political system "tribal?" By definition, it is one that is based on *kinship*. Political rights and responsibilities arise from genealogy and are highly differentiated. Kinship assigns fixed roles to individuals, as if they were species in an ecosystem. At the same time, each individual plays multiple roles in relation to others: as a father to one, uncle to another, cousin to still another. Thus, a tribal political system is a web of reciprocal relationships without a separately institutionalized "state."<sup>69</sup> Leaders are recognized speakers for segments of the web (families, genders, generations), representing countervailing responsibilities. By contrast, European "liberal" political systems treat individuals as if they all were identical in their relationships with the state. Responsibilities are to the state; rights are limitations on the power of the state. Good government is equated with regulating the state, rather than strengthening families.<sup>70</sup>

Traditional tribal political systems were quite ingenious when it came to devising checks and balances against natural concentrations of power. A multitude of institutions were locked, through ritual, in an endless cycle of neutralizations. These neutralizations were based not on function or ideology, like the concept of "separation of powers" and the party systems of liberal European politics, but on more fundamental and inevitable divisions in biology: gender, family, and (through clans and religious societies) species and spirits. Collective action was possible only if women and men agreed;

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69. See generally MORTON H. FRIED, *THE NOTION OF TRIBE* (1975) (arguing that the term "tribe" has been widely abused by scholars).

70. See Russel L. Barsh, *The Nature and Spirit of North American Political Systems*, 10 AM. INDIAN Q. 181 (1986).

if families agreed; if the deer, wolves, and ravens agreed; and if the dead and the unborn agreed. There was no notion of "majority," since the objective was not to find the most popular decision, but the decision that maintained the social and ecological order. Changes are very slow but very stable in such a system.<sup>71</sup>

Reciprocity and redistribution provided the stitching which held this social fabric together. Wealth was produced in order to distribute it among kinsmen, gaining prestige and respect for its producers. Savings were reinvested in kinship, rather than in the production of greater quantities of goods, and this provided a kind of universal social security. Giving ensured receiving. It spread the risk of seasonal and local variations in the productivity of resources, and balanced family management of resources with much wider collective access to their use and enjoyment.<sup>72</sup> Early European explorers were struck by the Indians' relative freedom from greed and possessiveness. In Europe, Pierre Biard observed, "our desire tyrannizes over us and banishes peace from our actions."<sup>73</sup> Aboriginal ethics began to break down, however, when Europeans interfered with aboriginal ecosystems, and forced mass migrations.<sup>74</sup> Increasingly dependent on external economic relationships, Indians neglected their responsibilities to their human and animal kinsmen. Survival took priority over kinship and identity. This psychology of scarcity and insecurity still dominates contemporary tribal governments. There is more accumulation and less investment in people. Redistribution is limited to smaller circles and shorter-term goals. What has changed is that now the power of tribal governments has been harnessed for these purposes.

Collapsing the multifarious checks and balances of tribal systems into a chairman-and-council model has the effect of liberating gender, family, interspecific, and intergenerational

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71. For a general theory, see *id.* This discussion obviously does not apply to the authoritarian regimes that periodically emerged in aboriginal North America, some of which became aggressive and destructive empires.

72. See RESOURCE MANAGERS: NORTH AMERICAN AND AUSTRALIAN HUNTER-GATHERERS 69-91 (Nancy M. Williams & Eugene S. Hunn eds., 1982); WAYNE SUTTLES, COAST SALISH ESSAYS 15-25 (1987).

73. 3 THE JESUIT RELATIONS AND ALLIED DOCUMENTS, *supra* note 13, at 85. Biard's compatriot LeClercq confirmed a generation later, "In a word, they rely upon liking nothing, and upon not becoming attached to the goods of the earth, in order not to be grieved or sad when they lose them." LECLERCQ, *supra* note 13, at 243.

74. See generally INDIANS, ANIMALS, AND THE FUR TRADE (Shepard Krech III ed., 1981) (examining Indian participation in the fur trade and the effects this had on their society).

antagonisms. Suddenly, it is possible for a temporary tactical coalition of men to dispossess women, for a handful of families to monopolize public funds for a few years, for one generation to prosper at the expense of future ones or the loss of the land. Social order is sacrificed for speed and growth, with very exciting, short-term material results. By the time people realize that these advantages can evaporate in a few generations, they have lost the mutual trust and respect necessary to restore a balance. They have launched an irreversible social war against themselves.

Tribal electoral politics today is dominated by a rotating spoils system.<sup>75</sup> Coalitions of strongmen and their families take turns on the council, where they pass out jobs, subsidized housing, and grants until opposing families demand their turn at the table. There are few long-term policies because the electorate has grown cynical, and has little confidence that tribal leaders can improve the quantity or quality of their economy sustainably. The goals of political action are largely distributive, rather than aimed at structural improvement. This feeds itself relentlessly. Reformers must promise pork to get elected. They serve an average of only two years in office, and may be recalled even sooner if they fail to reward their supporters. Moreover, federal officials can easily terminate the careers of any genuine reformers by reducing discretionary aid flows after their election.

In terms familiar to liberal political theory, traditional tribal systems were designed, in their structures and rituals, to include all relevant parties in decisions—even animals and the unborn. European parliamentary systems *exclude* all relevant parties *except* adult living citizens, and condition *effective* participation on having the leisure, literacy, and financial resources to make politics a profession. Those present and voting are free to steal from the unrepresented.<sup>76</sup>

Although they are products of this underrepresentative political model, American Indian tribal leaders persist in deploying the rhetoric of Indian values as a badge of

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75. See, e.g., *Federal Acknowledgement Administrative Procedures Act of 1989: Hearing on S. 611 Before the Senate Select Comm. on Indian Affairs*, 101st Cong., 1st Sess. (1989); *Occupation of Wounded Knee*, *supra* note 27; LOPACH ET AL., *supra* note 27, at 48, 57, 64–67, 88, 103, 181.

76. Lawyers like to believe that constitutional law provides a check against at least the worst excesses of electoral majorities. There is little evidence, however, that law is adequate, even in the United States, to protect women, minorities, children, or the environment. Ultimately, law is not a satisfactory substitute for representation in decision making—though it may suffice to prevent revolutions.



legitimacy. Contradictions abound between stated beliefs and practice. Compare, for instance, the oft-heard slogans on the importance of children and elders with the worsening statistics on reservation child abuse, family violence, and neglect of the aged.<sup>77</sup> Likewise, compare popular romanticism about Indian earth stewardship with the number of strip mines and landfills on reservations.<sup>78</sup> Consider the significance of the recent emergence of Indian feminism, which asserts a basis in traditional gender relationships.<sup>79</sup> Who has been Westernized here, Indian women who claim to have been dispossessed politically, or Indian men who accuse Western culture of turning women against them?

The most poignant illustration of cultural contradiction today is the battle over "federal acknowledgment" of Indian tribes. The entire premise of this federal policy should make Indians suspicious: that an Indian tribe is genuine, and accordingly entitled to self-government, only if a panel of

77. See, e.g., *Indian Protective Services and Family Violence Act: Hearing on S.2340 Before the Senate Select Comm. on Indian Affairs*, 101st Cong., 2d Sess. (1990); DORRIS, *supra* note 35; Moncher, *supra* note 35; Young, *Poverty, Suicide, and Homicide*, *supra* note 35; Young, *Suicide and Homicide*, *supra* note 35.

78. See, e.g., WARD CHURCHILL, *STRUGGLE FOR THE LAND: INDIGENOUS RESISTANCE TO GENOCIDE, ECOCIDE AND EXPROPRIATION IN CONTEMPORARY NORTH AMERICA* (1933); ALVIN M. JOSEPHY, JR., *NOW THAT THE BUFFALO'S GONE: A STUDY OF TODAY'S AMERICAN INDIANS* 221-24, 233-35 (1982); *NATIVE AMERICANS AND ENERGY DEVELOPMENT II* (Joseph G. Jorgensen ed., 1984). See generally Ward Churchill & Winona LaDuke, *Native America: The Politics of Radioactive Colonialism*, 13 J. ETHNIC STUD. 107 (1985) (describing resource extraction and its effects on tribes); Lynn A. Robbins, *Navajo Energy Politics*, 16 SOC. SCI. J. 93 (1979); Marjane Ambler, *The Lands the Feds Forgot*, SIERRA, May-June 1989, at 44 (detailing Congressional efforts to grant tribes the same authority as states to regulate the environment); John Harmon, *Environmental Plight of Reservations Spurs Indians, EPA to Seek Solutions*, ATLANTA CONST., May 20, 1992, at A3 (reporting on a meeting of tribal leaders with the EPA to address toxic waste and other hazards on Indian lands); Paul Schneider, *Other People's Trash*, 93 AUDUBON, July-Aug. 1991, at 108 (on tribal resistance to landfills); Roger Worthington, *Tribes Resist Tempting Landfill Offers*, CHI. TRIB., Sept. 22, 1991, § 1, at 4 (noting recent tribal opposition to leasing reservations for waste disposal).

79. For surveys of recent Indian feminist writing, see A GATHERING OF SPIRIT (Beth Brant ed., 1988); SPIDER WOMAN'S GRANDDAUGHTERS: TRADITIONAL TALES AND CONTEMPORARY WRITING BY NATIVE AMERICAN WOMEN (Paula G. Allen ed., 1989); see also LORETTA FOWLER, *ARAPAHOE POLITICS, 1851-1978: SYMBOLS IN CRISES OF AUTHORITY* 271-73, 281 (1982) (describing the traditional role of Arapahoe women); Carla Christofferson, *Tribal Courts' Failure to Protect Native American Women: A Reevaluation of the Indian Civil Rights Act*, 101 YALE L.J. 169 (1991) (detailing discrimination against Native American women); Diane Rothenberg, *The Mothers of the Nation: Seneca Resistance to Quaker Intervention*, in *WOMEN AND COLONIZATION: ANTHROPOLOGICAL PERSPECTIVES* 67-70, 78-83 (Mona Etienne & Eleanor Leacock eds., 1980) (describing the change in the role of Native American women brought about by colonization).

federal anthropologists and historians certify that it is sufficiently Indian.<sup>80</sup> The power to define what constitutes "Indian culture" would be the ultimate achievement of arrogant colonialism, if Indian tribes accepted it. The sad truth is that many tribes welcome this program and even have gone to Congress and the courts to defend it, because they see it as a way of rationing limited resources such as federal aid and fishing rights.<sup>81</sup> Often there are relatives on both sides of these disputes;<sup>82</sup> hence, tribal leaders are advocating the disinheritance of their own kin. It is a triumph of materialism over family, kinship, tribe, and tradition.

On a wider scale, the centralization of reservation economies and their continued dependence on scarce outside resources has intensified disputes over tribal membership.<sup>83</sup> These conflicts not only have cross-cut kinship lines, but have embraced increasingly strident racist language which equates blood quantum with cultural integrity. Originally, race was strictly a European category. It was a classification scheme used to demonstrate European superiority—one that pretended to be simple, obvious, and objective. Comparing cultural characteristics was much more tedious and philosophically perilous than comparing skin tones.<sup>84</sup> What

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80. See Rachael Paschal, *The Imprimatur of Recognition: American Indian Tribes and the Federal Acknowledgment Process*, 66 WASH. L. REV. 209, 216–17 (1991); William A. Starna, "Public Ethnohistory" and Native-American Communities: History or Administrative Genocide?, 53 RADICAL HIST. REV. 126 (1992); cf. JACK CAMPISI, *THE MASHPEE INDIANS: TRIBE ON TRIAL* (1991) (relating one tribe's efforts to obtain federal recognition).

81. See, e.g., *Greene v. Lujan*, 911 F.2d 738 (9th Cir. 1990) (text in Westlaw) (dismissing intervenor's interlocutory appeal for lack of jurisdiction) (appeal from judgement on the merits (order of October 18, 1992) is pending); *Federal Acknowledgment Administrative Procedures Act of 1989: Hearings on S.611 Before the Select Comm. on Indian Affairs*, 101st Cong., 1st Sess. (1989). The author was the counsel of record for the Samish Indian Tribe in *Greene*.

82. In the dispute over recognition of the Samish, considered only in its procedural aspects by *Greene*, 911 F.2d 738, there were cousins on the tribal councils of the Samish Tribe and the Tulalip Tribes, which opposed the Samish; and a sibling of the Samish tribal chairwoman on the council of the Lummi Tribe, which also opposed the Samish, albeit politically rather than in court.

83. See FOWLER, *supra* note 79, at 221–23, 234; LOPACH ET AL., *supra* note 27, at 85–86, 103, 147, 160–61.

84. For background on the use of racial arguments to justify dispossession and exploitation, see FRANCIS JENNINGS, *THE INVASION OF AMERICA: INDIANS, COLONIALISM, AND THE CANT OF CONQUEST* (1975); Russel L. Barsh, *Are Anthropologists Hazardous to Indians' Health?*, 15 J. ETHNIC STUD. 1, 3 (1987). See generally WILLIAM STANTON, *THE LEOPARD'S SPOTS: SCIENTIFIC ATTITUDES TOWARD RACE IN AMERICA 1815–59* (1960) (discussing various scientific views on the origin of race in the 19th century).

does it mean when Indians—the oppressed—adopt the same standard of comparison among themselves? In part, the cultural determinants of tribal identities have grown so confused and attenuated that it is far easier to talk about race than about culture. Tribal governments have seized upon race as a criterion for building coalitions and rationing scarce resources—just like oppressive regimes everywhere.

Why has this come about? If it is true that the structures of political institutions reflect their underlying functions, it is important to explore the historical origins of today's system of tribal governments, for evidence of their purpose. What were they designed to achieve, and whom were they intended to serve?

Historically, tribal councils and courts were organized by Indian agents to help them manage the Indians on reservations. They were the instruments of colonial administration. Although they did not always do what they were told, and sometimes even were disbanded or punished for their disobedience, nineteenth century councils and courts were designed to control Indians and promote assimilation, not to serve them.<sup>85</sup> While the adoption of the 1934 Indian Reorganization Act<sup>86</sup> was heralded in the nation's capitol as the end of paternalism, this official fanfare did not prevent the Bureau of Indian Affairs (BIA) from designing "reorganized" councils along the same basic structural lines as their predecessors. Reorganization simply achieved greater standardization. The BIA retains residual control through discretionary funding and its veto power over constitutional amendments (and to varying degrees, tribal legislation). Arguably, tribal governments have grown stronger and somewhat more independent since 1934, but decision-making processes have changed little. Rooted in problems of social control rather than the promotion of families, justice, or equity, tribal governments are ideal vehicles for self-serving elites and "strongmen."

The bottom line is power without legitimacy. Tribal governments can collect taxes, lease land, build housing projects, and jail Indians, but they cannot mobilize Indian people or give voice to their cultural and spiritual aspirations. Instead, they intensify conflict, disregard civil rights, and even

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85. See HAGAN, *supra* note 33; HOXIE, *supra* note 33.

86. 25 U.S.C. §§ 461-479 (1988).

resort to political violence to suppress dissent.<sup>87</sup> Tribal governments view all possible political competition with suspicion or hostility: formal political parties, trade unions, social and religious organizations, private businesses. All criticism is met with admonitions of the need for unthinking loyalty to "the tribe," or charges that the critics are undermining "tribal sovereignty." Who is "the tribe" if not its citizens—who after all, are, mostly relatives? The separation of "the tribe" from the people in contemporary American Indian political rhetoric is a disturbing development, which hails the emergence of "the state" as an entity with rights and privileges quite distinct from living, breathing human beings. Indians have grown very Westernized, indeed, if they accept the existence of such an imaginary Leviathan within communities of a few thousand people! In fact, what has emerged is the *one-party* state, which condemns dissent as foreign-inspired subversion and limits politics to personality disputes among a clique of strongmen.<sup>88</sup>

Contemporary tribal leaders accordingly seek external rather than internal legitimacy. In the words of one tribal member, "The tribes . . . must act how we expect to be treated."<sup>89</sup> Thus, tribal councils, courts, and laws must be recognizable to outsiders and compatible with white Americans' conceptions of good government. Heavily dependent on corporate investors, public aid, and the political goodwill of federal bureaucrats, "[t]he tribes discovered that they could deal successfully in these relationships only if they adopted organizational values and processes that outsiders

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87. See, e.g., *Occupation of Wounded Knee*, *supra* note 27; Robert C. Jeffrey, Jr., *The Indian Civil Rights Act and the Martinez Decision: A Reconsideration*, 35 S.D. L. REV. 355, 355–57, 364 (1990); Sandy Tolan, *Showdown at Window Rock*, N.Y. TIMES, Nov. 26, 1989, § 6 (magazine) at 29. See generally LOPACH ET AL., *supra* note 27, at 138–43, 184–88 (examining the problems with tribal government and discussing means to resolve these problems).

88. This presents striking parallels with post- or neocolonial Africa and its preoccupation with national political unity. See RHODA E. HOWARD, HUMAN RIGHTS IN COMMONWEALTH AFRICA 119–44 (1986); cf. ALI A. MAZRUI, THE AFRICAN CONDITION: A POLITICAL DIAGNOSIS 90–112 (1980) (arguing that modern African states are becoming more pluralistic and more open societies). Howard argues that the persistence of communal solidarity at the family and tribal levels is a compelling justification for strong countervailing human rights mechanisms to prevent groups from abusing their individual members or (through the state) one another. Rhoda E. Howard, *Group Versus Individual Identity in the African Debate on Human Rights*, in HUMAN RIGHTS IN AFRICA: CROSS-CULTURAL PERSPECTIVES 159, 162, 178–83 (Abdullahi A. An-Na'im & Francis M. Deng eds., 1990).

89. LOPACH ET AL., *supra* note 27, at 54.

respected.”<sup>90</sup> Under these conditions, tribal governments are growing indistinguishable from white governments while tribal leaders appeal to cultural unity to discredit dissenters.

All this belies the basic legal insecurity of tribal governments, which lack the constitutional footing and Congressional representation necessary to combat encroachments upon their autonomy. Tribal sovereignty was historically a judicial construction, to which Congress has added and subtracted.<sup>91</sup> To borrow a Canadian Indian metaphor, tribal sovereignty is like a box of powers and immunities, which the courts and Congress occasionally empty or refill as the spirit moves them. Because Supreme Court justices have far longer tenures than do members of Congress, the Court and Congress tend to behave countercyclically in this regard. When Congress tried emptying the box during the 1950s “termination” era, the Court began refilling it. In the 1970s, Congress was back filling the box, while the Court was conscientiously emptying it again. This ceaseless legal seesaw exhausts tribal resources in court battles and dilutes Congressional advocacy, while frustrating any long-term reservation policy planning.

Why, then, don't American Indian tribal leaders try to put an end to it? It is for the same reason that they fail to restore reservation democracy to traditional principles. They are part of this problem, preoccupied with tedious, daily struggles with federal regulations, jurisdictional disputes, and budgetary negotiations, as if these marginal adjustments can achieve substantial improvements in reservation life. Uncertainty over tribal authority is an excuse both for expensive tribal political activity and for tribal failure to improve human conditions. A campaign to clarify tribal authority might succeed and leave tribal leaders in undisputed control of their domestic agendas with no one but themselves to blame for the results.

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90. *Id.* at 167.

91. *Cf.* BARSH & HENDERSON, *supra* note 68, at 209–10 (noting the changing role of Congress in overseeing tribes); LOPACH ET AL., *supra* note 27, at 33–34 (addressing the increased role of the federal government in Indian affairs); Russel L. Barsh, *Is There Any Indian 'Law' Left? A Review of the Supreme Court's 1982 Term*, 59 WASH. L. REV. 863 (1984) (contending that the Supreme Court's treatment of Indian affairs does not amount to “law” because it lacks generality and constancy).

### C. Culture and Disillusionment

If structure follows function, it is true also that culture tends to follow structure. The social, economic, and political institutions of a highly regulated society create a learning environment. From day to day, they reward and punish certain kinds of behavior, encouraging what is rewarded and suppressing what is punished. People who succeed and "get ahead" become role models, and their conduct is emulated even if it is less than exemplary in moral terms. What lessons are taught, particularly to Indian youth, by the structure and behavior of today's tribal governments?

Contemporary tribal electoral politics is aggressive, competitive, and materialistic. Candidates prevail by distributing money, goods, or jobs before and after the election. Once elected, they may "do little, provide no supervision, travel all of the time, and exploit the tribe for private gain."<sup>92</sup> Their political survival depends on securing federal aid and resource rentals that can be distributed as jobs or per capita payments. As a consequence, "[a]gency paternalism is replaced by tribal paternalism."<sup>93</sup> To make matters worse, this kind of politics attracts people who cannot succeed at anything else (or, alternatively, who are elected by suspicious voters because they are "too dumb to steal").<sup>94</sup>

The longevity and apparent success of this kind of tribal leader has a demonstration effect on Indian youth. Reservation life teaches them to equate selfishness with popularity and power, and forces them to choose between materialism and personal insignificance. It is practically impossible to combat cynicism and resignation in the face of such daily evidence of the futility of holding fast to traditional Indian ideals. Indeed, tribal leaders discredit Indian values by routinely using them merely as a convenient camouflage for pursuing selfish ends.<sup>95</sup>

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92. LOPACH ET AL., *supra* note 27, at 48.

93. Harry W. Basehart & Tom T. Sasaki, *Changing Political Organization in the Jicarillo Apache Reservation Community*, 23 HUM. ORGANIZATION 283, 288 (1964).

94. LOPACH ET AL., *supra* note 27, at 126, 140.

95. German scholars have told me that Hitler, for admittedly more vicious objectives, succeeded in discrediting pre-Christian Germanic tribal traditions by exploiting them in constructing the ideology and symbolism of his Nazi state. For

The Northwest Indian fishing rights controversy illustrates these processes.<sup>96</sup> Until tribal jurisdiction over off-reservation Indian fishing was confirmed by the Supreme Court in the 1970s,<sup>97</sup> the BIA had little interest in financing marine industries, and tribal councils had little police power or financial power over Indian fishers. A string of legal victories reversed this. Suddenly, federal agencies and private financial institutions were anxious to subsidize marine development, and tribal councils found themselves in possession of aid, bank credit, and considerable regulatory power. Many councils used this to reward themselves, resulting in Indian ownership of fishing gear and the significant concentration of Indian fishing income over the past decade. This has deprived a great many Indian families of their chief source of livelihood and was done all in the name of the collective good. Thus, a resource originally divided among all has become an oligopoly, and the excuse used for this was "tribal tradition."<sup>98</sup> The logic is Orwellian, and the message sent to Indian youth is that tradition is defined by power, not by wisdom.

Indian communities respond to government elitism in various ways. Indian voter turnouts are very poor. On many reservations a majority of tribal members never participate in elections, either as a protest against what they consider to be an illegitimate process, or because they simply do not believe it matters who nominally is in charge.<sup>99</sup> Even if only a small

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example, the Swastika was a symbol of the perpetual motion of life and the universe. See MARIJA GIMBUTAS, *THE LANGUAGE OF THE GODDESS* 298 (1989).

96. This discussion is summarized from Russel L. Barsh, *Backfire from Boldt: The Judicial Transformation of Coast Salish Proprietary Fisheries into a Commons*, 4 W. LEGAL HIST. 85 (1991).

97. See *Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658 (1979).

98. See Daniel L. Boxberger, *The Lummi Indians and the Canadian/American Pacific Salmon Treaty*, 12 AM. INDIAN Q. 299 (1988) (shifting some of the blame to the U.S. government for failing to protect tribal fishers from high-seas interception). See generally Russel L. Barsh, *The Economics of a Traditional Coastal Indian Salmon Fishery*, 41 HUM. ORGANIZATION 170 (1982) (discussing the economics of fishing in a community still practicing traditional forms of management and allocation).

99. Cf. Thomas Holm, *Indian Concepts of Authority and the Crisis in Tribal Government*, SOC. SCI. J., July 1982, at 59 (discussing the illegitimacy of tribal politics). But see LOPACH ET AL., *supra* note 27, at 126 (discussing the high voter turnout on one reservation, possibly due to concerns about corruption); Robert L. Bee, *The Predicament of the Native American Leader: A Second Look*, 49 HUM. ORGANIZATION 56 (1990) (arguing that the increasing volatility in tribal electoral politics in the 1980s is a sign of democratization).

proportion of each community is interested in competing for elite power, this political system is reproduced and can perpetuate itself because the federal government finances it and defends it against dissidents. Washington supplies the spoils that successful candidates distribute to their supporters, and recognizes as lawful no regimes other than its own creatures. Popular support, then, is of secondary importance, if any at all. This is the most depressing fact of life on Indian reservations: the *inevitability* of the existing scheme of tribal government. When combined with the psychological legacy of cultural abuse, mistrust, and self-rejection, it should be no wonder that disillusionment, depression, and suicide have reached an epidemic scale.

At least when white Americans were in direct and visible control of reservations there was a feeling of Indian solidarity: us against them. Now it is *us against us*, families against themselves. It is no wonder that self-destructiveness has increased dramatically during the era of "self-determination."

#### *D. Redefining "Development"*

American Indian tribes need a better definition of "development" and a better way to measure progress. Defining success as the total production of goods and services ("gross product"), like the rest of Western society, tribal governments today plan and spend in ways that maximize measured financial throughput rather than human happiness. Indeed they assume (just like everyone else) that throughput and happiness are the same, which only emphasizes the convergence of values between Indian America and European America. This is not a question just of measurement, but also of "development paths." We must agree upon the trajectory tribal development should take before determining how best to measure progress along that path. The conventional approach gives priority to product-capital<sup>100</sup> and mechanical technology. Another option would be to focus on families,

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100. The term "product-capital" is used here to distinguish productive assets which are the products of human artifice, including money, buildings, and equipment, from assets which exist naturally in ecosystems, whether renewable or nonrenewable.



healthy childhoods, and individual creativity. What are Indian tribes trying to "grow" through development—things or people?

The choice of development paths also involves fundamental issues of a *procedural* nature. Is the *political* means of reproducing society broad-based, popular, and legitimate? Is it democratic, in the sense of active participation and genuine choices, not merely in the formality of periodic balloting? Tribal governments have become technocracies. Like their non-Indian neighbors, they are dominated by experts, and by a process of "consultation." This means that citizens have the right to make public complaints and have their complaints duly noted for the record. Ordinarily, they are not involved directly in decisions, but participate only in electing and chastising decision makers, or the people who hire the decision makers. Unfortunately, a noninvolved citizenry is generally a poorly informed one. It becomes mistrustful, reactive, and worst of all, guided by superficial slogans and symbolism. A genuine democracy may no longer be possible for Euro-Americans, at least at the national level, as a consequence of sheer scale. This is no reason to abandon it at the tribal level, however. Among many Indian tribes, there has been a resurgence of demand for real democracy, reflected in actions as varied as the formation of women's groups, the aggressive use of recall elections, and violence against incumbent administrations.<sup>101</sup>

What are the alternatives, then, for steering and monitoring the development process? One approach, championed in recent years by the United Nations Development Programme (UNDP), is "human development."<sup>102</sup> The long-term goal is maximizing human "choices," including productive capacity and personal life-options. Productive capacity is defined in terms of health, lifespan, education, and income, all of which can be measured relatively easily in most countries.<sup>103</sup> Of

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101. See, e.g., LOPACH ET AL., *supra* note 27, at 126, 136–39, 143; Holm, *supra* note 99, at 59; Bee, *supra* note 99, at 57–62; Tolan, *supra* note 87.

102. See UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 1992 (1992); *Human Development Report, Regional Consultations on the Human Development Report, Report of the Administrator*, Governing Council of the U.N. Development Programme, Special Sess., Provisional Agenda Item 6, U.N. Doc. DP/1992/13 (1992). The World Bank also endorses this approach. See *The Development of Human Resources in Developing Countries*, 28 DEV. ISSUES 33 (1991).

103. See UNITED NATIONS DEVELOPMENT PROGRAMME, *supra* note 102, at 91–96 (1992) for details on the calculation of UNDP's Human Development Index.

course, there is no objective way to standardize the scales for highly qualitative conditions, such as "health," so that they can be compared cross-culturally. Even greater problems confront those who attempt to devise standardized scales for freedom of choice. UNDP's efforts to use checklists derived from United Nations human-rights legislation have been criticized widely on political and methodological grounds.<sup>104</sup> While frequencies of torture or politically inspired murder are reasonably objective measures (assuming that there are reliable sources of raw data), there is no valid universal standard for measuring subjective ideals such as a "fair trial." People may agree on the definition of a "fair trial" at some general level, but disagree, across cultures, about whether a particular trial was "fair."

Despite these analytical difficulties, the human development idea seems far more compatible with traditional Indian conceptions of human dignity and development than do gross-product models. This makes it all the more disturbing that contemporary tribal governments avoid models and measures based on human conditions. Such models already exist and readily could be adapted to specific tribal cultural contexts. Indian tribes even might make an important contribution to improving on them. What they fear, however, is exposing the contradictions between stated commitments to social justice and poor social conditions, poor records on human rights, and public disapproval of tribal policies.

Another important alternative development model is "environmental accounting," which has gained popularity since the 1992 Earth Summit. The underlying idea is simple: environmental quality is treated as a productive capital asset, which changes in book value as a consequence of (for example) pollution, exploitation, and rehabilitation.<sup>105</sup> Although all economic activity involves trade-offs between production and long-term environmental productivity, these trade-offs are rarely explicit. Gross-product models omit them; indeed, toxic chemicals are an "asset" in the gross-products model as long

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104. See Russel L. Barsh, *Measuring Human Rights: Problems of Methodology and Purpose*, 15 HUM. RTS. Q. 87, 104 (1993) (summarizing criticisms of the UNDP checklist).

105. See U.N. TRANSNATIONAL CORPS. AND MANAGEMENT DIV., ENVIRONMENTAL ACCOUNTING: CURRENT ISSUES, ABSTRACTS AND BIBLIOGRAPHY, at 18-19, U.N. Doc. ST/CTC/SER. B/9, U.N. Sales No. E.92.II.A.23 (1992).

as they continue to be useable or marketable.<sup>106</sup> Environmental accounting shifts the analysis from current production and consumption to the *sustainability* of production, or, in terms familiar to tribal teachings, to the "seventh generation" yet to come. If this is compatible with traditional values, why is it nearly absent in contemporary tribal government planning?

Tools exist for basing development strategy on human dignity and ecological values. What is missing is genuine commitment to these goals. Like their neighbors, tribal governments appear to give priority to current consumption, and then make marginal adjustments, as needed, to respond to the most pressing concerns for social equity and ecological protection. This scheme is not sustainable, however, for any society.

Ecological problems are an inevitable consequence of materialism, even in societies that avoid symbolic development. Industrialization, at least in its early stages, breeds large inequalities in employment and income. Instead of resolving these inequalities through taxation and redistribution, which may slow growth, governments typically try to achieve social justice through *more* growth—that is, a policy of *more for everyone*. While politically appealing, this approach accelerates the utilization of the environment, unsustainably. Once rich and poor emerge from socioeconomic transformations, growth becomes a political imperative. The rich want to keep what they have, and the poor aspire to be like the rich. Rich and poor can agree only on producing everything faster, engendering an accelerating cycle of accumulating goods, unhappiness, and demands for equality. When the foundation of social life shifts from relatives (including animals) to things, there is an inevitable trajectory towards accumulating material goods at the expense of environmental sustainability.

Here is where most contemporary prescriptions for the environment go wrong. They are based on slowing down the destruction of the earth by restricting the most damaging forms of consumption. The idea is to curb the worst excesses, such as reducing toxic waste to "safe" levels or disposing of toxic materials in a "safe" manner. The only genuine, lasting

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106. See CHOOSING A SUSTAINABLE FUTURE: THE REPORT OF THE NATIONAL COMMISSION ON THE ENVIRONMENT 30-32 (1993).

solution must come from changing the aims and organization of our societies—changing our culture—rather than hemming in the worst manifestations of our present way of life. This means addressing the *incentives* for material consumption, or what people strive to achieve in their lives. Is their aim to accumulate love and respect, as among aboriginal Americans, or is their aim to accumulate goods? Indian tribes, building upon their traditional strengths and values, could have been the vanguard of this transformation.

Unfortunately, tribal governments already have largely adopted a conventional approach to environmental management, in their actions if not in their words. They measure progress in terms of cash flow<sup>107</sup> and respond to environmental threats by placing regulatory outer limits on the amount of damage done.<sup>108</sup> They are adopting European mechanisms to control a European problem which now has become an Indian problem. Thus, the debate between kinship and materialism is no longer between Indian people and their European colonizers; it is within the Indian community itself.

### III. RESTORING COMMITMENT

More than a century ago, the Pequot preacher and abolitionist William Apess denounced the racism and hypocrisy of white Christians from his pulpit in Boston.<sup>109</sup> American Indians today need some fiery preaching against hypocrisy in tribal government.

An old saw in Indian country provides, "It's hard to be an Indian." This saying is not about discrimination, racism, or poverty. Rather, it is a reminder that Indian values are hard. They demand great commitment and self-discipline. It is time, to borrow again from Ambrose Bierce, to give this old saw

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107. For a defense of this conventional approach see ROBERT H. WHITE, *TRIBAL ASSETS: THE REBIRTH OF TRIBAL AMERICA* 276-77 (1990).

108. By regulatory limits, I mean, for example, placing ceilings on the quantity of toxic materials that can be discharged into soil or water, or setting aside ecologically sensitive sites as reserves. These are forms of "growth management." They accept a calculated amount of irreversible ecological sacrifice in exchange for increasing present-day production and consumption. Preserving future generations' options requires the elimination, not reduction, of irreversible harm.

109. See *ON OUR OWN GROUND: THE COMPLETE WRITINGS OF WILLIAM APASS, A PEQUOT* (Barry O'Connell ed., 1992).

some new teeth.<sup>110</sup> Culture is not genetic and does not come without effort. If it is to achieve a sustainable future for Indian communities and make a contribution to global survival, Indian politics must be renewed on a clear philosophical basis by people who are prepared to live according to their stated beliefs.

There no longer seems to be much difference in the Westernization of the Third World and of the indigenous world. Indigenous societies are usually more isolated geographically, so the process of convergence is understandably slower. But they are catching up. While world leaders lament the loss of biological diversity, which holds the key to the renewal and survival of ecosystems, our planet rapidly is losing its cultural diversity, which holds the key to the renewal and survival of human societies. Scientists and scholars search for an alternative in their theories while real alternative cultures disappear.

It will be a real struggle to reassert an indigenous perspective on social justice, democracy, and environmental security. The hardest part of the struggle will be converting words to action, going beyond the familiar, empty rhetoric of sovereignty and cultural superiority. The struggle will be hardest here in the United States, where the gaps between rhetoric and reality have grown greater than anywhere on earth. This is the best place to begin, however, because this is the illusory "demonstration" that is studied by the rest of the world, including the indigenous peoples of other regions.

Are American Indians ready to accept this global responsibility? The current generation of tribal leadership appears unwilling to try. It is firmly committed by its actions to the materialist path, and it is neutralized by its dependence on a continuing financial relationship with the national government and developers. The next generation of American Indians may be another matter. Disillusioned and critical, they may yet find a voice of their own that is both modern and truly indigenous, and they may have the courage to practice the ideals that their parents merely sloganize. Let us hope so. There is no alternative for Indian survival or for global survival.

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110. See BIERCE, *supra* note 51, at 171.