

TRIBAL NATIONS AND LIMITARY CONCEPTS:
EXAMINING THE DIMENSIONS AND LIMITATIONS OF SOVEREIGNTY
AND AUTONOMY

BY

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Abstract

Due to the expansion of Indigenous academic scholarship in the past few decades, Indigenous theorists have struggled with the implementation of sovereignty. Recently, the concept of autonomy has entered the struggle. Sovereignty is generally understood as absolute political authority, autonomy as self-government. The relationship between sovereignty and autonomy with respect to Tribal Nations concerns two conceptualizations of the inherent right to manage their affairs free from external influence. Federal policies from settler governments such as the United States have denied this right. Therefore, this thesis examines the dimensions and limitations of the concepts of sovereignty and autonomy based on a category of Indigenous theorists devised within this thesis. The category of Indigenous theorists is used to trace how sovereignty has been conceptualized to express the inherent right of Tribal Nations to govern as they deem fit. Autonomy is critically analyzed in this thesis pursuant to the category of Indigenous theorists as an alternative political objective for Tribal Nations.

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“We should master these concepts so we can do battle with them and turn their inconsistencies around, substituting tribal perspectives wherever we can.”

Vine Deloria Jr.

“They forget, however, that to these phrases they themselves are only opposing other phrases, and that they are in no way combating the real existing world when they are merely combating the phrases of this world.”

Marx and Engels

Introduction

The purpose of this thesis is to explore the practical dimensions and limitations of sovereignty and autonomy with respect to Tribal Nations.¹ Due to the expansion of Indigenous academic scholarship in the past few decades, Indigenous theorists have struggled with the meaning and purpose of sovereignty as a political objective. More recently, autonomy has emerged in the struggle. Initially, sovereignty and autonomy appear to share strong conceptual connections that are useful to Tribal Nations. This thesis evaluates these connections and assesses their limitations through an

¹ This thesis does not use Indian, American Indian, or Native American unless citing material in Federal “Indian” law and policy or other supporting materials. Tribal Nations and Indigenous Peoples or tribal and Indigenous, are used interchangeably. The purpose for using Tribal Nations is two-fold. First, *The American Heritage College Dictionary* defines tribal as relating to *tribe* in the first sense as: A unit of social organization consisting of a number of groups who share a common ancestry, culture, and leadership. Second, as anthropologist Ronald Niezen points out in *The Origins of Indigenism: Human Rights and the Politics of Identity* (Berkeley, Los Angeles, London: University of California Press, 2003) we are “inclined to see indigenous peoples as ‘nations’ by virtue of the fact that their representatives are presenting their arguments in international forums” (213) based on “the conviction that the nature and purpose of the family, tribe, or regional bloc can only be realized in the nation” (200).

examination of four schools of thought in Tribal Nations' sovereignty literature.²

The most common line of thought to appear in Tribal Nations' sovereignty literature is what this thesis refers to as the *re-conceptualist*, which seeks to re-conceptualize and expand the concept of sovereignty to match the cultural orientations of Tribal Nations. The second line of thought, referred to as the *rejectionist*, stresses that sovereignty is an inappropriate concept for Tribal Nations, and should be abandoned and substituted by autonomy. Combining these two thoughts is the *rejectionist-conceptualist*, which argues for the rejection of the political feature of sovereignty until cultural features of sovereignty are legitimized. Finally, indicating a departure from thoughts on sovereignty is the *revolutionary-conceptualist* that ignores sovereignty and stresses an entirely revolutionary liberation from colonialism.

To explore the dimensions and limitations of sovereignty and autonomy, this thesis discusses the work of a selection of Indigenous political theorists. Indigenous scholars falling into the *re-conceptualist* thought are the Lakota scholar Vine Deloria, Jr. and Seneca tribal member and Professor of

² These theorists were chosen because they make references to autonomy without providing a clear definition of the concept. Political autonomy is understood as self-government; yet these theorists are critical of self-government. These theorists also make references to a cultural sense of autonomy. However, as the *revolutionary-conceptualist* thought puts forth, strictly cultural objectives fail to provide liberation from the conflicts that the theorists have with self-government.

Law at the University of Syracuse Robert Odawi Porter.³ The Indigenous scholar falling into the *rejectionist* thought is furthestmost represented by the Kahnawake Mohawk Director of the Indigenous Governance Program at the University of Victoria: Taiaiake Alfred. Arguing the *rejectionist-conceptualist* thought are co-authors Comanche Chairman Wallace Coffey and Yaqui Professor of Law Rebecca Tsosie. Arguing from the *revolutionary-conceptualist* thought is Métis scholar and activist Howard Adams.

This thesis is divided into four chapters. To understand the U.S. government's manipulation and subsequent erosion of tribal sovereignty, Chapter 1 reviews the colonization history of Tribal Nations and federal policies designed to obtain tribal land and assimilate Tribal Nations.⁴ Chapter

³ For additional in-depth analysis of the various forms of re-conceptualist thought on sovereignty that have emerged as intellectual, visual, and rhetorical sovereignty, see Michelle Raheja, Reading Nanook's Smile: Visual Sovereignty, Indigenous Revisions of Ethnography, and *Atanarjuat (The Fast Runner)*," *American Quarterly* 59, no. 4, (2007): 1159 – 1185. This piece of work is one of numerous to explore modern mediums, such as narrative works and film, through which Indigenous Peoples are re-conceptualizing the meaning and purpose of sovereignty. See also Amanda J. Cobb, "Understanding Tribal Sovereignty: Definitions, Conceptualizations, and Interpretations," *Indigeneity at the Crossroads of American Studies; Indigenous Studies Today: An International Journal* 2005-2006/ *American Studies: Incorporating American Studies International*, 46, no. 3-4 (2005): 115 – 132. Also see Joanne Barker, ed., *Sovereignty Matters: Locations and Contestation and Possibility in Indigenous Struggles for Self-Determination* (Lincoln and London: University of Nebraska Press, 2005).

⁴ For a review of the political and legal history of the tribal-federal relationship, see: Felix S. Cohen's *Handbook of Federal Indian Law*, Edited by David E. Wilkins (Norman: University of Oklahoma Press, 2006), David H. Getches, Charles F. Wilkinson, and Robert A. Williams Jr., *Cases and Materials on Federal Indian Law* (5th ed. Minnesota, Thomson & West, 2005) and Stephan L. Pevar, *The Rights of Indians and Tribes: The Basic ACLU Guide to Indian and Tribal Rights* (Carbondale and Edwardsville: Southern Illinois University Press, 1992).

2 considers the history of sovereignty and autonomy as the terms have developed through European philosophy, political theory, and contemporary international use.⁵ To aid in understanding sovereignty, this thesis relies on the work of Professor of Law Robert Williams. This chapter also provides a brief overview of the development of sovereignty from the European Enlightenment period to contemporary thought, as explained by leading scholar Stephan Krasner. To aid in understanding autonomy, this thesis uses the work of Professor of International Law Hurst Hannum, Professor of Public Law, Yash P. Ghai, and international law scholar Natalia Loukacheva.

Chapter 3 examines how Indigenous scholars have discussed and applied the concepts of sovereignty to Tribal Nations. The last section of the chapter analyzes the feasibility of Tribal Nations undertaking autonomy as a political objective. Chapter 4 concludes with a brief summary of the major

⁵ Sovereignty is not an entitlement of international law; it is however a constitutional component of nation-states and their right to recognize sovereigns in international and domestic matters. Tribal Nations seek to enforce the recognition of sovereignty in recent international developments regarding self-determination, found in United Nations documents on human and Indigenous rights: namely, the Declaration on the Rights of Indigenous Peoples, United Nations Charter Article 55, the International Convention on Civil and Political Rights (ICCPR) and the International Convention on Economic Social and Cultural Rights (ICESCR) common Article 1, and International Labor Organization Convention No. 169 (1989). Autonomy, similar to sovereignty, is not an entitlement of international law; it too is a constitutional component or statute, predominantly used by ethnic minorities. The only international documents in which autonomy appears are explicitly linked to the administration of local affairs while a political authority retains the control of common interests: Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation Article 35 paragraph 2 and Article 4 of the Declaration on the Rights of Indigenous Peoples.

findings in chapter 3 and recommendations based on Adams' thoughts on the political liberation of Tribal Nations from colonialism.

Chapter I

Colonialism, Settler Governments, and Tribal Nations

This chapter provides a brief overview of government mechanisms used to maintain the oppression of Tribal Nations', beginning with the formation of the U.S. to underlying assimilation strategies in 20th century federal government policies.¹ This chapter emphasizes how the U.S. government manipulated tribal sovereignty through federal policy and U.S. Supreme Court decisions for the purpose of colonizing, dominating, and controlling Tribal Nations. The significance of federal policies and U.S. Supreme Court decisions during this era introduces the importance of defining the dimensions and limitations of sovereignty and autonomy in chapter 3 as political objectives for Tribal Nations.

¹ This chapter is brief in its emphasis on the legal mechanisms leading to current Tribal Nations structures. The entire history of imperialism and colonialism in Canadian and U.S. law would expand the limits of this paper. However, in *A Tortured People* (Penticton, B.C.: Theyton Books, 1995) and *Prison of Grass* (Saskatoon, Saskatchewan: Fifth House Publishers, 1989), Adams defines imperialism as an ideology stemming from capitalism or European economic interests in the conquest and colonization of Indigenous lands. Adams defined ideology in *A Tortured People* as a system of ideas and political values. Adams believes that the ideology of settler governments is based on capitalism and that their sole purpose is to indoctrinate people into this ideology. Adams refers to colonialism as the result of a declining imperialism after colonization and therefore residue of imperialism carried into capitalist interests of the settler government to maintain political domination over Indigenous Peoples and Tribal Nations.

The Formative Years (1789 – 1871)

When the United States was first established, Tribes were politically and militarily powerful and recognized as sovereigns through the treaty-making process. However, the terms under which Tribal Nations would be recognized shifted as the federal government ended treaty-making in 1871 and initiated the erosion of tribal sovereignty. A great tragedy that shaped U.S. history and challenged the definitions of Tribal Nations occurred with the decisions in the Cherokee law cases of the 1800s, known as the Marshall Trilogy. The Marshall Trilogy was a body of court decisions that set in motion congressional right to define the sovereign status of Tribal Nations. Additionally, the Marshall Trilogy continues to play an important role in the conceptualization of tribal sovereignty.

Chief Justice John Marshall determined in *Johnson v. McIntosh*² that the US acquired title to Tribal land by way of British relinquishment of their “discovery” right after the Revolutionary war. Marshall applied the international colonial law of “doctrine of discovery” to claim that the U.S. became sole heir of the right to colonize and dominate tribal lands. The “doctrine” was colonial by the nature that it protected the economic interest that a European country found in new land from being claimed by another colonizing European country.

² Johnson v McIntosh 21 U.S. (8 Wheat) 543 (1823)

Marshall ruled in *Cherokee Nation v Georgia*³ that Tribal Nations were considered to hold limited rights to occupy their land which would therefore be classified as “domestic dependent nations” under the pupilage of the U.S. government. Much of Marshall’s perspective on land occupation was linked to European philosopher John Locke where he outlined “user rights” as opposed to “property rights.” Because Tribal Nations showed more rotation in their land operations as a method to preserve the environment, European Enlightenment thinkers argued that Tribal Nations had not developed effective property holdings to protect individual property rights and ownership.

In *Worcester v. Georgia*⁴ Marshall entrusted to the federal government the approval of all economic policies between states and Tribal Nations. This case defined more clearly the interpretation of tribal sovereignty. Marshall ruled that Tribal Nations were restricted from entering foreign relations, alienating their land except to the federal government, and were bound to a larger and more powerful sovereign in terms of national protection, trade regulation, and ultimate governing authority.

The Removal Act of 1830 was passed by the U.S. Congress and signed into law by President Andrew Jackson. The Removal Act further eroded tribal sovereignty as the federal government removed and relocated the majority of eastern Tribes west of the Mississippi River in lands occupied

³ *Cherokee Nation v Georgia* 30 U.S. 1, 17 (1831)

⁴ *Worcester v Georgia* 31 U.S. 483 (1832)

by other tribes, but not by settlers. As the settlers encroached on lands further west, the Tribal Nations of the plains retaliated, resulting in hostilities, military campaigns, and wars. By 1913, the last Indian war had ended and the federal government had forced tribes onto reservations. The Bureau of Indian Affairs (BIA), created in 1824, now controlled all reservation lands, held in trust status by the U.S. government.⁵

The Era of Allotment and Assimilation (1871 – 1928)

This next era settled for a more direct policy toward Tribal Nations: assimilation, carried out largely by the Dawes Act 1887 or the General Allotment Act.⁶ To accomplish this, Congress decided to divide up communally held tribal lands into separate parcels, give each tribal member a parcel, and sell “surplus” parcels to white settlers.⁷ As political scientist Sharon O’Brien puts forth in *American Indian Tribal Governments*, there were two significant features of the General Allotment Act. O’Brien writes:

First, the notion of private ownership seriously conflicted with the deeply held tribal belief that land was a sacred resource to be used communally. Second, while many eastern tribes were traditionally agriculturalists and could indeed take credit for teaching farming

⁵ Although some east coast Tribal Nations, such as the Mashpee, Poosapatuck, and the Pequot, were forced to retreat to reservations as early as the late 1600s, reservations came to the fore in this era.

⁶ General Allotment Act 25 U.S.C. (1887)

⁷ Pevar, *The Rights of Indians and Tribes*, 5.

techniques and introducing new crops to the first settlers, farming represented a completely alien way of life for most western tribes.⁸

Most Indians did not want to abandon their communal society and adopt the way of life of a farmer.⁹ Further, the land that was reserved and/or allotted was often unsuitable for farming. Thousands of impoverished Indians sold their land or lost their land in foreclosures when they were unable to pay state real estate taxes.¹⁰

Reorganization Era (1928 – 1945)

After decades of disastrous results from the Removal and Allotment Acts, the U.S. government shifted policy with the Indian Reorganization Act (IRA) of 1934.¹¹ The IRA halted further allotments of Indian lands and established tribal governments and courts.¹² Although initiated as recognizing a greater sense of self-government for Tribal Nations, the BIA constructed boiler-plate tribal constitutions including internal references to U.S. authority

⁸ Sharon O'Brien, *American Indian Tribal Governments* (Norman and London: University of Oklahoma Press, 1993), 78.

⁹ Pevar, *The Rights of Indians and Tribes*, 5.

¹⁰ Pevar, *The Rights of Indians and Tribes*, 5.

¹¹ Indian Reorganization Act 25 U.S.C. § 461 et seq. (1934)

¹² Sharon O'Brien, "Federal Indian Policies and the International Protection of Human Rights," Edited by Vine Deloria, Jr., *American Indian Policy in the Twentieth Century* (Norman: University of Oklahoma Press, 1985), 43.

over tribal actions. IRA constitutions pressured Tribal Nations to act as federally chartered corporations rather than distinctly self-governing nations acting under respective sovereign interests.¹³

The Termination Era (1945 – 1961)

During the 1950s, Congress made another abrupt change in policy, abandoning the goals of the Indian Reorganization Act and ending its efforts to improve Indian economic life.¹⁴ This change in policy is known as the termination era. In *Federal Indian Law*, Cohen writes, “In a narrow sense, termination was an experiment imposed on a small number of Tribes that ended, in virtually all respects, the special relationship between those Tribes and the federal government.”¹⁵

Congress and the BIA worked together to collect comprehensive data on the social and economic status of every Indian group or Tribe under federal supervision.¹⁶ According to Cohen, “[t]his quantifiable information was to be used in projecting policies aimed at the eventual discharge of the federal government’s obligation – legal and moral – and the discontinuance of

¹³ See Felix S. Cohen *On the Drafting of Tribal Constitutions*, Edited by David E. Wilkins (Norman: University of Oklahoma Press, 2006).

¹⁴ Pevar, *The Rights of Indians and Tribes*, 7.

¹⁵ Cohen, *Handbook of Federal Indian Law*, 91.

¹⁶ Cohen, *Handbook of Federal Indian Law*, 91.

federal supervision and control at the earliest possible date compatible with the government's trusteeship responsibility.”¹⁷

In exchange for the termination of tribal specific federal services, tribal assets were sold and divided between tribal members. During this era, many tribal members were relocated to urban work programs. The distance created by yet another relocation experience for many of these tribes, produced psychological problems that further affected their socio-economic status, sense of self worth, and attitudes toward federal policy.

Self-Determination Era (1961 – Present)

The federal government began to abandon the termination policy in 1958.¹⁸ There are three central reasons for this, numerous Tribal members were arguing for a release from disastrous federal policies, the impoverishment resulting from the termination policy did not fit with newer developing policies to battle poverty in the U.S, and Termination also proved more expensive for the federal government. In response, the federal government inaugurated policies of self-determination and self-governance in the early 1970s in order to recognize the distinctive cultural, political, and

¹⁷ Cohen, *Handbook of Federal Indian Law*, 91.

¹⁸ Cohen, *Handbook of Federal Indian Law*, 97.

economic rights of Tribal Nations and to encourage greater political independence of Tribes.¹⁹

According to Cohen, “The foundation policies of self-determination and self-governance were articulated in speeches delivered by President Lyndon Johnson and later, President Richard Nixon.²⁰ At the onset of this era, President Johnson declared that new policies toward Tribal Nations should strengthen their sense of “autonomy” without threatening their sense of community and the responsibility of the federal government²¹ As enunciated by President Nixon, the policy of self-determination rejects the two extreme policies advocated at various times in the U.S. nation's history: termination of the special relationship on the one hand and an excessive dependence on the federal government on the other.²² With President Nixon, autonomy entered the discussion of tribal sovereignty. However, President Nixon did not define autonomy as a policy for tribes.

¹⁹ David Wilkins and K. Tsianina Lomawaima, *Uneven Ground: American Indian Sovereignty and Federal Law* (Norman: University of Oklahoma Press, 2001), 7.

²⁰ Cohen, *Handbook of Federal Indian Law*, 100.

²¹ Nixon, Richard M. “Recommendations for Indian Policy,” Washington, D.C.: Government Printing Office, 1970. John T. Woolley and Gerhard Peters, *The American Presidency Project*. (Santa Barbara, CA: University of California). <http://www.presidency.ucsb.edu/ws/?pid=2573>. (accessed April 14, 2008).

²² Senate Committee on Indian Affairs Briefing Booklet, *The Enduring Validity of Indian Self-Determination*. (January 11, 1999). <http://www.senate.gov/~scia/106brfs/selfd.htm> (accessed April 14, 2008).

The two major acts in tribal self-governance policy have been the Indian Self-Determination and Education Assistance Act of 1975²³ and the Tribal Self-Governance Act of 1994.²⁴ The Indian Self-Determination and Education Assistance Act established procedures allowing Tribal Nations to administer more directly health and education services. The Tribal Self-Governance Act developed out of subsequent grievances with the Self-Determination Act, specifically as Tribal Nations demanded more control to administer federal funding.

In sum, as this brief history of the Tribal Nations' interaction with the U.S. federal government reveals, tribal sovereignty is largely dependent upon and subject to federal recognition. In terms of tribal sovereignty, Deloria believes, "[t]he issue boils down to making another political entity respect your rights deriving from a contractual agreement you have with them."²⁵ As Glen Coulthard summarized the relationship in *Indigenous Peoples and the Politics of Recognition*, "terms of recognition tend to remain the property of those in power to grant to their inferiors in ways that they deem appropriate."²⁶

²³ Indian Self-Determination and Education Assistance Act 25 U.S.C. § 450 et seq. (1975)

²⁴ Tribal Self-Governance Act, 25 U.S.C.A. §458 Part D

²⁵ Vine Deloria, Jr., "Intellectual Self-Determination and Sovereignty: Looking at the Windmill in our Minds," *Wicazo Sa Review* 13, no. 1 (Spring 1998): 26.

²⁶ Glen Coulthard, "Indigenous Peoples and the Politics of Recognition," *New Socialist: Ideas for Radical Change*, Sept. - Oct., 2006, 119 – 12.

As this chapter has indicated, the U.S. government has manipulated the concept of tribal sovereignty through a variety of policies, laws, and legal decisions. Tribal Nations retain inherent, yet limited sovereignty. Policies of sovereignty are evidence that Tribal Nations, “more than any other ethnic group, are subject to extensive legal regulation of their rights.”²⁷ It is therefore, understandable why many theorists such as Deloria, Porter, Alfred, Coffey and Tsosie discuss the validity of sovereignty, its proper definition, and application.

²⁷ Getches, Wilkinson, Williams, Jr., *Cases and Materials on Federal Indian Law*, 1.

CHAPTER II

Origins and Common Applications of Sovereignty and Autonomy

As Tribal Nations struggle with the meaning and purpose of a limited sovereignty, it is necessary to understand the origins of the concept of sovereignty, and that of autonomy. The purpose of this chapter is to examine the historical development and current understanding of sovereignty and autonomy generally. How Indigenous theorists have defined these terms is evaluated in the next chapter.

Sovereignty

Robert Williams, Lumbee tribal member and Director of the Indigenous Peoples Law and Policy Program at the University of Arizona has traced the origin and development of sovereignty in *The American Indian in Western Legal Thought*.¹ According to Williams' well-documented history, Europeans, in the 13th century, appropriated the concept of sovereignty as absolute authority from ancient Asian empires. Initially, European rulers used the concept of sovereignty to endorse religious wars against non-believers of Christianity.

¹ See Robert Williams, *The American Indian in Western Legal Thought: The Discourses of Conquest* (New York, Oxford: Oxford University Press, 1990).

Political philosopher Jean Bodin (1530-1596) defined sovereignty as a purely political concept. Bodin used the concept of sovereignty to settle the question of how the state must be organized for the sake of order. Order, Bodin argued, flowed from recognition of the territorial state as personified in the divine monarch, whose duty it was to protect trade, territorial security, and national integrity.

After Bodin, various philosophers developed and located sovereignty in the personality of the people, not the monarch. A great portion of this development took place during the European Enlightenment era, namely from the work of social contract theorists, such as Thomas Hobbes (1588-1679), John Locke (1632-1703), and Jean Jacques Rousseau (1712-1778).² The social contract theorists were disinterested in the concept of sovereignty serving as an absolute right of state answerable to a divine monarch. By placing sovereignty in “the people,” they could withdraw their allegiance from a ruler.

According to the social contract theorists, sovereign rule contained within its foundational machinery “popular sovereignty” based on natural law. Rousseau, speaking of sovereignty’s “double capacity”, argued that, “as a member of the Sovereign he is bound to the individuals, and as a member of

² See Christopher W. Morris, ed., *The Social Contract Theorists* (Lanham, Boulder, New York, and Oxford: Rowman and Littlefield Publishers, 1999).

the State to the Sovereign.”³ With the migration of sovereignty from the ruler to the people, the notion of popular sovereignty, or the democratic ideal materialized: that a state and government concede to the will of the people and the people to the will of the state. This ideal, understood and practiced by certain Indigenous tribes, such as the Iroquois, formed the philosophical rationale for the 1776 American Revolution.

As a concept, sovereignty can be used to expand or decrease power. Europeans, after using sovereignty to solidify their own authority, subsequently manipulated the application of the concept to colonize Indigenous Peoples, minority communities, and entire states. By the start of WWII, Western powers exercised sovereignty over four-fifths of the world.

Today, nation-states provide the status quo for sovereignty. To understand nation-state sovereignty, the concept must be understood on a global scale. Globalization has led to stronger regionalism (European Union, African Charters, OAS, Latin America, etc.) and border conflicts, trade agreements, and international recognition. Such authors as Stephen Krasner argue that globalization has overshadowed or evicted sovereignty from its former recognition as a preeminent political concept. Krasner believes that

³ Jean-Jacques Rousseau, *The Social Contract and Discourses*, trans. by George Douglas Howard Cole
<http://ia311535.us.archive.org/1/items/therepublicofpla00rousouft/therepublicofpla00rousouft.djvu.txt>. (accessed April 14, 2008).

sovereignty remains an “attractive” feature for providing little more than international recognition; “that recognition guarantees access to international organizations and sometimes to international finance.”⁴

In *Sovereignty*, Krasner argues that the concept has been used four different ways: 1) international legal sovereignty, referring to mutual recognition between political entities retaining some form of jurisdiction; 2) Westphalian sovereignty, referring to internal control of a political organization without exception from external authority structures; 3) domestic sovereignty, referring to state political authority free from external authority structures; and 4) interdependence sovereignty, referring to the ability of public authorities to regulate the flow of information, ideas, goods, people, pollutants, or capital across the borders of their state.⁵ These forms of sovereignty may or may not occur simultaneously. Krasner believes at any given time a political entity may retain all or some features, of these uses of sovereignty. Though Krasner’s uses of sovereignty might explain the limitations of sovereignty due to globalization, each use carries special significance for the assertion of tribal sovereignty.

International legal sovereignty should be expressed by the U.S. in the mutual recognition and respect of tribal sovereignty. As mutual recognition moves through the Westphalian and domestic uses, tribal sovereignty has

⁴ Stephan Krasner, "Think Again: Sovereignty," *Foreign Policy*, (Jan - Feb. 2001): 20.

⁵ Stephan Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, New Jersey: Princeton University Press, 1999): 3 – 4.

clearly been manipulated and therefore never appropriately respected by the U.S. In terms of interdependence and the ability to regulate the flow of such things as pollutants through tribal land, this form of sovereignty is largely compromised if states fail to respect interdependence.

International issues with sovereignty reveal that nation-states are forced to accept that the political and economic world is ever more critically integrated and that central decisions have regional and international consequences. It would be expected that the U.S. would take this evidence in further consideration of respecting the sovereignty of Tribal Nations. As this has not happened, it is understandable why an Indigenous theorist may reject sovereignty and propose autonomy as an attractive political objective.

Autonomy

The concept of autonomy is a more ancient concept than that of sovereignty. The term autonomy derives from the Greek *auto* (self) and *nomos* (rule of law) and has many synonyms in modern political, sociological, philosophical, and juridical literature.⁶ The issue of autonomy is increasingly important owing to the majority of wars today are groups fighting for increased independence and/or control over their lives, lands, and resources. The

⁶ Natalia Loukacheva, working paper *On Autonomy and Law*, at Globalization and Autonomy Online Compendium, 3.
http://www.globalautonomy.ca/global1/article.jsp?index=RA_Loukacheva_AutonomyLaw.xml, (accessed April 14, 2008).

majority of these groups are ethnic minorities residing in and seeking self-government in a multi-ethnic state.

As chapter 1 discussed, Tribal Nations share a unique and critically integrated relationship of colonialism with the U.S. government. As inherent sovereigns, Tribal Nations possess a status that many ethnic minorities do not possess. Ethnic groups may or may not have prior occupancy rights to land and therefore do not retain inherent sovereignty.

To better understand the political variations on autonomy, the philosophical origins of the concept must first be understood. In *The Perversions of Autonomy*, Hasting Center scholars' Willard Gaylin and Bruce Jennings maintain that "[to] grasp what animates the contemporary idea of autonomy, it is important to locate it against the background of the modern worldview that developed in European civilization from roughly the sixteenth century on."⁷ During this time, European Enlightenment philosopher Immanuel Kant (1724 –1804) responded to the religious influence of pre-Enlightenment with autonomy. Breaking from the religious passion of the pre-Enlightenment era, Kant believed that individuals did not need to believe in a higher authority for a secure society.⁸ Kant determined that autonomy is the

⁷ Willard Gaylin and Bruce Jennings, *The Perversion of Autonomy: Coercion and Constraints in a Liberal Society* (Washington D.C.: Georgetown University Press, 2003): 29.

⁸ At this juncture it is worth noting that Kantian autonomy rejects spirituality in its foundational machinery. Such a concept would be misplaced for Tribal Nations considering there is a spiritual as well as ethical balance key to the tribal worldview.

fundamental feature of the categorical imperative, or as used in this thesis: internal control without exception.⁹ Kantian autonomy is an explicit moral obligation to respect individual personality.

Kantian autonomy, in terms of a political objective is similar to Rousseau's double capacity in sovereignty. Personal and political autonomy is in some real sense the right to be different and to be left alone; to preserve, protect, and promote values which are beyond the legitimate reach of the rest of society.¹⁰ Therefore, as the double capacity of sovereignty entails a sense of shared and participatory control of governance, autonomy as a political objective suggests that a political authority is obligated to respect a separate political group without interference. Thus, sovereignty and autonomy are similar as the autonomous region must still respect the larger society, as in working in a cooperative environment.

Scholars examining and evaluating the efficacy of autonomy as a political status include Hannum, Ghai, and Loukacheva. Hannum and Lillich (1933 – 1996) in *The Concept of Autonomy in International Law*, which appeared in the prestigious American Journal of International law, define autonomy as:

⁹ See Immanuel Kant, *Fundamental Principles of the Metaphysics of Morals: Transition from Popular Moral Philosophy to the Metaphysic of Morals*, trans., Thomas Kingsmill Abbot 1785. <http://www.gutenberg.org/dirs/etext04/ikfpm10.txt> (accessed April 4, 2008).

¹⁰ Hannum, *Autonomy, Sovereignty, and Self-Determination*, 4.

Independence of action on the internal or domestic level, as foreign affairs and defense normally are in the hands of the central or national government, but occasionally power to conclude international agreements concerning cultural or economic matters also may reside with the autonomous entity.¹¹

Ghai, editor of *Autonomy and Ethnicity*, defines autonomy as a device to allow ethnic or other groups claiming a distinct identity to exercise direct control over affairs of special concern to them, while allowing the larger entity those powers which cover common interests.¹² Ghai also puts forth, “[a]utonomy becomes less problematic if it can be disassociated from sovereignty.”¹³

As Tribal Nations retain inherent sovereignty, it may be difficult to consider an autonomy arrangement for Tribal Nations as both they and the U.S. government each have desired strong central authority over tribal affairs. By this line of reasoning, arrangements for autonomy may or may not be strengthened by the indeterminacy of sovereigns to agree on a standard set of limitations between local administration and central political authority. As Tribal Nations have experienced, the U.S. is likely to retain the central authority to suspend, by Congressional “plenary power”, strong central authority of tribal governments.

¹¹ Hurst Hannum and Robert Lillich, “The Concept of Autonomy in International Law,” *The American Journal of International Law* 74, no. 4, (1980): 860.

¹² Yash P. Ghai, ed., *Autonomy and Ethnicity: Negotiating Competing Claims in Ethnic-States* (Singapore: Green Giant Press, 2000), 8.

¹³ Ghai, *Autonomy and Ethnicity*, 16.

An important note must be made on the definitions of autonomy provided by Hannum, Lillich and Ghai: autonomy refers to local control over special concerns while a central authority controls common interests, foreign affairs, and national defense. Further, Ghai determines that direct control over internal affairs with a central identity controlling common affairs often entails an asymmetry in constitutional provisions.¹⁴ For instance, it may be difficult to manage various autonomous arrangements or regions, all of which seeking identical treatment from a central authority, if there is conflicting domestic and international laws, policies, and constitutions.

Based on Hannum, Lillich, and Ghai's, definitions, there are strong connections between autonomy as it is understood for ethnic minorities and tribal sovereignty. The U.S., a central authority, controls common interests, foreign affairs, and national defense while Tribal Nations struggle to control local affairs under federal policy. Similarly, the U.S. government has continued to deprive tribes of their autonomous or internal, or sovereign powers to control their own affairs.

Hannum listed in his later work *Autonomy, Sovereignty, and Self-Determination* a set of variables that, if they exist, provide the content for an autonomous political existence: 1) language, 2) education, 3) access to

¹⁴ Ghai, *Autonomy and Ethnicity*, 11 – 14. Asymmetry in constitutional provisions, or conflicting perspectives on various federal, tribal, administrative, and environmental policies, has largely dominated tribal sovereignty.

government civil service employment and social services, 4) land and natural resources, and 5) representative local government structures.¹⁵ Language is perhaps the most distinctive feature of a culture.¹⁶ Hannum notes that the experience of a spoken national language being withheld from a cultural and national minority is a direct violation of the cooperative role of a nation-state and sovereign partners internal to that nation-state. Hannum's findings on this matter correlate with the experiences of languages being denied to tribal individuals in the boarding school experiences of the assimilation era in federal policy, a direct attack on the autonomy or sovereignty of Tribal Nations. However, many Tribal Nations have managed to retain their languages and most importantly, have institutionalized tribal language in developments postdating the Termination era.

Education is, along with language, the primary vehicle through which a culture is transmitted.¹⁷ Though individual states are obligated to provide education on a universal basis, states are also obligated to allow local control over content. In terms of tribal sovereignty and autonomy, Tribal Nations possess the inherent right and authority to create academic and educational programs and institutions.

¹⁵ Hannum, *Autonomy, Sovereignty, and Self-Determination*, 458.

¹⁶ Hannum, *Autonomy, Sovereignty, and Self-Determination*, 458.

¹⁷ Hannum, *Autonomy, Sovereignty, and Self-Determination*, 462.

Based on Hannum's study, access to government civil service employment and social services rests largely upon ethnic divisions that can be extended and enforced when administrative policies and duties are withheld from an aspiring community. Due to policies of the Indian Self-Determination and Education Assistance Act and Self-Governance Act, Tribal Nations possess a greater amount of control over internal administrative duties. However, Indigenous theorists have begun to explore the existence of neo-colonialism in tribal self-government following these policies.¹⁸

In Hannum's terms of land and natural resources, "[I]and is the literal and figurative foundation of the state and of every community that aspires to political autonomy.¹⁹ Land is the symbolic aspect of controlling one's 'homeland' under principles separate from a centralized government.²⁰ An important piece of tribal sovereignty is the full return of tribal jurisdiction over Tribal land.

Hannum believes that fully autonomous territory possesses representative local government structures involving 1) local control or influence over education, use of language, structure of local government, and

¹⁸ Neo-colonialism is the control of Indigenous affairs which occurs through the employment of Indigenous Peoples in colonized institutions. Here the most effective colonizer is the colonized who accepts the state ideology of capitalism; providing the colonizer with the social control, land, natural resources, and labor to extend and enforce dependency upon the colonizer's economy.

¹⁹ Hannum, *Autonomy, Sovereignty, and Self-Determination*, 463.

²⁰ Hannum, *Autonomy, Sovereignty, and Self-Determination*, 463.

land use and planning, 2) a locally selected chief executive, who may be subject to approval by the central government, 3) an independent local judiciary with full responsibility for interpreting local laws, and 4) areas of joint concern which may be the subject of power-sharing arrangements between the autonomous and central governments.²¹ Based on Hannums' delineations, Tribal Nations may possess autonomy to some degree; perhaps just short of full sovereignty. At this juncture, autonomy significantly resembles local administration or self-governance.

In the working paper *On Autonomy and Law*, Loukacheva “employs the concept of autonomy as equivalent to self-government pursuant to international law, comparative constitutional law, and Indigenous Peoples political conditions.²² Loukacheva argues that there are weak grounds for autonomy as a principle of international law and somewhat stronger, but still very limited, grounds for its recognition in comparative law.²³ Loukacheva also argues that autonomy may serve as a dynamic concept for Indigenous Peoples.

According to Loukacheva, the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security

²¹ Hannum, *Autonomy, Sovereignty, and Self-Determination*, 467.

²² Loukacheva, *On Autonomy and Law*, 1–2.

²³ Loukacheva, *On Autonomy and Law*, 1.

and Cooperation Article 35 paragraph 2 refers to autonomy as an option of administration for minorities under a participating state:

The participating States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned.

As the previous document states, autonomy is recognized as equivalent to local administration. It also has an explicit reference of local administration corresponding not only to the characteristics of a minority but that of the policies of the state. This reference to local administration in correspondence with state authority may not be useful to Tribal Nations as the U.S has previously proven to create conditions opposite of those in this document.

At the time of Loukacheva's major investigations, the UN Declaration on the Rights of Indigenous Peoples was not yet adopted. At the time, Article 31 stated:

Indigenous Peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs...

This reference to autonomy, which survived numerous amendments, is now located only in Article 4:

Indigenous Peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Autonomy and self-government are indicated with the disjunctive “or”, which makes these notions synonymous.²⁴ Self-government is a critical issue for Tribal Nations. Therefore, it is necessary to review their perspectives on sovereignty, autonomy, and self-government in the next chapter.

²⁴ Loukacheva, *On Autonomy and Law*, 14.

Chapter III

Indigenous Theorists and a Critical Analysis of Autonomy as Political Objective

Innovative theories and expansion of the concept of sovereignty continues to be a critical point of discussion by various Indigenous theorists. The underlying question in this discussion is whether sovereignty remains a useful political objective for Tribal Nations. To examine this question, this chapter is separated into two sections: section one evaluates the following four lines of thought: *re-conceptualist*, *rejectionist*, *rejection-conceptualist*, and the *revolutionary-conceptualist*. Section two evaluates the logic of autonomy as a political objective for Tribal Nations, concluding with recommendations following the *revolutionary-conceptualist* perspective.

Each school of thought accepts that Tribal nation-building must take place within the local tribal community; they differ however on what the use of sovereignty implies for this objective. For instance, the *re-conceptualists* argue that sovereignty can provide the necessary psychological and political incentive for re-building Tribal Nations; the *rejectionist* argues that the sovereignty diminishes the cultural orientation of Tribal Nations and should therefore be abandoned. The *rejection-conceptualists* argue that cultural feature of sovereignty must be expanded before political feature has any meaning or use, and the *revolutionary-conceptualist* ignores sovereignty and

argues for features of nation-building that lead from colonialism to liberation. The following chart provides a summary of each school of thought and each indigenous scholar's interpretation of sovereignty.¹

INDIGENOUS THEORETICAL THOUGHT ON SOVEREIGNTY

| THEORIST | SCHOOL OF THOUGHT | PRIMARY CHARACTERISTICS |
|----------------------------|---|--|
| DELORIA | <i>Re-Conceptualist</i> | <ul style="list-style-type: none"> · Council of elders oversees internal activities · Tribal council enters political discourse with nation-states · European concept of property rights useful to protect land |
| PORTER | | <ul style="list-style-type: none"> · Tribal members must have belief · Carry out that belief · All must recognize that belief |
| ALFRED | <i>Rejectionist</i> | <ul style="list-style-type: none"> · Rejection of sovereignty · Revitalization of Tribal values · Nations respect other nation's autonomy |
| COFFEY & TSOSIE | <i>Rejection-Conceptualist</i> | <ul style="list-style-type: none"> · Tribes look within for core meaning · External political sovereignty paused until internal or "cultural" sovereignty is realized |
| ADAMS | <i>Revolutionary-Conceptualist</i> | <ul style="list-style-type: none"> · Ignores sovereignty · "Cultural" nationalism is step backward · Complete liberation from state ideology of capitalism |

¹ This category of Indigenous theorists was devised in this thesis to represent the collective thought on sovereignty in respect to Tribal Nations.

Section I

The Re-Conceptualists, Rejectionist, Rejectionist-Conceptualists, and Revolutionary-Conceptualist Schools of Thought

In the keynote address at the May 26, 1995 Tribal Sovereignty Forum of the American Indian Policy Center, Deloria explained what this thesis refers to as the *re-conceptualist* thought on sovereignty.² This approach focuses on three aspects of sovereign authority: external, internal, and property rights. External sovereignty is dependent upon tribal nationhood as a basis in which tribal councils enter political discourses with other nation-states. According to Deloria, nationhood implies a process of decision-making that is free and uninhibited within a community that is virtually insulated from external factors as it considers its possible options.³ In contrast to nationhood, understood as full external sovereignty, self-government implies that a superior political power monitors the local decision making authority to ensure that its decisions and outcomes are compatible with the goals and policies of the larger political power.⁴

² Vine Deloria, Jr., "Rethinking Tribal Sovereignty" (keynote address, Tribal Sovereignty Forum of the American Indian Policy Center, May 26, 1995). <http://www.airpi.org/projects/tribsov.html>, (accessed April 14, 2008).

³ Vine Deloria, Jr. and Clifford M. Little, *The Nations Within: The Past and Future of American Indian Sovereignty* (Austin: University of Texas Press, 1998), 13.

⁴ Deloria and Little, *The Nations Within*, 14.

According to Deloria, internal sovereignty can be determined by a council of elders that oversee the internal activities of Tribal Nations. Also, external sovereignty can be determined by a tribal council that works more directly with other nations and nation-states. By Deloria's line of reasoning, internal sovereignty can strengthen traditional aspects of Tribal Nations as external sovereignty provides a space for tribes to participate in open political dialogue.

Property rights are a *re-conceptualist* thought on sovereignty. Deloria believes that although property rights are European in origin and that Tribal Nations held land communally rather than individually, property rights are still useful. According to Deloria, embracing property rights to protect tribal land from non-tribal economic developers can be an expression of both internal and external tribal sovereignty.

In *Strengthening Tribal Sovereignty through Government Reform and The Decolonization of Indigenous Governance*, Porter's arguments also fall into the *re-conceptualist* school of thought. Porter argues that tribal sovereignty depends upon the extent to which: 1) tribes believe in the right to define their own future, 2) possess the ability to carry out those beliefs, and 3) the tribe and outside world recognizes tribal sovereignty.⁵ Porter stresses

⁵ Robert Odawi Porter, "Strengthening Tribal Sovereignty through Government Reform: What Are the Issues?" *Kansas Journal of Law and Public Policy* 7, no.1 (1997): 90. Robert Porter also stated that the three main faces of tribal dysfunction are poor administration, dependence, and infighting. See also Porter's chapter "The Decolonization of Indigenous

foremost internal implications, that of believing that a concept of European origin can strengthen the future of Tribal Nations. Believing that sovereignty is the power of a people to control their own destiny, Porter argues that the legitimacy of sovereignty lies in tribal ability to extend and enforce it.⁶

Alfred's approach, classified as *rejectionist*, is plainly set forth in his "manifesto" *Peace, Power, Righteousness*. "Sovereignty," Alfred argues, "is an exclusionary concept rooted in an adversarial and coercive Western notion of power."⁷ By this line of reasoning, "sovereignty implies a set of values and objectives in direct opposition to those found in traditional indigenous philosophies."⁸ Alfred maintains that scholars and activists must reject the term and notion of indigenous "sovereignty."⁹ If sovereignty remains the goal

Governance" in *For Indigenous Eyes Only: The Decolonization Handbook*, Edited by Waziyatawin Angela Wilson and Michael Yellow Bird, Santa Fe: School of American Research, (2005): 100.

⁶ Porter, *The Decolonization of Indigenous Governance*, 100.

⁷ Alfred, Taiaiake. *Peace, Power, Righteousness: An Indigenous Manifesto* (Canada: Oxford University Press, 1999), 59. The notion of power is a central feature in Alfred's argument. Alfred argues that, separate from Western power which is predominantly individualistic, coercive, and adversarial, Indigenous power respects the intellectual, mental, physical, and spiritual essence of all elements of creation without interfering in their natural functions for personal, political, or economic self gain.

⁸ Alfred, *Peace, Power, Righteousness*. 57. According to Alfred's "manifesto", Tribal Nations' traditional Indigenous philosophies are: respect for the earth (xiv), a respectful way of governing (xvi), leadership that loves and sacrifices for people (xv), a worldview that balances respect for autonomy with recognition of a universal interdependency (xvi), and peaceful co-existence among all the elements of creation (xvi).

⁹ See Taiaiake Alfred, "Sovereignty" in *Sovereignty Matters: Locations of Contestation and Possibility in Indigenous Struggles for Self-Determination*, ed. Joanne Barker (Lincoln and London: University of Nebraska Press, 2005), 41; and *A Companion to American Indian History*, ed. Vine Deloria Jr. and Neal Salisbury, (New York: Blackwell Publishers, 2002), 460 – 474.

of indigenous politics, Alfred argues, "...Native communities will occupy a dependent and reactionary position relative to the state."¹⁰ Alfred's argument is supported by the reality that "Congress has the authority to limit or even abolish tribal powers, and thus tribes are 'limited' sovereignties."¹¹

Coffey and Tsosie's *Rethinking the Tribal Sovereignty Doctrine*, represents a *rejectionist-conceptualist* approach. In this *Stanford Law Review* article, the authors call for a reappraisal of the tribal sovereignty doctrine, one which looks *within* – to the "cultural sovereignty" of Tribal Nations – for the core of its meaning rather than to an externally defined notion of tribal "political sovereignty."¹² Similar to Alfred's *rejectionist* thought, Coffey and Tsosie reject external political features that are restricted by federal policy until "cultural sovereignty" and autonomy are realized. Similar to Deloria's and Porter's *re-conceptualist* thought "cultural sovereignty" is dependent upon the willingness of Tribal Nations to determine their own meaning of sovereignty.¹³

¹⁰ Alfred, *Peace, Power, Righteousness*, 59.

¹¹ Pevar, *The Rights of Indians and Tribes*, 79.

¹² Wallace Coffey and Rebecca Tsosie, "Rethinking the Tribal Sovereignty Doctrine: Cultural Sovereignty and the Collective Future of Indian Nations." *Stanford Law and Policy Review* 12, no. 2, (2001), 191.

¹³ Coffey and Tsosie, *Rethinking the Tribal Sovereignty Doctrine*, 196.

Arguing from, what this thesis terms the *revolutionary-conceptualist* thought is Adams. Adams does not discuss sovereignty; but does refer to a conceptualization of autonomy in a cultural and political sense of Indigenous nationalism and liberation from the capitalist ideology of the Canadian nation-state:

As long as capitalism remains the dominant ideology in Canada, these segregated Métis and Indian areas will probably have to remain separate and autonomous...In this case, however, separatism means nothing more than allowing the present segregation of reserves, colonies, and ghettos to continue as they are today, with the exception that autonomy and local control must be given to them.¹⁴

To Adams, autonomy functions largely as internal control as the given reality of Tribal Nations' position in the dominant nation-state. By this line of reasoning, autonomy does not mark any real shift in tribal sovereignty or the overall state of affairs between the colonizer and the colonized.

These Indigenous theorists discuss the features of tribal sovereignty. For the *re-conceptualist* school of thought, sovereignty is a separation of council authorities, an embracement of property rights, and an inner ability to believe. For the *rejectionist* school of thought, sovereignty is an exclusionary concept and therefore inappropriate for Tribal Nations. For the *rejectionist-conceptualist* school of thought, sovereignty is a process of reclaiming culture before political advancements can be made. For the *revolutionary-*

¹⁴ Adams, *Prison of Grass*, 168.

conceptualist school of thought, sovereignty is entirely absent in a discussion between the colonizer and the colonized.

The *re-conceptualist*, *rejectionist*, and *rejection-conceptualist* theorists provide an in-depth understanding of the dimensions, limitations, and hopes for sovereignty. However, when referring to autonomy the *rejectionist*, *rejection-conceptualist*, and the *revolutionary conceptualist* allude to the concept without clearly defining how autonomy differs from self-government. The following section evaluates autonomy as an appropriate political objective for Tribal Nations.

Section II

A Critical Analysis of Autonomy as Political Objective

Rejecting sovereignty, Alfred argues for autonomy in a federal system. To demonstrate autonomy in a federal system, Alfred explains the workings of the Mohawk Two-Row Wampum:

The Kanien'kahaka Kaswentha (Mohawk Two-Row Wampum) principle embodies this notion of power in the context of relations between nations. Instead of subjugating one to the other, the Kanien'kehaka who opened their territory to Dutch traders in the early seventeenth century negotiated an original and lasting peace based on co-existence or power in a context of respect for the autonomy and distinctive nature of each partner. The metaphor for this relationship – two vessels, each possessing its own integrity, travelling the river of time together – was conveyed visually on a wampum belt of two

parallel purple lines (representing power) on a background of white beads (representing peace).¹⁵

Alfred advises “[t]he principles embedded in cultural ideals like the *Kaswentha* are in fact consistent with some Western principles that have been nearly forgotten in the construction of the modern hegemonic state – among them the original principle of federalism.”¹⁶ Alfred also argues for pre-colonial, tribal confederated unions which contained principles of federalism as an expression of autonomy.

Based on Hannum’s, Ghai’s and Loukacheva’s descriptions, if Tribal Nations embrace autonomy in a federal system, they would also embrace the authority of a central governing body. A central political authority is the operative principle behind a federal system. There is an internal contradiction with the political objective of autonomy for Tribal Nations; this lies in promoting principles of federalism while being critical of self-government. Deloria and Alfred argue that self-government is an inappropriate idea originating in the minds of state authorities, providing an avenue to inter-governmental dialogue yet failing to embody the spiritual aspirations of Tribal Nations.¹⁷

¹⁵ Alfred, *Peace, Power, Righteousness*, 52.

¹⁶ Alfred, *Peace, Power, Righteousness*, 53.

¹⁷ The original statement may be found in Vine Deloria, Jr. and Clifford M. Little, *The Nations Within: The Past and Future of American Indian Sovereignty*, (Austin: University of

Indigenous theorists object to self-government as it is assumed that the tribal sovereign does not possess internal sovereignty, rather has only been given the authority of self-government from a higher authority, like a town or county. Inherent sovereignty does not remain in such a federal system. Self-government appears to be autonomy in another guise, that of remaining loyal to a limited internal sovereignty.

Indigenous theorists are correct in their criticism of self-government if the powers of self-government that Tribal Nations possess are internal administrative authorities that conflict with Tribal values and keep tribes loyal to the overall goals and policies of the non-tribal political authority.¹⁸ As Adams puts forth: The move for so-called self-government can be a dangerously oppressive and reactionary move.¹⁹ Therefore, self-government or autonomy is like a Trojan horse for neo-colonialism, as Alfred states:

It is ensuring continued access to Indigenous lands and resources by insidiously promoting a form of neo-colonial self-government in our communities and forcing our integration into the legal mainstream.²⁰

Texas, 1984), 15. See Alfred "Sovereignty" 2005, 42, and Alfred, *Peace, Power, Righteousness*, 1999, 54.

¹⁸ Recall Tribal values as described by Alfred, see note 62.

¹⁹ Adams, *A Tortured People*, 10.

²⁰ Alfred, *Peace, Power, Righteousness*, xiii.

Forcing and integrating Tribal Nations into the legal mainstream has limited tribal sovereignty and self-government. Tribal autonomy may do more to confuse the issue and the conceptualization of autonomy as a political objective than clarify it. Deloria, Alfred, and Adams condemn the use of autonomy in its present manifestation as self-government. The disagreement concerning autonomy hinges upon whether the Indigenous theorists conceive of autonomy included in or rising from inherent sovereignty. Yet, if inherent sovereignty does not exist in a federal system, then autonomy is relegated to what Coffey and Tsosie call cultural sovereignty.

Coffey and Tsosie refer to autonomy as an inherent right to exercise *within* tribal boundaries.²¹ According to Coffey and Tsosie, cultural sovereignty; the looking within Tribal Nations to define the future of tribal sovereignty, provides a context for political sovereignty rooted in autonomy.²² Coffey and Tsosie would also appear at odds with autonomy as it has developed internationally; they too are critical of self-government as it continues to “affirm the primary role of the federal government and the subordinate status of Indian nations.”²³

²¹ Coffey and Tsosie, *Rethinking the Tribal Sovereignty Doctrine*, 194.

²² Coffey and Tsosie, *Rethinking the Tribal Sovereignty Doctrine*, 201.

²³ Coffey and Tsosie, *Rethinking the Tribal Sovereignty Doctrine*, 201.

Porter refers to autonomous constitutional tribal governments, meaning those tribal governments that lost autonomy through the adoption of constitutional elements foreign to pre-colonial tribal governing structures.²⁴ If Porter is correct, that Tribal Nations can carry the belief that they are sovereigns, then sovereign Tribal Nations could indeed write an autonomous constitution with a purpose separate from the interests of the U.S. However, Tribal Nations would have to be explicit in their separation from federal authority, and according to Porter, such action would require the recognition of tribal sovereignty not only within the Tribal Nation itself, but from the U.S.

According to Adams, autonomy would be a passing phase. This is the paradigm shift for the theorists in this thesis. Opposed to the *re-conceptualist* and *rejection-conceptualist* thought, Adams argues that a deeply internal or cultural initiative fails to make the necessary political moves away from dependence upon a central, non-Indigenous governing authority. Warning against an entirely cultural nationalism, Adams writes:

Since the cultural awakening is only one stage of liberation, steps must be taken to ensure that the national consciousness will develop its political aspect as well. There is danger in nationalism if this transition is not made at the right time, because colonized people can quickly

²⁴ Porter, *Strengthening Tribal Sovereignty Through Government Reform*, 81. Autonomous constitutional governments refer to tribal governments that have written elements derived from the U.S. constitution. Porter provides evidence of the autonomous constitutional government in the Seneca and Cherokee Nations, each of which experienced a great amount of interaction and trade with the developing U.S.

become involved in cultural nationalism, which is a move backward to further oppression.²⁵

Adams believes that a purely cultural initiative will inevitably emerge as a caricature of cultural celebration. Quoting Adams further:

Cultural nationalism is a reactionary nationalism that forms part of the ideology of imperialism...it involves the revival of indigenous native traditions and tribalism...The danger in this is that it might begin to sever any links with a progressive liberation ideology. The idea that a return to traditional Indian customs and worship will free us from the shackles of colonial domination is deceptive – a return to this kind of traditional worship is a reactionary move and leads to greater oppression, rather than to liberation. Cultural nationalism is more than behaving and believing as traditional Indians; it is a return to extreme separatism in the hope that colonial oppression will automatically go away. The emphasis is upon worship and the performance of ritual behavior, not upon politics and liberation.²⁶

According to Adams, “[I]liberation demands are based on obtaining autonomy in native communities and throwing off the domination of government bureaucrats.”²⁷ By this line of reasoning, the demands for autonomy, as in freedom from bureaucratic domination, is a goal that has not been fully achieved. Once autonomy is obtained, the overall political objective of liberation from capitalism should be realized.

²⁵ Adams, *Prison of Grass*, 169 – 170.

²⁶ Adams, *Prison of Grass*, 170.

²⁷ Adams, *Prison of Grass*, 169.

The strongest argument against achieving autonomy is in its implication: that it must be granted by a sovereign to a non-self-governing entity. Tribal Nations have been extended self-government. Therefore, negotiating for autonomy, or freedom from bureaucratic domination that serves the interests of the central non-Indigenous authority, will take place within the very dominant colonial discourse in which Indigenous theorists struggle with sovereignty and self-government.

Based on the arguments of the Indigenous theorists in this thesis, tribal sovereignty cannot be legitimately expressed unless Tribal Nations define it in their own terms. Further, the legitimacy of a non-Indigenous government's sovereignty cannot be recognized until that government has recognized the legitimacy of tribal sovereignty. The concept of autonomy however, may provide a theoretical space in which Indigenous theorists expand the concept of sovereignty to match their cultural orientations, but autonomy is unlikely to undo the political and psychological attachments to sovereignty that Tribal Nations have developed.

As this section has evaluated, the Indigenous theorists are critical of self-government. Yet, internationally, autonomy has been understood as self-government. As chapter 1 points out, the U.S. government used the European international "doctrine of discovery" to manipulate and control tribal sovereignty. Based on this experience, Tribal Nations must be careful with

using a concept with such close affiliations to international use as it applies to ethnic minority struggles for local administration while the common interests are managed by a central political authority.

To conclude this section and chapter, this thesis closes with recommendations put forth by Adams. Adams recognized that his language was often called “too political, pejorative, and rhetorical.” However, he does not apologize.²⁸ Adams argues that Métis and Tribal Nations should develop counter-consciousness and unite with the working class and all individuals to seek liberation from imperialism, colonialism, and capitalism.

Adams understood that class structure is more difficult to determine in Tribal Nations because of the interaction of tribal customs, as well as the remnants of traditional Indian spirituality and communal societies.²⁹ Adams believes that liberation must go beyond racial and nationalist themes. For this purpose, Adams recommended the following model as a plan for political liberation:

To link the local communities together, a provincial coordination committee could be created from among the representatives of the local councils. However, this coordinating committee would not be given any authority over local organizations. Its primary function would be to channel information to local communities and to develop political analyses that would contribute to the understanding of the Indian/Métis liberation. It would synthesize the activities of the various local

²⁸ Adams, *A Tortured People*, 8.

²⁹ Adams, *Prison of Grass*, 123.

councils and broadcast them at a provincial or national level, but the coordinating committee would have no authority over the direction of the movement or over any local council. There is no room for an elite leadership.³⁰

Following Adams' recommendations, the political analyses developed by the provincial coordinating committee should embrace a deep decolonization strategy for eliminating the state ideology of capitalism. Adams writes:

We have to do this by working in all levels in the liberation struggle. For instance, some members are able to work at the neighborhood level in simple organizational and education work, while others can work in a broader way, mobilizing for civil-rights actions and extra-parliamentary confrontations. Finally, there must be a group of natives who are willing and able to work at the sophisticated level of guerilla warfare, both urban and rural.³¹

Adams has presented a practical recommendation for Tribal Nations. Adams reinforces the practical implications of sovereignty and autonomy. Rather than arguing over their theoretical conceptualizations, Adams steps beyond sovereignty and autonomy.

³⁰ Adams, *Prison of Grass*, 186.

³¹ Adams, *Prison of Grass*, 187.

Chapter IV

Conclusion

This thesis has evaluated the dimensions and limitations in sovereignty and autonomy with respect to Tribal Nations. This thesis has discussed four schools of thought to guide this evaluation: the *re-conceptualist*, *rejectionist*, *rejection-conceptualist*, and the *revolutionary-conceptualist*. The common thread shared in these schools of thought is that Indigenous theorists must expand the concepts of sovereignty or autonomy to fit the cultural and political orientations of Tribal Nations.

This thesis has demonstrated that, at its core, autonomy cannot undo the political and psychological tensions created by sovereignty. This thesis has determined that a sovereign entity may choose autonomy, but an autonomous entity cannot likely choose sovereignty. Further, a liberating ethos may use the concepts of sovereignty and autonomy, but the practical implications of these concepts are limited by the dominant colonial discourse.

In conclusion, Indigenous theorists continue to examine the political relationships that Tribal Nations are engaged with. This theoretical work will substitute tribal perspectives wherever it is possible. Indigenous theorists will continue to conceptualize the meaning and purpose of an inherent right to internal sovereignty separate from the overall goals and policies that conflict with tribal sovereignty in a federal system.

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