Barriers to Fair and Effective Congressional Representation in Indian Country

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Abstract
Native American tribal nations may have survived in the face of 500 years of violent displacement as a result of European colonization, but have undergone profound changes to their land bases and ways of life. Settler colonialism is an imposed structure within which tribes have been forced to negotiate their circumstances, with Congress being one of the primary instruments of the settler state. This essay argues that there are several barriers inherent in the political system that precludes fair and effective Congressional representation, and that there are certain fundamental problems associated with tribes' limiting themselves to working within the domestic system.

Introduction

Undertaking a comprehensive discussion about Congressional representation of Native Americans is a complex topic that doesn't fit strictly or neatly within either the disciplines of Native American studies or political science, but does have to be explored as an intersection of both. So little has been written on the subject, in fact, that there is virtually no body of academic literature on it.[1] However, there are nonetheless far reaching critical implications for democracy in America as a settler colonial state in light of the realities Native Americans face regarding their relationship to Congress. This paper argues that understood from the framework of the 500 year historical continuum upon which Native people have interacted with Europeans and Euro-American immigrant populations and their descendants, the American system of representational democracy as it exists cannot be applied to Native Americans in the same way as it applies to all other Americans (even other ethnic minorities) and can be seen as the ongoing manifestation of an imposed hegemonic relationship.

United States Federal Indian policy is based on legal principles that include four particularly problematic doctrines: the doctrine of discovery, the doctrine of domestic dependent nations, the trust doctrine, and the plenary power doctrine, all of which have their roots in the Marshall Trilogy. Many Native and non-native scholars and law professionals alike view the Marshall Trilogy and the descending theories of federal Indian law as the creation of a complex maze of legal fictions by a colonial power that justifies the ongoing abrogation of Native treaty rights and unilateral diminution of Native sovereignty. Yet, the US does recognize what it terms a "limited (or quasi)

1. In 2006 a book was published as part of a series on political participation in America called Native Americans and Political Participation by Jerry Stubben, an enrolled member of the Ponca tribe. In the preface of the book he makes the observation that, "As we enter the twenty-first century, not one article about Native Americans has been published in the most prestigious journals of political science, such as the American Journal of Political Science, American Political Science, or Journal of Political Science. This apparent lack of interest is especially distressing since during the 1990's the number of articles on African Americans, Asian Americans, Hispanics, and women in these and other major political journals has increased dramatically."

sovereignty" of Native nations, and it is well established in law that there exists a legal/political relationship between the federal government and tribes. This relationship distinguishes Native peoples from all other ethnic minorities in the US. This limited sovereignty affirms, among other things, the rights of tribes to self-governance, the right to determine their own citizenry, and government-to-government relationships with the US as long as tribes meet the prescription of federal recognition. The United States is comprised of not just two sovereigns (state and federal), but three—including all federally recognized tribes. Congress, via the concept of plenary power, has intervened in the lives of Indians through various eras of its Indian policy. The eras are generally known as Assimilation (1871-1928), Reorganization (1928-1945), Termination (1945-1961), and Self-Determination (1961-present). These policy eras, in addition to the legal concepts, are key to understanding the ongoing political issues Native Americans face and can generally be characterized as varying tactics of forced inclusion of Native Americans into the fabric of American society.

As noted, very little scholarship exists examining (or questioning) Indian country's relationship to Congress, especially in the realm of political science. If anything, there is increasingly a "get out the vote" movement in Indian country, encouraging Natives to engage more deeply with the American political process by advocating for Natives to seek public office at the local, state, and federal levels.[2] Natives participating in the political process on these levels can be seen as accomplishing a "sticking to the issues" approach to the struggle for recognition of Indian rights.[3] It may be true that if a Native person is elected to public office (particularly at the regional or state level), they encounter the possibility of being able to represent Native interests through the promotion of pro-Indian legislation. But pro-Indian legislation stands much greater chances of being passed in districts where there is a high concentration of Native voters, for example in the states of Arizona, New Mexico, Oklahoma, South Dakota, and Washington, assuming they are mobilized and actually voting. Statistics show that overall, Natives tend to vote in higher numbers percentage-wise (42 percent) than Blacks (40 percent), and Latinos (40 percent), at a slightly lower rate than Asians (43 percent), but at a much lower rate than whites (56 percent)[4], but these percentages and the small number of districts with large Indian constituencies are not big enough to guarantee any mandates of the Native vote.

While there is not much data indicating the impact Native office holders actually have on Native affairs, in one informal study by Robinson, Olson, and McCool, interviews were conducted with 15 Indian office hold-

2. For example, there is a group called Indn's List Indigenous Democratic Network," which formed in 2005, for the express purpose of "recruiting and electing Native American candidates and mobilizing the Indian vote throughout America on behalf of those candidates." Their primary function is Campaign Camp, which teaches Natives how to run political campaigns, how to staff campaigns, and how to raise funds for campaigns. In the summer of 2007, they sponsored an event called "Prez on the Rez," an unprecedented event which aimed to bring together all the Democratic presidential candidates in Indian country to focus on Indian issues. It was met with only limited success as only 3 of the candidates actually attended, with the frontrunners Hillary Clinton and Barrack Obama refusing to participate.

3. I use the phrase "sticking to the issues" as it arose out of a conversation I once had with a Congressman I was serving an internship with. In discussing the problems of representation and the larger problems of legal doctrines he said to me that Native Americans are better off sticking to specific issues.

4. Jerry Stubben, *Native Americans and Political Participation,* pg. 130.

ers in local governments in 2004-2005. They were asked, "What impact do you think you have had on laws and regulations, the delivery of service, Indian peoples' access to local government, and Indian people's perceptions about local government...?"While seven of the elected officials expressed the view that they had made an impact on laws and regulations, five others said their presence had no impact. One commissioner bluntly stated: 'I'm only one vote here, we get overrun on anything.'"[5] In another survey of tribal officials' political opinions conducted by Stubben (2006), a question was posed asking which branch of the government better protected tribal sovereign rights. Forty-one percent responded that Congress best protected their rights, 23 percent felt that the Supreme Court did, and 6 percent felt that the president best protected their rights. Interestingly, however, even though Congress was perceived as the best protector of Indian sovereignty:

> *…the vast majority of respondents (75 percent) did not approve of how the US congress had been handling Indian affairs…The trust level of the federal government by Indian tribal leaders appears to be moderate to low. None of the respondents felt that they could trust the federal government to always handle Indian trust responsibilities, 11 percent felt they could trust the government most of the time, 54 percent felt that they could trust the government some of the time, and 32 percent felt that they could never trust the federal government. (Stubben 2006, p. 141)*

One of the arguments advanced in this essay is that a "sticking to the issues" approach towards the protection of Indigenous rights through congressional action, failing to address the overarching fictional legal principles applied in federal Indian law—especially the plenary power doctrine—merely amounts to damage control for the monumental impact on Native Americans of 500 years of Euro-American colonization. First of all, it risks assuming that Congress will always have the best interests of Native people at heart. To the contrary, all of the positive Indian legislation of the past few decades, if we are to take our cues from Charles Wilkinson's book *Blood Struggle* (which highlights all the advances made by Indians in the last 50 years) has been necessary to counteract the detrimental effects of Congress' prior laws and policies. Second, it assumes that the current progressive trend of Congress toward the supporting of tribal self-determination will remain unchanged for the indeterminate future. However, the history of Congressional Members has shown earlier periods of relatively progressive ideology in Congressional action, but was then followed by long periods of regressive and deleterious legislation. The best example of this is the contrast between the Reorganization era of the 1930's when the federal government sought to improve the dire conditions of tribal nations and the Termination era of the 1950's and 60's, when it then attempted to cope with the ongoing "Indian problem" through unilaterally attempting to terminate its historical legal responsibility to tribes by simply discontinuing its relationship with them.

Additionally, Native people must be extremely cautious of what they are arguing for when they argue for inclusion into the American political process, especially in the realm of Congressional representation. Unlike all other Americans, Native Americans are in

5. David Wilkins, *American Indian Politics and the American Political System,* pg. 207.

the unique position of possessing citizenship within not just the US, but with their tribal nations as well. Their political/legal relationship with the US distinguishes them from all other Americans. This raises questions of not just patriotism and loyalty, but of equality. Vine Deloria (1996) argued in his civil rights era classic *Custer Died for Your Sins: An Indian Manifesto* that equality was what ethnic minority groups in America demanded due to historical experiences of marginalization and disenfranchisement from the "American dream," an ideal reserved only for *White* Americans. For Native people, forced inclusion via *assimilationist* policies of the US government set up a contradictory civil rights issue, and they argued instead for an end to governmental intrusions into their lives. Deloria said that "what we need is a cultural leave-us-alone agreement in spirit and in fact" (p. 27). He also addressed the issue of equality within the civil rights movement when he observed, "The tragedy of the early days of the Civil Rights movement is that many people, black, white, red and yellow, were sold a bill of goods that said that equality was the eventual goal of the movement. But no one had considered the implications of so simple a slogan. Equality became sameness" (p. 179). Indian political agendas have tended not to argue for equality, but for what Robert A. Williams terms a "degree of measured separatism." (Williams 2005)

Corntassel and Witmer (2008) contend that we are now in an era of "forced federalism" in which tribes in their nation-building efforts to build stronger economies have compromised their sovereignty by engaging too deeply in the American political process, subjecting them to new forms of racism based on "rich Indian" stereotypes that lead to public perceptions of Indians as special-interest groups, while simultaneously undermining the cultural foundations of indigenous nationhood. The danger of Natives seeking Congressional representation is in the perception that it is a demand for equality—of sameness—to be on par with all other Americans, in spite of their unique political/legal status as sovereign entities.[6] This can arguably be seen as a direct threat to and potential compromise to whatever measure of tribal sovereignty tribes currently enjoy. What is needed is something altogether different—a relationship, which instead exceeds the hegemonic conditions created by the doctrines of discovery, domestic dependent nations, trust, and plenary power.

Barriers to Fair and Effective Representation

1. American history as a colonial construct; collective distortions of the past; and inaccurate, harmful stereotypes of Native Americans. Triumphalist historical narratives have resulted in a whitewashing of American imperialism against indigenous Americans. According to Timothy Linter (2004):

6. It is worth commenting At this point that there is a growing body of academic work which challenges the notion of "Native sovereignty" as being an artificial European legal construct that only serves to keep the discourse of inherent Native self-determination confined within the boundaries of a colonial dominant paradigm. Taiaiake Alfred, one of academia's leading voices on this topic, "has engaged this challenge from within an indigenous intellectual framework. Alfred's manifesto calls for a profound reorientation of indigenous politics and a recovery of indigenous political traditions in contemporary society. Attacking both the foundations of the state's claim to authority over indigenous peoples and the process of cooptation that has drawn indigenous leaders into a position of dependency on and cooperation with unjust state structures, Alfred's work reflects a basic sentiment within many indigenous communities: 'sovereignty' is inappropriate as a political objective for indigenous peoples." Taiaiake Alfred, *Sovereignty*, from the anthology *Sovereignty Matters: Locations of Contestations and Possibilities in Indigenous Struggles for Self-Determination*, 2005.

> *…history is a delicate amalgam of fact and fiction tempered by personal and pedagogical perception. Though the premise of history is rooted in empiricism, the teaching of history is not so subjective. History classrooms are not neutral; they are contested arenas where legitimacy and hegemony battle for historical supremacy.*[7]

Dominant narratives that construct Native Americans as "savage" and "heathen" led to the easy justification of their subjugation. Additionally, the construction of Native people as "the other" forms a core discussion of American identity and where Native Americans fit in America's collective unconscious. In *Playing Indian*, Deloria, explores non-Indians' ongoing fascination with Indians and their "historical anxiety" about them. He identifies a dilemma surrounding American identity based on an awkward tendency to define them by what they were not. They had failed to produce a positive identity that stood on its own, which was complicated by the simultaneous desire to embrace and reject what they saw as savage freedom.

The history of violent suppression and the unjust taking of their lands also complicate American identity. An irresolvable conflict is present when America, which holds itself as the foremost beacon of freedom, human rights, and democracy in the world, cannot reconcile the reality of its violent past with the high ideals it claims to stand for. The conflict is perpetuated when Native people are too visible in the population, and especially when they are vocal about their indignation of past and present wrongs of the American government against them. In *Going Native: Indians in the American Cultural Imagination*, author Shari Huhndorf (2001) also explores notions of national identity and its relation to Native America. Americans have a long history of co-opting Indian identities for their own as evidenced by various movements over the past few hundred years in which the Indian as the "noble savage" is idealized. Captivity narratives, new age cultural appropriation, even the appropriation of ancient Native artifacts into museum collections are all part and parcel of the American attempt to reconcile itself with its troubling past. The stereotypes that result from the distorted telling of history, with all the attendant complexities raised by America's inability to reconcile its imperialistic foundations and its profound impact on Native America sets the stage for a social disorientation in which the American people are ill prepared to deal with the truth of their history. With so many mixed messages, unless Americans are willing to acknowledge not only the atrocities of the past toward Native Americans, but of the ongoing injustices—especially those Americans at the highest levels of political leadership—there cannot possibly be the collective presence of mind to address structural injustice. True justice at the deepest levels means the willingness to envision a political reality that abandons the ideal of domination. Short of this, at best all we can expect are merely tokens of guilt-reducing acts of goodwill, feel good attempts to right the wrongs which have led to the profound cultural, physical, and psychological dispossession of Native people from their traditional life ways, homelands and resources. All we are left with are the half-measures of the "sticking to the issues" approach of justice in the legislative system.

2. The plenary power doctrine makes Native American citizens accountable to

7. *The Savage and the Slave: Critical Race Theory, Racial Stereotyping, and the Teaching of American History*, 2004.

Congress, instead of making Congress accountable to Native American citizens, as is true for all other citizens of America who are represented in Congress. One of the most fundamental and cherished tenets of American democracy in theory is that government is *of* the people, *by* the people, and *for* the people; in essence that Congressional representatives work for the public, who is ultimately "the boss" of Congress. The plenary power doctrine sets up Congress to be in an entirely opposite function for Native Americans. Tribal nations are positioned to be at the mercy of Congress, with no real power to take corrective action when Congress acts against their interests, except perhaps through the court system, which is mostly a Pandora's Box full of problems (and will be discussed further in this essay).

It can be said that much (if not all) of the positive Indian legislation enacted since the current policy of self-determination emerged in the 1970's has been to control the damage done to Native people since the inception of the United States and before. The succession of policies since the treaty-making era all occurred in response to the failures of prior policies, which had devastating effects on Native communities. Examples of damage control legislation are the Indian Child Welfare Act of 1978, Indian Religious Freedom Act of 1978 (AIRFA), and the Native American Graves Protection Act of 1990. There are many more examples too numerous to mention that demonstrate the notion of legislation as damage control.

It can also be said that Congress, even under the plenary power doctrine, can be the best friend to tribes, even while they can be their worst enemy. Congress simply has too much power to determine the destinies of Native people, as Laurence Hauptman has argued,[8] and also based on criticism from the United Nations Human Rights Committee as issued in a report in 2006. One of the biggest problems is the potential for conflicts of interest with members of Congress who must represent the interests of Native governments and individuals alongside those of non-Native individuals and groups within their districts. Their interests often are diametrically opposed to one another, particularly when it comes to sensitive issues such as legal jurisdiction, water rights or gaming. The plenary power doctrine combined with the political realities of a Congressman or Senator representing the interests of often such small number of Indians (that most Americans neither know nor care about very much about) sets up a dynamic for public policy where Indian interests are accorded "back-burner" status. Reelection to a Senate or Congressional seat doesn't depend on the doctrine or Indian issues. Even if elected representatives agreed that the plenary power doctrine is unjust, they are relatively powerless to do anything about it unless the majority of Congress is mobilized to address the matter by overturning the doctrine and setting up a different paradigm of relating to tribal nations. There simply is not enough political motivation to address Native issues on a large scale.

3. The persistent racist language used by the Supreme Court, which frames the legal doctrines that justify the continual subjugation of Native Americans to the authority of congress. If the plenary power doctrine is the drive train that keeps the wheels of subjuga-

8. "Congress, Plenary Power and the American Indian, 1870 to 1992", from the anthology *Exiled in the Land of the Free,* 1992.

tion in motion, then the Supreme Court is the ignition system, which initiates it and allows it to keep rolling forward century after century. Williams (2005) explores in vivid detail the courts' development and use of the Marshall Trilogy whose reliance upon the racist language of Indian "savagery" and cultural inferiority maintains a system of legalized white racial dictatorship to conduct its relations with Indian tribes even today. "As evidenced by their own stated opinions on Indian rights, a long legacy of hostile, romanticized, and incongruously imagined stereotypes of Indians as incommensurable savages continues to shape the way the justices view and understand the legal history, and therefore the legal rights, of Indian tribes" (Williams 2005, p. xxv). Beginning in 1823 with *Johnson v. McIntosh*, considered by Williams to be "without question the most important Indian rights opinion ever issued by any court of law in the United States," and the racist language of Indian savagery was institutionalized in the Supreme Court: "the tribes of Indians inhabiting this country were fierce savages, whose occupation was war…" (Williams 2005). With a single stroke of Justice Marshall's pen in this decision, several things were accomplished:

1. The very first precedent for all subsequent Indian cases was set.

2. The justification for the taking of Indian land based upon racial, cultural and religious superiority of Europeans.

3. The codification of the language that would justify future American incursions into Indian lives and resources.

The language of Indian savagery was to be revisited many times in subsequent nineteenth century Supreme Court decisions in the Marshall Trilogy and beyond, in cases such as *United States v. Rogers* (1846), *Ex Parte Crow Dog* (1883), and *United States v. Kagama* (1886). While the tradition of racist language in the Court reared its ugly head in African American cases as well, most famously in *Dred Scott v. Sanford* (1856) and later in *Plessy v. Ferguson* (1896), the twentieth century saw a paradigm shift in the language of those types of cases with *Brown v. Board of Education* (1954), the landmark decision credited as heralding the civil rights movement a decade later. Yet, when it came to Indian rights cases the language which perpetuated the negative stereotype of Indian savagery as well as white racial superiority was still very much alive, in *Tee-Hit-Ton v. United States* (1955), and even into the Rehnquist Court with *Oliphant v. Suquamish Indian Tribe* (1978) and *United States v. Sioux Nation of Indians* (1980). The entire body of federal Indian law is based on nineteenth century precedents, and outmoded ways of thinking which by today's standards are considered barbaric and dehumanizing, and yet is tolerated if not staunchly defended by those within the existing American power structures. Historically, when the justices of the Supreme Court have chosen to reject the language of prior decisions (the practice of stare decisis)—decisions which only served to oppress certain peoples—and adapt a new language which affirms the rights of those people, positive racial paradigm shifts have occurred within the Court and society at large, even if only for a time.

4. The conscious or unconscious belief within Congress, collectively and individually, that the current paradigm cannot or should not change. Because the guiding principles of indigenous rights and policy-making are based on deeply entrenched, archaic,

colonial-era perceptions, ideologies and practices that are taken for granted as "just the way things are," there is a certain sense in Indian country that there is no hope that things will ever change, so why try? Taking into consideration the previously outlined barriers to representation, what we are really talking about is a profoundly deep level of psychological disassociation America collectively has adapted itself to with regard to its historical treatment of Native peoples; so deep and pervasive that even the most highly educated and sophisticated thinkers at the highest levels of government are unable (or unwilling) to embrace an ethos of justice at the most fundamental levels by renouncing their hold of power over the lives of Native people.

There is an overwhelming, undeniable, and ever-growing body of scholarly work domestically and internationally that exposes the legal inconsistencies and injustices indigenous peoples' experience at the hands of their dominant, rights-denying nation-states. The indigenous decolonization movement worldwide seeks a paradigm shift in their relations with their dominant states, which must proceed from deconstructing histories and power structures. Inserting indigenous perspectives is necessary to knowing what kinds of changes to demand. Those perspectives include not just their histories, but their worldviews, their theories, and their epistemologies. Those ideas must then be compared and contrasted with the ideas and practices of colonial dominators to identify the divergences of those paths and to more coherently challenge current systems of power. For example, the notion of sovereignty as a political construction is an inappropriate concept for indigenous peoples. Taiakake Alfred (2002), invoking Vine Deloria's discourse on sovereignty makes the distinction between indigenous concepts of nationhood and those of state-based sovereignty, saying that "self-government" (or the domestic dependent nation) is a status accorded to indigenous people by the United States. "The right of 'self-determination,' unbounded by state law, is a concept more appropriate to nations" (Alfred 2005, p. 42). Alfred goes on to point out that indigenous peoples must develop appropriate postcolonial governing systems that disconnect the notion of sovereignty from its Western legal roots and transform it:

> *For the politician, there is a dichotomy between philosophical principle and politics. The assertion of a sovereign right for indigenous peoples is not really believed [emphasis added] and becomes a transparent bargaining ploy and a lever for concessions within the established constitutional framework…Non-indigenous politicians recognize the inherent weakness of a position that asserts a sovereign right for peoples who do not have the cultural frame and institutional capacity to defend or sustain it (Alfred 2005, 43).*

Alfred's assessment of politicians' views of indigenous sovereignty accurately reflects the premise of barrier #4. A power structure (Congress in this case) composed of individuals who don't really believe that Native people are entitled to (or capable of) exercising their pre-existing right to self-determination are not capable of representing the best interests of Natives as Natives themselves understand them. As long as tribal nations are held hostage to the plenary authority of Congress, there will always be a dichotomy between what non-Indian politicians believe is best for Indians and what Indians believe is best for Indians, and all that can result is the damage control, patchwork method of "justice" for

Indians in the "sticking to the issues" approach of legislation for Indian rights.

5. Congressional Native American policy is subject to the shifting winds of public opinion. Congress is by nature representative of the prevailing sentiments of the American public in two significant ways:

1. Members of Congress are elected because of their reflections of the beliefs of the majority of their own constituencies.

2. When Members of Congress aren't reflecting the beliefs of the majority, and public opinion changes during their tenure, it is often in their own self-interest to sway with the prevailing political winds if their goal is to be re-elected (which it inevitably is).

As has been argued, public sentiment towards Native Americans is based on a complex matrix of psychological factors, conscious and unconscious, influenced by historically shaped understandings about who they believe Native Americans are and by Eurocentric ideas of how they think Native Americans should fit into the spectrum of American life, socially, economically and politically (resulting in the usual homogenizing, assimilationist discourses). Even highly educated politicians are not immune from those misunderstandings and succumb to colonial ideology when it comes to Native American affairs in the legislature. And, as has been demonstrated, federal Indian policy throughout American history has reflected a cacophonous variety of philosophical approaches, consistent only in the sense that it has been primarily subject to prevailing political climates.

It is also apparent that America is not free of racist thinking and action; America's grappling with Indian issues continues to show up in anti-Indian rhetoric, which typically challenges tribal sovereignty. The anti-Indian movement is well organized, well-funded, and lobbies Congress full force. Organized throughout a network of large and small citizens' groups throughout the country, it mobilizes around issues such as jurisdiction on reservations (believing that tribes have too much power over non-Indians), that Indians have an unfair advantage to resources such as fish and game due to their protected treaty rights, and a belief that Indian tribes should not enjoy tax exemptions based on their sovereign status. One major anti-Indian group is Citizens Equal Rights Alliance (CERA), based in Wisconsin. Its goals are to (a) seek an end to the jurisdiction of tribal governments over Indian country; and (b) end treaty-protected off-reservation rights of Indians to certain resources, such as fishing and hunting.[9] Another is the group Upstate Citizens for Equality, Inc., which formed specifically in response to Oneida Nation's land claims lawsuit.

Every era comes with it new attacks on tribal sovereignty (always disguised in the language of equal rights and discrimination, where tribal nations are perceived to enjoy elevated or expanded rights, resulting in "discrimination" toward non-Native Americans). Efforts to chip away at tribes' pre- and extra-constitutional status manifest in different ways; a recent example is the IRS's increasing efforts to tax tribal revenues and benefit programs. Since the mid-2000's tribes have been mobilizing to fight the IRS's encroachments

9. *The Anti-Indian Movement*, by Robert Crawford, published in Building Progressive Community in the West, Fall 1998; Western States Center.

(jdsupra.com), seeing it as yet another treaty violation (Indian Country Today Media Network). Since the settling of the Cobell lawsuit in 2010 and the tribal trust lawsuit in 2012, which settled claims for over 100 years of BIA resource mismanagement, Indian country has experienced a wave of IRS audit notices in anticipation of tribes' distribution of per capita payments from settlements.

Because the American system of representational democracy as it exists relies upon popular elections, elections that depend on big campaign coffers and the commensurate support of powerful, well financed lobbying groups with agendas of their own and who see Indians as a threat, the possibility of termination will always loom over Native nations. Until Americans fully understand Native issues and history, and can see beyond their own Eurocentric cultural values to accept the very different values Native people embrace (especially the importance of group rights vs. individual rights), Native people will always have to be vigilant in fighting off the attacks on their rights to sovereignty, limited though it currently is under domestic law. Under the plenary power system, public opinion will always be a wild card tribal nations will have to contend with.

Conclusion

The goal of this paper is not to argue that Native Americans should not engage in the political process to achieve their goals and objectives. It is only to point out the inherent problems and limitations of engaging solely within a system that has been designed specifically to limit them. One might argue that it is easy to point out the ways in which tribes are still subject to the injustices of American hegemony as there is a mountain of scholarship which already does this, and that perhaps a more relevant study would identify why the system does work, when it works in their favor. Such an endeavor, however fascinating and even potentially useful it may be, would fail to challenge the system and the structural violence it perpetuates. The ultimate goal of this study is to do just that. A lesson can be taken from Canada's current aggressive efforts to terminate the political status of its Aboriginal First Nations, that no matter how vigorously one era of the nation-state professes to support the indigenous right to existence, as this essay has argued, it can change with the wind. Since the passing of the United Nations Declaration of the Rights of Indigenous Peoples, and the United States' subsequent adoption of support for it under the Obama administration, new options have been opened for Native nations' assertion of their rights to self-determination as political and cultural entities that existed long before the system of modern states we have today.

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