

NENABOZHO'S SMART BERRIES: RETHINKING TRIBAL SOVEREIGNTY AND ACCOUNTABILITY

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INTRODUCTION

Professor Wenona Singel, in her paper *Indian Tribes and Human Rights Accountability*, makes a compelling argument for reforming conventional understandings of tribal sovereignty to “reflect the transformative international law principle that all sovereigns are externally accountable for human rights violations.”¹ She proposes the development of an intertribal human rights regime that includes the formation of an intertribal treaty recognizing tribal human rights obligations and outlining capacities to enforce human rights.² In reading this thoroughly researched and well-thought-out proposal by Singel, I found myself seriously reflecting on these questions of human rights, accountability, and the need to reform standardized notions of sovereignty. I could not help but think back to a statement made by the late Vine Deloria, Jr. in a 2001 interview about sacred sites for the documentary *In the Light of Reverence*.³ Deloria stated, “The basic problem is that American society is a ‘rights society’ not a ‘responsibilities society.’”⁴ Too often the Western prevalence of and preference for a discourse of rights locks us into thinking about our individual rights and distracts us from discussing our responsibilities to one another. This rights-based discourse has clouded and limited our understandings and applications of tribal sovereignty.

1. Wenona T. Singel, Abstract, *Indian Tribes and Human Rights Accountability*, 49 SAN DIEGO L. REV. 567 (2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2241017.

2. Wenona T. Singel, *Indian Tribes and Human Rights Accountability*, 49 SAN DIEGO L. REV. 567, 611-12 (2012).

3. IN THE LIGHT OF REVERENCE (PBS Aug. 14, 2001).

4. TELEVISION RACE INITIATIVE, IN THE LIGHT OF REVERENCE: DISCUSSION GUIDE 2, available at http://www.pbs.org/pov/film-files/guide_action_discussion_file_0.pdf.

In this Article, I begin with a brief discussion of the term *sovereignty*. I focus my attention on expansive definitions of sovereignty as scholars attempt to encapsulate in writing the rich indigenous perspectives that inform this concept. Many scholars have diligently sought to articulate a conception of sovereignty that accounts for indigenous ways of being, rooted in indigenous values and traditions, which give force and meaning to this term. Nonetheless, the multitude of definitions and applications of sovereignty have caused some indigenous scholars to question the term's continued validity. This scholarship and responses to it are analyzed in Part II of this Article. In Part III, I reflect on Anishinaabe treaty speeches in order to unearth Anishinaabe expressions of sovereignty that are grounded in a recognition of responsibility, including accountability to others and to the Creator, *Gizhe-Manidoo*. I conclude with a story about Nenaboozho to illustrate the importance for Native peoples to strongly consider the question, "What kinds of nations do we want to be?"

I. SOVEREIGNTY

Sovereignty is arguably the most critical force of Native nations today. It is foundational for indigenous nations as they face political, economic, legal, and social struggles.⁵ While European in origin, deriving from intimate and imbricate European theological and political discourses, it is nonetheless an "ancient idea."⁶ Anishinaabe scholar Scott Lyons reminds us that "[s]overeignty is a concept that has a history of contest, shifting meanings, and culturally-specific rhetorics."⁷ Though the classical notions of sovereignty posit a "single 'divine ruler'"⁸ and see state authority as "supreme and absolute,"⁹ these notions are a far cry from the term's current articulations and applications.⁹ Indeed, no nation exercises absolute sovereignty as all nations are limited by their relationships and responsibilities, internally, to their own citizens, and externally, to other nations.¹⁰ This concept has

5. See CHARLES F. WILKINSON, *AMERICAN INDIANS, TIME, AND THE LAW: NATIVE SOCIETIES IN A MODERN CONSTITUTIONAL DEMOCRACY* 54-55 (1987); Erich Steinman, *The Contemporary Revival and Diffusion of Indigenous Sovereignty Discourse*, *AM. STUD. J.*, Fall-Winter 2005, at 89, 89.

6. Vine Deloria, Jr., *Self-Determination and the Concept of Sovereignty*, in *ECONOMIC DEVELOPMENT IN AMERICAN INDIAN RESERVATIONS* 22 (Roxanne Dunbar Ortiz ed., 1979).

7. Scott Richard Lyons, *Rhetorical Sovereignty: What Do American Indians Want from Writing?*, 51 *J. CONF. COMPOSITION & COMM.* 447, 458 (2000).

8. Amanda J. Cobb, *Understanding Tribal Sovereignty: Definitions, Conceptualizations, and Interpretations*, 46 *AM. STUD.* 115, 117 (2005) (quoting Lyons, *supra* note 7, at 450).

9. *Id.* (quoting CHARLES WILKINSON, *BLOOD STRUGGLE: THE RISE OF MODERN INDIAN NATIONS* 248 (2005) (emphasis omitted)).

10. *Id.* at 118.

been appropriated, transformed, and reorientated by the changing conditions and characteristics of the nation-states who employed the term.¹¹

Although the term originated in Europe, what it describes at its core is intrinsic to all peoples.¹² Thus, contemporary understandings of sovereignty reference the unique traits of a nation that enable their self-governance.¹³ Native nations recognized and exercised their sovereign powers, both internally, through established governing systems for regulating social, political, and economic practices,¹⁴ and externally, through political alliances, agreements, and treaties with other indigenous nations, long before Europeans arrived.¹⁵ Native nations continued these practices with European nations, and later the United States, as a means to protect their lands and resources while establishing social, economic, and political allies. Indeed, the existence of treaties confirms a nation-to-nation relationship between indigenous nations and the United States.¹⁶ These treaties recognized and reinforced each nation's sovereignty.¹⁷

Since the concept has relevance to a multitude of nations and states, the definitions and applications of sovereignty vary. Lenape scholar Joanne Barker, for example, notes that:

There is no fixed meaning for what *sovereignty* is—what it means by definition, what it implies in public debate, or how it has been conceptualized in international,

11. See, e.g., 2 ALEXANDER HAMILTON, THE FEDERALIST: A COLLECTION OF ESSAYS WRITTEN IN FAVOUR OF THE NEW CONSTITUTION, AS AGREED UPON BY THE FEDERAL CONVENTION, SEPTEMBER 17, 1787 (New York 1788); JOHN LOCKE, TWO TREATISES OF GOVERNMENT (Peter Laslett ed., Cambridge Univ. Press 1966) (1690); JEAN-JACQUES ROUSSEAU, THE SOCIAL CONTRACT (Hafner Publishing Co. 1955) (1762); CARL SCHMITT, POLITICAL THEOLOGY: FOUR CHAPTERS ON THE CONCEPT OF SOVEREIGNTY (George Schwab ed. & trans., Univ. Chicago Press ed. 2005) (1922).

12. Kirke Kickingbird et al., *Indian Sovereignty, in NATIVE AMERICAN SOVEREIGNTY 1, 2* (John R. Wunder ed., 1996); WILKINSON, *supra* note 5, at 54.

13. See generally SOVEREIGNTY MATTERS: LOCATIONS OF CONTESTATION AND POSSIBILITY IN INDIGENOUS STRUGGLES FOR SELF-DETERMINATION (Joanne Barker ed., 2005) [hereinafter SOVEREIGNTY MATTERS] (presenting articles by various scholars on the subject of why sovereignty matters for indigenous peoples in the Americas).

14. For a discussion of indigenous legal traditions, see JOHN BORROWS, CANADA'S INDIGENOUS CONSTITUTION (2010).

15. See generally BRUCE G. TRIGGER, NATIVES AND NEWCOMERS: CANADA'S "HEROIC AGE" RECONSIDERED (1985) (revealing the role of native peoples in Canada's political, economic, and social history); RICHARD WHITE, THE MIDDLE GROUND: INDIANS, EMPIRES, AND REPUBLICS IN THE GREAT LAKES REGION, 1650-1815 (1991) (describing the process of mutual accommodation to reach the "middle ground" between whites and Indians); ROBERT A. WILLIAMS, JR., LINKING ARMS TOGETHER: AMERICAN INDIAN TREATY VISIONS OF LAW AND PEACE, 1600-1800 (1997) (explaining indigenous tribal influence on North American Encounter era legal and political interactions).

16. DAVID E. WILKINS & HEIDI KIIWETINEPINESIIK STARK, AMERICAN INDIAN POLITICS AND THE AMERICAN POLITICAL SYSTEM 34 (Paula D. McClain & Joseph Stewart Jr. eds., 3d ed. 2011).

17. *Id.*

national, or indigenous law. Sovereignty—and its related histories, perspectives, and identities—is embedded within the specific social relations in which it is invoked and given meaning.¹⁸

While this point is critical to understanding sovereignty and its myriad applications in discourse, policy, and law, various scholars have nonetheless articulated a variety of working definitions that demonstrate how the concept is understood and utilized.¹⁹ Sovereignty in contemporary understandings has often been applied to mean that nations are autonomous and independent, self-governing, and generally free of external interference.²⁰

One of the central variables common in many definitions of sovereignty is the idea that it is an inherent presence.²¹ Sovereignty cannot be granted to a people, rather it derives from within the collective will of the community.²² Chickasaw scholar Amanda Cobb argues that “[a]t base, sovereignty is a nation’s power to self-govern, to determine its own way of life, and to live that life—to whatever extent possible—free from interference.”²³ Her emphasis on the right of a people to live in accordance with their own ways is prevalent across indigenous understandings of sovereignty.²⁴ Lumbee political scholar David Wilkins similarly asserts that “[t]ribal sovereignty is the intangible and dynamic cultural force inherent in a given indigenous community, empowering that body toward the sustaining and enhancement of political, economic, and cultural integrity.”²⁵ Wilkins’s definition demon-

18. Joanne Barker, *For Whom Sovereignty Matters*, in SOVEREIGNTY MATTERS, *supra* note 13, at 1, 21.

19. See generally SOVEREIGNTY MATTERS, *supra* note 13; COHEN’S HANDBOOK OF FEDERAL INDIAN LAW (Nell Jessup Newton et al. eds., 2012); DAVID E. WILKINS, AMERICAN INDIAN SOVEREIGNTY AND THE U.S. SUPREME COURT: THE MASKING OF JUSTICE (1997); David E. Wilkins, *A Constitutional Comundrum: The Resilience of Tribal Sovereignty During American Nationalism and Expansion: 1810-1871*, 25 OKLA. CITY U. L. REV. 87 (2000); DAVID E. WILKINS & K. TSINANINA LOMAWAIMA, UNEVEN GROUND: AMERICAN INDIAN SOVEREIGNTY AND FEDERAL LAW (2001); WILKINSON, *supra* note 5; Wallace Coffey & Rebecca Tsosie, *Rethinking the Tribal Sovereignty Doctrine: Cultural Sovereignty and the Collective Future of Indian Nations*, 12 STAN. L. & POL’Y REV. 191 (2001); Cobb, *supra* note 8; Deloria, *supra* note 6; Vine Deloria, Jr., *Intellectual Self-Determination and Sovereignty: Looking at the Windmills in Our Minds*, 13 WICAZO SA REV. 25 (1998).

20. Cobb, *supra* note 8, at 118; Deloria, *supra* note 6, at 22; Lyons, *supra* note 7, at 450.

21. Cobb, *supra* note 8, at 117.

22. *Id.* at 117, 124.

23. *Id.* at 118.

24. *Id.*; see also Dagmar Thorpe, *Sovereignty, A State of Mind: A Thakivi Citizen’s Viewpoint*, 23 AM. INDIAN L. REV. 481 (1999); Deloria, *supra* note 6; Deloria, *supra* note 19; Tom Holm, J. Diane Pearson & Ben Chavis, *Peoplehood: A Model for the Extension of Sovereignty in American Indian Studies*, 18 WICAZO SA REV. 7 (2003); Lyons, *supra* note 7; Coffey & Tsosie, *supra* note 19.

25. DAVID E. WILKINS, AMERICAN INDIAN POLITICS AND THE AMERICAN POLITICAL SYSTEM 48 (1st ed. 2002).

states that sovereignty cannot be bestowed upon a people by another nation but must come from within.²⁶

Because sovereignty is “intangible” and an inherent “dynamic cultural force,” it is crucial that indigenous peoples define for themselves a vision of their own nationhood and sovereignty, as well as the practical implications that come with this term.²⁷ By looking to their own epistemologies and practices, Native peoples can put forward definitions of sovereignty that are distinct from United States legal and political definitions of Native nations status that have operated to diminish Native sovereignty and self-government.

In response to the external limitations placed on the definitions and applications of indigenous sovereignty, legal scholars Wallace Coffey and Rebecca Tsosie urge for a reappraisal of the tribal sovereignty doctrine, asserting that sovereignty should reflect the definitions held by Native nations, accounting for cultural understandings of this term.²⁸ Cultural sovereignty, for them, is the right of indigenous nations to exercise their own cultural values and practices in shaping their collective future.²⁹ Coffey and Tsosie state:

By understanding the philosophical structure of Native cultures, we can appreciate “sovereignty” as a cultural as well as a political phenomenon. In many ways, political sovereignty for Native peoples has become an *external* phenomenon that posits the overriding sovereignty of the federal government and the centrality of American citizenship for Native people. Cultural sovereignty is an *internal* phenomenon: the “heart and soul” of the Indian nation is located *within* Indian people, as communities and as individuals.³⁰

Coffey and Tsosie, proposing two distinct definitions of sovereignty, employ cultural sovereignty as a means to recognize and put forward Native conceptions of sovereignty that are not limited by outside forces.³¹ Indeed, it is up to Native peoples to define for themselves what sovereignty entails for their daily lives.³² These definitions must come from within each individual

26. *See id.*

27. Vine Deloria’s scholarship has explored this concept. *See, e.g.*, VINE DELORIA, JR., WE TALK, YOU LISTEN: NEW TRIBES, NEW TURF 114-37 (1970); ROBERT ALLEN WARRIOR, TRIBAL SECRETS: RECOVERING AMERICAN INDIAN INTELLECTUAL TRADITIONS 87-126 (1995) (providing an analysis of intellectual sovereignty and the work of Vine Deloria, Jr.).

28. *See* Coffey & Tsosie, *supra* note 19, at 195-96.

29. *Id.* at 196.

30. *Id.* at 203 (footnote omitted).

31. *Id.* at 192.

32. *Id.* at 196.

community, grounded in his or her own political, legal, and social traditions.³³

II. CONTESTATIONS

The bevy of definitions and interpretations of sovereignty speaks to the attention this concept has garnered from scholars over the last half century.³⁴ This important political concept began to dominate indigenous political discourse in the mid-1960s but has captured the attention of indigenous political leaders and scholars and has remained a steady focus. Scholars, in their desires to conceptualize and articulate this term in a manner that would resonate with indigenous philosophies and values, have wandered down an endless path that qualifies sovereignty with an adjective like intellectual, rhetorical, or hermeneutical to name a few.³⁵ This has only further complicated the question of sovereignty's meaning and application and given rise to indigenous critiques of the term.

Vine Deloria has pithily stated that “[t]oday the definition of *sovereignty* covers a multitude of sins, having lost its political moorings, and now is adrift on the currents of individual fancy.”³⁶ Deloria was critiquing scholars for creating what he saw as a set of artificial and abstract problems by engaging in a philosophical debate about the terms self-determination, sovereignty, hegemony, empowerment, and colonialism.³⁷ He believed this linguistic mastication allowed scholars to avoid the real problems facing indigenous nations.³⁸ Deloria noted that “[w]e are really in desperate straits as a people,” facing legal attacks on our tribal rights, scientific assaults on our indigenous knowledge, and religious exploitation of our spiritual practices.³⁹ He questioned whether we had the luxury of “whining about our lack of ‘intellectual sovereignty’” and stated that “[t]he largest barrier to individ-

33. *Id.* at 192. This idea is echoed by Dagmar Thorpe. She states, “If we are to look for a Native understanding of sovereignty, this can be understood within the way of life from which each of us emerges.” Thorpe, *supra* note 24, at 481.

34. Deloria, *supra* note 6; Taiaiake Alfred, *Sovereignty*, in A COMPANION TO AMERICAN INDIAN HISTORY 460, (Philip J. Deloria & Neal Salisbury eds., 2002); Deloria, *supra* note 19; Lyons, *supra* note 7; SCOTT RICHARD LYONS, X-MARKS: NATIVE SIGNATURES OF ASSENT (2010); WARRIOR, *supra* note 27; Coffie & Tsosie, *supra* note 19; LISA FORD, SETTLER SOVEREIGNTY: JURISDICTION AND INDIGENOUS PEOPLES IN AMERICA AND AUSTRALIA 1788-1836 (2010).

35. See Lyons, *supra* note 7, at 449 (defining “rhetorical sovereignty”); WARRIOR, *supra* note 27, at xxiii (introducing “intellectual sovereignty”); JACE WEAVER, OTHER WORDS: AMERICAN INDIAN LITERATURE, LAW, AND CULTURE 193 (2001).

36. Deloria, *supra* note 19, at 26-27.

37. *Id.* at 25-27.

38. *Id.* at 25.

39. *Id.* at 28.

ual sovereignty that I can see is the refusal of Indians to take their own traditions seriously and simply repeat Western notions of the world.”⁴⁰

Deloria is not alone in this critique. Instead of reorienting how we think of sovereignty, as Deloria calls for, Taiaiake Alfred has taken this argument further, encouraging Native nations to discontinue the use and application of the term. Alfred asserts that the state (namely the United States and Canada) has taken various positions on Native sovereignty, from outright denial to a theoretical acceptance that still renders indigenous nations’ rights contingent within the framework of federal Indian law that works to subjugate indigenous sovereignty.⁴¹ Alfred asserts that “mythic narratives and legal understandings of state sovereignty in North America have consciously obscured justice in the service of the colonial project.”⁴² For example, Chief Justice John Marshall utilized his legal imagination in 1823 to reduce indigenous land title to a mere “right of occupancy.”⁴³ In 1831 he again transformed Native nations’ political statuses from self-governing and independent nations to “domestic dependent nations.”⁴⁴ Alfred notes that the “actual history of our plural existence has been erased by the narrow fictions of a single sovereignty. Controlling, universalizing, and assimilating, these fictions have been imposed in the form of law on weakened but resistant and remembering peoples.”⁴⁵

Many scholars have outlined how the courts have eroded both the more expansive notion of indigenous sovereignty and its legally confined counterpart—the tribal sovereignty doctrine.⁴⁶ Indeed the initial articulations of indigenous peoples’ political statuses vis-à-vis the state narrowly construed and eclipsed indigenous sovereignty. The courts have been a source of frustration for Native nations that have had to defend themselves from congressional imposition over and state encroachment of their rights.⁴⁷ Lyons, echoing Alfred’s critique, notes:

40. *Id.* at 29.

41. See Taiaiake Alfred, *Sovereignty*, in SOVEREIGNTY MATTERS, *supra* note 13, at 34-39.

42. *Id.* at 33.

43. *Johnson v. McIntosh*, 21 U.S. (8 Wheat.) 543, 585 (1823).

44. *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 14 (1831).

45. Alfred, *supra* note 41, at 33-34.

46. WILKINS, *supra* note 19; WILKINS & LOMAWAIMA, *supra* note 19; WILKINSON, *supra* note 5; FRANK POMMERSHEIM, *BROKEN LANDSCAPE: INDIANS, INDIAN TRIBES, AND THE CONSTITUTION* (2009); N. BRUCE DUTHU, *AMERICAN INDIANS AND THE LAW* (2008); WALTER R. ECHO-HAWK, *IN THE COURTS OF THE CONQUEROR: THE 10 WORST INDIAN LAW CASES EVER DECIDED* (2010); Coffie & Tsosie, *supra* note 19.

47. WILKINS, *supra* note 19, at 112; WILKINS & LOMAWAIMA, *supra* note 19, at 70, 108; ROBERT A. WILLIAMS, JR., *THE AMERICAN INDIAN IN WESTERN LEGAL THOUGHT: THE DISCOURSES OF CONQUEST* 315 (1990); VINE DELORIA, JR. & CLIFFORD M. LYTLE, *THE NATIONS WITHIN: THE PAST AND FUTURE OF AMERICAN INDIAN SOVEREIGNTY* 153 (1984); see

From “sovereign” to “ward,” from “nation” to “tribe,” and from “treaty” to “agreement,” the erosion of Indian national sovereignty can be credited in part to a rhetorically imperialist use of writing by white powers, and from that point on, much of the discourse on tribal sovereignty has nit-picked, albeit powerfully, around terms and definitions.⁴⁸

Therefore, Alfred argues that the term is inappropriate for Native nations. He wonders why few people have questioned how “‘a European term and idea’” became so entrenched and imperative to the political agenda of Native peoples.⁴⁹ Alfred further laments that “[f]ewer still have questioned the implication of adopting the European notion of power and governance and using it to structure the postcolonial systems that are being negotiated and implemented within indigenous communities today.”⁵⁰

While aspects of sovereignty are indeed tied to western notions of power, many scholars also recognize that this term comes with political power. For example, Wilkins notes that the political and legal dimensions of sovereignty contain viable powers for Tribal nations,

including, but not limited to, the power to adopt its own form of government; to define the conditions of citizenship/membership in the nation; to regulate the domestic relations of the nation’s citizens/members; to prescribe rules of inheritance with respect to all personal property and all interests in real property; to levy dues, fees, or taxes upon citizen[s]/members and noncitizen[s]/nonmembers; to remove or to exclude nonmembers of the tribe; to administer justice; and to prescribe the duties and regulate the conduct of federal employees.⁵¹

Given that the word *sovereignty* has such powerful political and legal importance in both federal Indian relations and within the international community, scholars and Native leaders alike have argued against the rejection of this term, instead utilizing sovereignty and its surrounding discourse as a crucial instrument to strengthen external recognition of Native political autonomy.⁵² While Cobb agrees with Alfred’s assessment that sovereignty is tied to a western understanding of power, she refutes “his notion that it is the *concept* of sovereignty, per se, that is coercive; instead [she notes] it is our *experience* of inter-sovereign relationships, particularly with the United States, that has been coercive.”⁵³ Cobb believes that Native nations possess the power to transform the notion of sovereignty and posits that “[p]erhaps

generally ROBERT A. WILLIAMS, JR., *LIKE A LOADED WEAPON: THE REHNQUIST COURT, INDIAN RIGHTS, AND THE LEGAL HISTORY OF RACISM IN AMERICA* (2005).

48. Lyons, *supra* note 7, at 453.

49. Barker, *supra* note 18, at 25 (quoting Alfred, *supra* note 41).

50. Alfred, *supra* note 34, at 465; *see also* Barker, *supra* note 18, at 25 (arguing that the term sovereignty “fails to interrogate the ideological bases on which it has emerged and functioned as a category”).

51. WILKINS, *supra* note 47, at 20. *See generally* DAVID E. WILKINS, *AMERICAN INDIAN POLITICS AND THE AMERICAN POLITICAL SYSTEM* (2d ed. 2007).

52. *See* Cobb, *supra* note 8, at 122 for additional responses to Alfred’s article.

53. *Id.* at 123.

it is time to ‘decolonize’ our definition of sovereignty and anchor our definition to the sure knowledge of our own continuance.”⁵⁴ While this is an important step, Deloria expects us to go further. It will not suffice to just put forward indigenous definitions of sovereignty that are divorced from the western notions of supreme authority. Deloria calls for action:

Tribal societies were once great . . . but they were great because people lived in and supported the tribal context. People followed the clan and kinship responsibilities, took care of their relatives, and had a strong commitment to assisting the weak and helpless. Those virtues need to be at the center of our lives *as actions* and not somewhere in our minds as things we believe in but do not practice.⁵⁵

Professor Singel echoes this call for action.⁵⁶ She does not merely ask us to transform our understanding of the tribal sovereignty doctrine, but instead outlines why this action is important. Heeding Deloria’s call, she proposes a mechanism from tribal accountability that is rooted in indigenous values and philosophies.⁵⁷

III. ACCOUNTABILITY

This call to action raises important questions that require serious contemplation. What are indigenous conceptions of sovereignty? How can we unearth and bring to light the critical values and philosophies that not only inform these conceptions of sovereignty but should undergird many, if not all, aspects of indigenous governance? I believe some answers can be found in the rich treaty speeches of indigenous leaders who put forward indigenous visions of law and peace that accounted for the complex nexus of relationships that not only transcended national boundaries on the ground, but that also transcended the hierarchical notions of humanity that too often fail to reflect our commitments and responsibilities to all of creation.

For example, Anishinaabe nations in the treaty era were aware of their external accountability. Not only did they recognize the ways in which their treaties bound them to other nations, but more importantly, they continually acknowledged their responsibility to creation and accountability to *Gizhe-Manidoo*. They invoked the Creator and articulated an understanding that their actions were accountable to this Supreme Being. Anishinaabe leaders acted according to a code of ethics—a set of human rights or, perhaps better stated, human responsibilities—and were made accountable to *Gizhe-Manidoo*. This notion of accountability is tied to the very idea of sovereignty asserted by Anishinaabe leaders throughout their treaty negotiations with the United States.

54. *Id.* at 131.

55. Deloria, *supra* note 36, at 28 (emphasis added).

56. Singel, *supra* note 2, at 611-12.

57. *Id.*

Anishinaabe understandings of their creation, recorded in stories, songs, birch-bark scrolls, rock paintings, and teachings, were foundational to Anishinaabe political thought and practice throughout history. Many Native peoples recognize that their nationhood is derived from a divine or supreme power. Sac & Fox scholar Dagmar Thorpe observes that “[i]t was recognized that the Creator was the source of our lives and everything contained within the geographical boundaries of our homelands.”⁵⁸ Many decisions were made with guidance from the Creator through prayer and ceremony. The Anishinaabe expressed their sovereignty, nationhood, and land tenure as being derived from the Creator.⁵⁹ This understanding of origin is critical to its application because, as Thorpe states, “If we follow the original instructions given to our people, then no one has the right to seize, define, or diminish the sovereignty of our people because this sovereignty comes from a higher power.”⁶⁰

The philosophical underpinnings of Anishinaabe sovereignty can be seen in creation stories that indicate the Anishinaabe were formed out of the earth. It was in combining the earth with the breath of *Gizhe-Manidoo* that the Anishinaabe were created and then placed on their lands.⁶¹ The connection of Anishinaabe sovereignty to their creation is illustrated through an understanding of the term *Anishinaabe*. This word contains a rich history of the people, with various definitions and stories that demonstrate the Anishinaabe’s relationship to their place. Elder Edward Benton-Banai declares that *Anishinaabe* means “from whence lowered the male of the species.”⁶² This interpretation is in direct reference to when the Anishinaabe were lowered through *bagone-giizhik* (the hole is the sky) and placed on their homelands. Elder Moses Tom echoes Benton-Banai’s interpretation. He explains that *Anishinaabe* refers back to the time when original man stood beside the Creator.⁶³

Employing the term *Anishinaabe*, which delineates their relationship to the Creator, reveals that Anishinaabe identity is intrinsically connected to their sovereignty. Barker says that “indigenous identity is foundational to the structure, exercise, and character of sovereignty.”⁶⁴ Because the An-

58. Thorpe, *supra* note 24, at 482.

59. Documents Relating to the Negotiation of Ratified and Unratified Treaties with Various Indian Tribes, 1801-1869, *microformed on* NAMP RG 75, M T-494 Rolls 1-10 (Nat’l Archives), *available at* <http://digital.library.wisc.edu/1711.dl/History.IndianTreatiesMicro>.

60. Thorpe, *supra* note 24, at 482.

61. EDWARD BENTON-BANAI, *THE MISHOMIS BOOK: THE VOICE OF THE OJIBWAY* 3 (1988).

62. *Id.*

63. Dennis Jones, *The Etymology of Anishinaabe*, 2 OSHKAABEWIS NATIVE J. 43, 46 (1995).

64. Barker, *supra* note 18, at 17.

ishinaabe understand themselves as being placed on their land by the Creator and understand their sovereignty as deriving its force from this placement, each time they reference themselves through the word *Anishinaabe*, each time they utter it, the Anishinaabe recognize and invoke their sovereignty and title to their land.

As a Creator-derived source, Anishinaabe declarations of their rights and responsibilities as sovereigns and proprietors were often expressed in their treaty negotiations through an allegoric discourse. Governor Alexander Ramsey recognized this during the 1863 treaty negotiations between the United States and the Red Lake and Pembina Anishinaabe when he recorded his concern about being able to conclude a treaty. He stated that “[t]he prospect began to grow dim, that a title derived from sources so metaphysical and supernal, and fortified by claims so exalted and traditions so sublime, could be bought by any such terrestrial dross as money and blankets.”⁶⁵

An examination of Anishinaabe treaty practices and discourse demonstrates the relationship between *Gizhe-Manidoo* and Anishinaabe sovereignty. Throughout treaty making, the Anishinaabe and United States treaty commissioners alike invoked the Creator in their speeches and practices. This was demonstrated by the invocation of the Creator to open treaty councils; the use of pipe ceremonies to recognize and incorporate the Creator; the appeal to the Creator for guidance in these political decisions; and the reminder to participants about the moral weight of treaty making. There was little distinction between the spiritual or religious sphere of life from the political sphere. This is especially true throughout the treaty era, as Anishinaabe practices continually intertwined social, spiritual, and political beliefs and relationships, recognizing their interdependence.

The use of the pipe in treaty making served to both incorporate the Creator as well as create accountability between the various parties to the treaty. Commissioner Porter, during the 1833 treaty with the United Nation, seemingly recognized this when he stated, “We have smoked together. *We are all friends*. Our hearts are one and united. We love one another. No evil feelings exist among us.”⁶⁶ Porter utilized Anishinaabe political practice, specifically the act of smoking the pipe, as a means to enter into or renew

65. Ratified Treaty No. 327 Documents Relating to the Negotiation of the Treaty of October 2, 1863, with the Red Lake and Pembina Chippewa Indians, *microformed on* NAMP RG 75, M T-494 Roll3:F63 (Nat'l Archives), *available at* <http://digital.library.wisc.edu/1711.dl/History.IT1863no327>; *see also* Treaty with the Chippewa-Red Lake and Pembina Bands, U.S.-Chippewas, Oct. 2, 1863, 2 INDIAN AFF. & TREATIES 853 (1904).

66. Ratified Treaty No. 189 Documents Relating to the Negotiation of the Treaty of September 26, 1833, with the United Chippewa, Ottawa, and Potawatomi Indians, *microformed on* NAMP RG 75, M T-494 Roll3:F63 (Nat'l Archives), *available at* <http://digital.library.wisc.edu/1711.dl/History.IT1833no189>.

the relationship these nations had with one another. This was a relationship sanctified by smoking the pipe.

Lumbee scholar Robert Williams, Jr., in his analysis of American Indian treaty visions of law and peace in the Encounter era, finds that “[w]hen smoked in the context of treaty negotiations, the pipe evoked a vision of a universally conceived society in which different peoples were connected to each other as relatives.”⁶⁷ Intersecting spiritual practices with political acts allowed the Anishinaabe to develop political relationships that carried the additional obligations and commitments of kin relations. The pipe ceremony served not only to enact divinely attained sovereignty but also to keep each party accountable to the other.

Indeed, Williams finds that indigenous visions of law and peace were articulated throughout the treaty process as a means to create a shared understanding between the various participants. He argues that

[t]he parties to a treaty had to agree to create and sustain a *nomos*, a normative universe of shared meanings—“a present world constituted by a system of tension between reality and vision.” The smoking of the calumet of peace sought to resolve this tension by invoking the larger forces at work in the affairs of human beings.⁶⁸

This shared vision placed responsibilities on all the parties involved. It required every nation involved to transform or adapt its relationship to its own sovereignty because each nation’s ability to exercise its sovereignty was being “limited” or restricted by having to be accountable through commitments to one another.

Any alteration to Anishinaabe land tenure also required the involvement and consent of the Creator. Importantly, through the invocation of the Creator, the Anishinaabe expressed their rights and responsibilities to their lands and recognized these derived from the Creator. As such, the Anishinaabe, throughout their treaty negotiations, expressed the importance of making treaties in a public setting where the Creator would hear their words. In addition, this practice also served to place a moral weight on the treaty process. This was evident during the August 5, 1826 treaty negotiations with the United States. Anishinaabe Chief Peeshiokke stated, “I will not lie. That sun that looks upon me, and these your red children around me, are witnesses. Fathers, the Great Spirit knows what you say. So does our Great Father.”⁶⁹ By invoking both the Creator and the President as witness-

67. WILLIAMS, *supra* note 15, at 50.

68. *Id.* at 47 (quoting Robert Cover, *Foreward: Nomos and Narrative*, 97 HARV. L. REV. 4, 9 (1983)).

69. Ratified Treaty No. 145 Documents Relating to the Negotiation of the Treaty of August 5, 1826, with the Chippewa Indians, *microformed on* NAMP RG 75, M T-494 Roll 1:F859 (Nat’l Archives), available at <http://digital.library.wisc.edu/1711.dl/History.IT1826no145>.

es, Peeshiokke reminded the treaty commissioners of the necessity to speak honestly.

Chief Hole-in-the-Day also employed this approach in treaty negotiations, reminding U.S. Treaty Commissioner Henry Dodge that “[t]he Great Spirit who placed us on this Earth hears both you and me. He put us upon it to live.”⁷⁰ He further stated, “And I call the Great Being to witness what I say. We agree to what has just been done, and are satisfied with it.”⁷¹ Recognizing the role of the Creator in Anishinaabe land tenure, Chief Hole-in-the-Day let it be known, to all present and to creation and the Creator, that the Anishinaabe agreed to the treaty. In doing so, Hole-in-the-Day placed a moral weight on the treaty, reminding both parties that the Creator had witnessed the promises and commitments made between these nations.

Chief Little Rock, in the 1863 “Old Crossing Treaty” between the United States and the Red Lake and Pembina Anishinaabe, perhaps most eloquently illustrated this point. He stated:

I want the earth to listen to me, and I hope also that my grandfather may be present to hear what I have to say, and I invoke the Master of Life to listen to the words I have to speak. I hope there is not a single hole in the atmosphere in which my voice shall not be heard. My friend, the question you have laid before us is of great importance.⁷²

Indeed, the questions that faced the Anishinaabe and the United States during the treaty process were of immense significance: In what way would these nations live with one another? What outcome would these decisions have for their respective people? But equally important, what kind of people, or what kind of nations, were they bound to be—honorable nations? The invocation of the Creator reminded all participants of the ethical obligations and responsibilities that came with political commitments.

Anishinaabe legal scholar John Borrows defined the word *Ogimaa*, meaning leader, as “those who I am responsible for.”⁷³ The Anishinaabe term often utilized to express sovereignty is *ezhi-ogimaawaadizid*, which, utilizing Borrows’s definition of *ogimaa*, would translate roughly as “to act in a way that recognizes those who I am responsible for.” This is a nice way to think about tribal sovereignty while recognizing accountability. While

70. Ratified Treaty No. 223 Documents Relating to the Negotiation of the Treaty of July 29, 1837, with the Chippewa Indians, *microformed on* NAMP RG 75, M T-494 Roll 3:F564 (Nat’l Archives), *available at* <http://digital.library.wisc.edu/1711.dl/History.IT1837no223>.

71. *Id.*

72. Treaty with the Red Lake and Pembina Chippewa Indians, *supra* note 65; *see also* Treaty with the Chippewa-Red Lake and Pembina Bands, *supra* note 65.

73. *See* John Borrows, Professor, Univ. Minn. Sch. of Law, Accountability, Tribal Law, and Human Rights, Presentation at the Michigan State Law Review Symposium: Indian Tribes and Human Rights Accountability (Oct. 4, 2012) (recording on file with Michigan State Law Review).

this term is both appropriate and instrumental for understanding how we think about sovereignty, I would like to offer another. I think at its very essence, the Anishinaabe word for sovereignty is *Anishinaabe*. Who we are as a people and how we see ourselves is the very essence of our sovereignty. The term *Anishinaabe* references the creation of the people. It discusses how the Creator lowered our people to the earth. This act of creation was invoked again and again by Anishinaabe leaders to assert their sovereignty and land rights in treaty negotiations—rights and responsibilities inherited from the Creator.

Sovereignty is deeply intertwined with a nation's sense of self. Vine Deloria articulates this sentiment, finding, "Sovereignty then revolves about the manner in which traditions are developed, sustained, and transformed to confront new conditions."⁷⁴ Sovereignty and identity continually undergo transformation to meet the needs of the people collectively in all nations. This notion of sovereignty as interconnected with identity allows for an understanding that extends beyond its restrictive legal-political context. Instead, sovereignty can be seen as a process or a journey. Deloria echoes these sentiments, stating, "'Sovereignty' is a useful word to describe the process of growth and awareness that characterizes a group of people working toward and achieving maturity."⁷⁵ In this sense, sovereignty grows, shifts, and adjusts with the people. It is dependent on the group for understanding their identity of self and nation. Cobb argues that "[t]he briefest look at today's international affairs will illustrate that a nation's sense of its sovereignty and its ability to exercise those powers is deeply intertwined with its sense of self."⁷⁶ She finds that this emotional character of sovereignty is what makes the term difficult to define with precision, but is also what gives the term its force.⁷⁷

Through this connection to identity and self, sovereignty becomes a process rather than a stagnant notion. This process is carried forward by the Anishinaabe each time they invoke their language, each time they refer to self and each other as *Anishinaabe*, and each time they tell the stories connected with this word. It is echoed in their political discourse and practices, as they recognize the relationship between the Creator and Anishinaabe sovereignty. "By casting sovereignty not only in terms of process, but more particularly in narrative terms, sovereignty becomes the ongoing story of ourselves—our own continuance. Sovereignty is *both the story or journey*

74. Deloria, *supra* note 6, at 27.

75. *Id.* at 28. For an analysis of Vine Deloria's scholarship, discussing sovereignty as a collective process, see also chapter three of WARRIOR, *supra* note 27.

76. Cobb, *supra* note 8, at 118.

77. *Id.*

itself and what we journey toward, which is our own flourishing as self-determining peoples."⁷⁸

How Anishinaabe understood their sovereignty during the treaty era underwent transformation and growth, as it had been doing since time immemorial. Each time the Anishinaabe entered into a political practice with another nation, each time they told their children the stories of their creation, each time the Anishinaabe uttered the place names that delineated their relationship to their land, Anishinaabe sovereignty was transformed. This is largely because to be sovereign—or to enact sovereignty—necessitated the recognition of our interdependence, our connection to one another and creation, and our relationships. However, while this process of transformation is about growth and adaptation, it is important not to lose sight of the origins and foundations of this important political concept as we grow and transform.

IV. SMART BERRIES

Deloria and Alfred, while advocating for slightly different paths, both caution against the very problem we face now. We have not questioned whether, by participating in the sovereignty game, we are betting all our chips on a fixed deck of cards. We have spent so much energy working to convince others that we are sovereign that we have not paused to ask ourselves what that means. Instead, we have too often replicated the very institutions and ideologies we were trying to free ourselves from. We use scientific fictions like blood quantum or financial interests such as gaming revenue to disenfranchise our relatives; Western constructions of gender and sexuality to discriminate against Native GLBT rights and same-sex marriage; and ignore internalized oppression that contributes to inexcusably high rates of violence against our women and suicide among our children. We have a responsibility to address these concerns in Indian country. We must be accountable.

We act in the name of sovereignty. And sure, as sovereign nations we have a right to act in many of these ways. But, distracted by our struggle to prove and assert that we *can*, we have not paused long enough to ask if we *want to*. Are these the nations we want to be? Is this what it means to be Anishinaabe? Are we no longer accountable to one another, to creation, to a higher being? We often look to the United States, or to international law, to develop mechanisms that can aid our pursuits and political aspirations as peoples and nations. Indeed, there is much that can be learned from looking outward. This is something we have always done as indigenous peoples. We have sought to be informed by the world around us. But in looking outward

78. *Id.* at 125.

we must not forget to glance inward; in looking forward we must also look backward. We must understand the foundational ethics and values that should be driving our governments. We must understand where we come from, our creation stories and their relationship to our sovereignty, and how we exercise it. Western governance can be like the trickster.⁷⁹ We must be careful. Nenabozho reminds us of this.

At one time the Anishinaabe thought they could take shortcuts to replicate Nenabozho's intelligence. An Anishinaabe approached Nenabozho and inquired why he was so smart. Nenabozho replied that he always ate smart berries:

"Oh, please show me where you get these smart berries. I would like to be intelligent myself." "Okay," Nenabozho told him, "You come with me. I'll show you where I get these smart berries."

Then they went off there in the bush. While they were walking along, Nenabozho finds this rabbit trail. "I get the smart berries right there," Nenabozho says there as he gives away the smart berries, giving one to his fellow Indian—the one who was going to be taught a lesson. "Put one in your mouth," says Nenabozho. "Okay." His fellow Indian put one [sic] his mouth. "*Ishte*," says his fellow Indian, "These aren't smart berries. These are damned rabbit turds." "Yes. Yes," says Nenabozho, "Then you're getting smart yourself."⁸⁰

We want to make sure we do not think we are eating a bunch of smart berries to discover it is just a handful of rabbit turds. Throughout the *Indian Tribes and Human Rights Accountability* symposium, it was said that if Tribal governments want to be taken seriously as governments, they need to act like governments. I argue that we may want to instead reflect on this statement with a slightly different emphasis. Perhaps if Indian governments want to be taken seriously as governments then they should act like Indians.

79. See generally Heidi Kiiwetinepinesik Stark, *Transforming the Trickster: Federal Indian Law Encounters Anishinaabe Diplomacy*, in *CENTERING ANISHINAABEG STUDIES: UNDERSTANDING THE WORLD THROUGH STORIES* 259 (Jill Doerfler, Niigaanwewidam James Sinclair & Heidi Kiiwetinepinesik Stark eds., 2013).

80. *LIVING OUR LANGUAGE: OJIBWE TALES & ORAL HISTORIES* 173 (Anton Treuer ed., 2001).