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# The White Earth Nation

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# The White Earth Nation

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RATIFICATION OF A NATIVE  
DEMOCRATIC CONSTITUTION

*Gerald Vizenor* AND *Jill Doerfler*

INTRODUCTION BY *David E. Wilkins*

*University of Nebraska Press / Lincoln and London*

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*In memory of Vine Deloria Jr.*

My son, never forget my dying words. This country holds your father's body. Never sell the bones of your father and your mother.  
JOSEPH THE ELDER, chief of the Nez Perce

To starve a child of the spell of the story, of the center of the poem, oral or written, is a kind of living burial. It is to immure him in emptiness.

GEORGE STEINER, *Real Presences*

The book is an institution of memory for consecration and permanence, and for that reason should be studied as a key element in society's cultural patrimony. In itself, patrimony has the ability to stir a transmissible feeling of affirmation and belonging. It can reinforce or stimulate a people's awareness of identity in their territory. A library, an archive, or a museum are cultural patrimonies and all nations regard them as temples of memory.

FERNANDO BÁEZ, *A Universal History of the Destruction of Books*



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# 1

*David E. Wilkins*

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## Sovereignty, Democracy, Constitution

AN INTRODUCTION

*Sovereignty. Democracy. Constitution.* These are mere words. But words, and the often variable meaning or meanings assigned to them by human beings, matter. Associate Justice Oliver Wendell Holmes put it succinctly in *Towne v. Eisner* when he said, “A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used.”

However, as the “skins of living thoughts,” words, especially those with the convoluted history and confused contemporary status of concepts like *sovereignty*, *democracy*, and *constitution*, are intimately linked to the ideas of national identity, political authority (whether absolute or constrained, papal or secular), international law and diplomacy, and intergovernmental relations. Such concepts, I believe, are more useful when they have a measure of clarity. As Karl Deutsch, a political scientist, once observed, “A word is only a kind of noise unless we sooner or later use it to lead to a procedure that will tell us whether or not a certain event or fact belongs under the word. The meaning of a word is defined by its limits, by knowing what does not belong

under it as clearly as what does. Any word that could include everything and anything has no place in science.”

Unfortunately, and despite their centrality to politics, political science, law, American Indian studies, and other fields, the concepts of *sovereignty*, *democracy*, and *constitution*, along with the kindred terms *nation* and *state*, suffer from what Walker Connor in his study, *Ethnonationalism: The Quest for Understanding*, called a “terminological disease.” This is because each of these concepts is “shrouded in ambiguity” due to imprecise, inconsistent, and sometimes completely erroneous usage. A veritable “linguistic jungle” encircles each of these important concepts.

As one example, let us look at the concept of *sovereignty*, arguably one of the most, if not the most, critical concepts in indigenous studies and the resurgence of indigenous nationalism. Does sovereignty mean absolute power, supreme legal authority, or merely legal competence? Does it mean popular will, is it ecclesiastically derived, and does it include both external and internal dimensions? Similarly, does *indigenous sovereignty* mean self-governance, domestic dependency, economic vitality, cultural knowledge and integrity, organic connections to the land, something else, or all of the above?

A quick glance at the judicial, policy, and intellectual literature finds, at a minimum, the following variants of *indigenous sovereignty*: savage sovereignty, quasi-sovereignty, primeval sovereignty, residual sovereignty, semi-sovereignty, inherent sovereignty, delegated sovereignty, internal and/or external sovereignty, spiritual sovereignty, mature sovereignty, cultural sovereignty, economic sovereignty, rhetorical sovereignty, ancient sovereignty, artistic sovereignty, and even food sovereignty, among others. Such a plethora of terms makes it difficult to gain any clear and sensible understanding of the actual status of indigenous nations; their inherent authority in internal and external powers; or their actual political relations with other Native nations, states, the United States, or international actors.

Despite this terminological anarchy, the terms sovereignty and Native sovereignty and the related concepts of indigenous democracy and Native constitutionalism are particularly vital concepts within and outside indigenous communities, as the recent social, cultural, and political efforts of the White Earth Nation attest. The reasons will be expounded upon below and in the chapters that ensue.

### **Early Indigenous Political and Kinship History**

Human societies, regardless of their location on the planet, have over time arrived at a remarkably diverse and generally useful set of informal and formal institutional arrangements in a constant effort to maintain relatively stable social, environmental, and cultural existences. Indigenous peoples in North America were, of course, no exception, and for untold millennia they used a plethora of effective social, political, and economic arrangements that enabled them to coexist within the sacred landscapes and waterways they depended on for their identity, sustenance, and subsistence.

While European notions of sovereign authority were originally said to be legitimated by the Christian God and were later supported by the Roman Catholic Church, over time political theorists, beginning with Thomas Hobbes, sought and achieved a vitally important separation between the state, God, and the church; in the process, they devised a hypothetical social contract in which fear-driven individuals living lives considered to be “solitary, poor, nasty, brutish, and short” joined forces for the common purpose of safety and security and then crafted authority-led governments that were not beholden to divine revelation. Later, theorists like John Locke, Baron de Montesquieu, and Jean-Jacques Rousseau, each of whom held less churlish views of human nature than Hobbes, still utilized the social contract framework that Hobbes had concocted. Governments, according to these theorists, “were conceived as the

conglomeration of free people willingly surrendering their right to arbitrary action to a superior in return for the guarantee of law and order.” Indigenous peoples, of course, as Vine Deloria Jr. and Clifford Lytle noted in *American Indians, American Justice* (from which the previous quotation is also taken), “did not fit into this philosophical framework because there was no contractual right by individuals against Indian society.”

For Native nations, then, there was no hypothetical social contract. What virtually all Native peoples possessed and lived within was a very real cultural and political system based on responsibility, clans, and kinship. As described by Ella Deloria in *Speaking of Indians*, “all peoples who live communally must first find some way to get along together harmoniously and with a measure of decency and order. . . . and that way, by whatever rules and controls it is achieved, is, for any peoples, the scheme of life that works. The Dakota people of the past found a way: it was through kinship.” “One must,” said Deloria, “be a good relative.” Being a good relative, a good citizen of society, “was practically all the government there was. It was what men lived by.”

Kinship was intimately connected to the clan systems found in most Native societies. Clans linked tribal citizens within nations and also, to a broader philosophical-cultural extent, across nations, so that the idea of an absolute autonomous tribal nation wielding supreme and unaffiliated power did not exist. Atsenhaiton, a Kani-en-kehaka and a member of the Bear clan, said, “I think that the clan system breaks down nationalism; it’s the nationalism that causes conflict. If we all sat in our clans and discussed the issues we would get away from the nationalism that divides us.”

Just as there were no absolutely autonomous Native nations, there were virtually no individual Native leaders who exercised untrammelled power over their fellow citizens. As Russell Barsh noted, “in the indigenous North American context, a ‘leader’ is not a decision-maker, but a coordinator, peacemaker, teacher,

example and comedian. He cannot tell others what to do, but he can persuade, cajole, tease, or inspire them into some unanimity of purpose. His influence depends on his ability to minimize differences of opinion, to remain above anger or jealousy, and to win respect and trust by helping his constituents through death, danger in hard times at his own risk and expense.”

### **European and European American Conceptions of Native Sovereignty and Governance**

As we have seen, European and indigenous nations had divergent beginnings and different understandings of concepts like authority, power, and freedom. Furthermore, each Native society viewed self-government, self-determination, and self-education in ways that comported with their own origin accounts, lands, philosophies, norms and values, ceremonies, and languages. As a result, each Native nation was a unique socio-cultural-political body that sought self-fulfillment and maturity on every human level, both internally and externally.

The European invasion of North America, beginning in the fifteenth century, triggered an unprecedented period of violent confrontations interspersed with occasional moments of cooperation between indigenous nations and the various European and later European American polities. Much literature has been written describing how Europeans conceptualized Native nations. The colonial heritage produced at least three principles that would undergird federal policy and law *vis-à-vis* Native peoples. First, land, under the doctrine of discovery, was believed to ultimately belong to the United States, although Native nations were viewed as holding a lesser use and occupancy title. Second, indigenous peoples were generally held to be culturally, technologically, and intellectually inferior to Europeans and European Americans. Third, despite their diminished land title and allegedly inferior status, Native nations were treated as nations with the capacity to negotiate diplomatic accords and to conduct warfare.

The combined influence of these three principles structured the language used by U.S. policymakers in their general descriptions of the political status of Native nations, particularly insofar as the concept of nationhood was employed. Virtually all the colonial and early U.S. treaties negotiated with indigenous nations referred to them as *nations*. The art of treaty-making and the recognition of indigenous national status explicitly and implicitly entailed recognition of the inherent sovereignty of tribal nations as self-governing polities capable of diplomacy and war.

The next two centuries of the relations between indigenous people and the state were marked by profound changes in every aspect of Native life. The devastating demographic collapse of human life, along with the destruction of much of the flora and fauna; the coercive attempts by federal authorities to devalue and destroy indigenous cultural and political identity; and the dramatic loss of nearly 98 percent of all aboriginal lands left Native nations reeling on every level. Notwithstanding those horrendous events, the resilience of Native peoples enabled them to continue.

Today, the surge (however halting) of democratization that has been sporadically erupting in various parts of the world since the end of the Second World War—from Africa, to Eastern Europe, and most recently in the Middle East with the people-led movements in Tunisia and with the fall of the autocrat Hosni Mubarak in Egypt—has also taken hold in Indian Country, as shown by the constitutional developments taking place within the White Earth Nation.

Developments at the international state level always dominate global attention, but it is on the smaller scale, the indigenous scale, where never-ending experiments in self-governance, self-determination, and national development have been occurring for nearly two centuries, that we can learn vital details about the rule of custom and law, the pursuit of freedom and liberty, and

the meaning and exercise of sovereignty. In fact, while Native nations have struggled under the oppressive weight of colonial rule for the better part of the past two hundred years, the reality is that they have been at the center of a vortex of events and their struggle has often culminated in the development of formal and informal constitutions to improve self-governance and to spread power in a manner befitting their ancestral lines.

Nearly sixty aboriginal nations adopted constitutions before 1934, when a second and larger wave of constitutional development was ushered in by John Collier and the Indian Reorganization Act (IRA) of 1934. Under the auspices of the IRA, another 130 Native nations developed constitutions to better reflect their collective desires and, of course, the desires of federal officials as well. This massive surge in constitutional writing (and, in some cases, rewriting) produced the greatest number of constitutions ever devised in an equivalent length of time in the history of the world. Despite persistent misconceptions about these constitutions, many of them did, in fact, broadly reflect the goals of the communities at the time.

Like all national communities, indigenous nations expand, mature, and become more diversified. By the late 1960s and continuing into the present, the doctrine, if not the full practice, of Native self-determination had dramatically arisen, replacing the discredited federal termination policy. As a result, a new desire for constitutional modification or for the construction of new constitutions was unleashed in many Native societies, as community members realized the need to craft more appropriate organic political arrangements to better represent the spirit of their nations.

The White Earth Nation, long a part of the confederated arrangement with the other Anishinaabeg polities, has arrived at the realization that they have matured to the point of devising a document to encompass their present-day understanding of political, legal, economic, and cultural autonomy.



This book, then, is the unique and principled story of how and why the people of White Earth engaged the difficult process of establishing a new constitutional arrangement that links directly with their organic values, lands, and traditions. It critically examines the motives, the strategies, the bedeviling issues, and ultimately the choices they made in crafting their new charter of self-governance, an arrangement that fully comports with who the White Earth people were, who they are now, and who they might become.