Native American self- government
vs. sovereignty and nationalism

AMERICAN INDIAN SELF-GOVERNANCE: FACT, FANTASY AND PROSPECTS FOR THE FUTURE

--Ward Churchill, Creek-Cherokee

The question of self-governance among American Indian nations encapsulated within what is now the United States of America is one of the more confused issues in modern politics. While there is a general understanding that the indigenous nations of North America once existed as fully self-governing entities, those concerned with the matter have proven spectacularly unable to arrive at even a common definition of what constitutes (or might constitute) contemporary Indian self-governance, whether it presently exists or, if it does not, how it might be achieved. The present paper is an effort to examine both the proper meanings (facts) of self-governance and misunderstandings (fantasies), apply these observations to the situation in which Indian nations presently find themselves vis a vis the U.S., and advance a prospectus for Indian self-governance over the coming decades. Insofar as the space allowed for pursuit of these themes is quite limited, only the briefest overview will be possible.

FACT

The various American Indian peoples resident to the territory now known as the United Sates are nations within even the strictest legal definition. Further, they have been formally, and in many cases repeatedly, recognized as such by the U.S. government. Article I of the U.S. Constitution affirms quite clearly that subordinate sovereignties such as states, counties, municipalities and individuals or groups of individuals are prohibited from entering into treaty agreements. Only the federal government itself is allowed to engage in treaty-making, and then only with other fully sovereign national entities (never with states, counties, etc.). In advancing these principles within its own domestic law, the U.S. was or is reflecting the terms, understandings and requirements of international law, custom and convention. Each of the 371 duly ratified treaties between the federal government and an American Indian people thus represents the de facto formal recognition by the U.S. of the fully sovereign national status of that Indian people, in accordance with both the laws of the United States and the laws of nations. From this, we may readily discern that American Indian nations possess every legal and moral right to conduct themselves as such, unless they themselves have knowingly, willingly and formally given up such

rights.

Today, representatives of the federal government contend that while all of this may be true in principle, and have actually been true in practice in certain historical instances, the contemporary circumstance is rather different. They point to a series of federal court decisions and statutes holding that, rather than comprising nations in the fullest sense of the term, American Indian peoples constitute "domestic dependent nations" over which the federal government exercises superior sovereign prerogatives as well as a "trust responsibility" involving jurisdictional and administrative control. Further, they argue, while American Indians within the United States are acknowledged to still belong to their various indigenous polities, they are also citizens of the U.S. under provision of the 1887 General Allotment Act and the 1924 Indian Citizenship Act and are thus doubly subordinate to the federal system. The bottom line, from the federal perspective is therefore that American Indian nations enjoy a "limited sovereignty." This is to say that they retain all of their original national rights which have not been specifically usurped by the government of the United States; the fact that there are presently more than 5,000 federal statutes designed to effect precisely this usurpation speaks amply to the latitude of national self-governance with which Indians have been left by the 1980s.

Advocates of such a view purposefully neglect to mention that each of the elements of "law" were unilaterally extended (imposed) by the United States in direct contradiction to the treaty understandings already (and still) in effect with Indian nations. There is no record of American Indian nations having willingly accepted the notion that they were either domestic to or particularly dependent upon the U.S. To the contrary, these same nations are documented as having spent the bulk of the 19th century engaged in armed resistance and suffering truly horrendous suffering in a concerted effort to avoid being accorded precisely this status. Similarly, there has never been anyone, even a federal bureaucrat, recorded as being brazen enough to suggest that Indians were somehow mutual participants in bringing about passage of the General Allotment and Citizen Acts, that requested the extension of federal criminal and civil jurisdiction over their homelands, or andy of the rest of the measures upon which the idea of U.S. sovereign superiority rests. And yet, absent the willing consent of the Indian nations to the diminishment of their sovereign status, such measures on the part of the federal government can only be viewed as abridgments (violations) of the treaties into which it had entered with the Indians. The implications of this are readily apparent in Article VI of the U.S. Constitution, in which it is stated unequivocally that treaties represent the "Supreme Law of the Land," on par with the law embodied with the Constitution itself: the terms and provisions of a ratified and unabrogated treaty cannot therefore be legally contradicted or impugned by the passage of any

subordinate legislation.

Proponents of the government view also omit to (quite willfully, it appears, insofar as such matters have been repeatedly pointed out to them), that this unilateral reduction of American Indian nations to federally subordinate or "quasi-sovereign" status -- similar to that occupied by the states of the union or, increasingly, to that of counties or municipalities, subject to even state jurisdiction and control -- was and is quite illegal in terms of the constitutional requirements pertaining to the entities with which the U.S. government is authorized and empowered to treat. This is no mere academic point. For the federal government to hold that Indian peoples constitute less than fully sovereign national entities is to simultaneously argue that the entire treaty-making process undertaken by the government with those peoples is and always was illegal. This, of course, would serve to void the treaties en toto. In turn, insofar as the treaties include the land cession clauses by which the U.S. acquired what it contends is "legal title" to upwards of 70% of its present domestic territoriality, the basis by which the United States has always claimed a right to its own land-base would be obliterated. The only fall-back position would then be resort to the doctrine of the "right of conquest," no small problem for a nation-state which has consistently disavowed this same doctrine in the name of purported "moral superiority" (and which assumed a leadership role in executing the nazi leadership for having engaged in "aggressive war" while pursuing exactly the same "right").

Federally oriented legal theorists and policy-makers are thus forced to advance and insist upon the validity of a sheer logical impossibility: that Indian nations are simultaneously fully sovereign (in the abstract sense) for purposes treaty-making/transferring land title to the U.S., and less than sovereign (in the practical sense) for purposes of allowing "legitimate" federal control ("exercise of trust") over Indian land, water and other resources, regulation of trade and diplomatic relations, form of governance, recognition of citizenry, jurisprudence, and virtually anything else striking the federal fancy. Such a convoluted and absurd "doctrine" must also be maintained in order for the U.S. to be able to assert in the international arena that it has always comported itself on the basis of humane, treaty-anchored (i.e.: nation-to-nation) understandings with "its" indigenous population(s) while at the same time insisting that "Indian Affairs" are a purely "internal" concern of the U.S., and are thereby not subject to international consideration, scrutiny or intervention (as would be the case in any true nation-to-nation relationship, under international law).

In a number of important ways, it is not difficult to discover recent parallels to the U.S. attitude toward American Indian nations. The French, for example, offered similar arguments to explain and justify their relationship to Indochina and Algeria

during the 1950s. The Belgians advanced similar rationales in an attempt to justify their hold upon the Congo during the same decade. Portugal resorted to the same arguments concerning Angola during the 1960s and '70s. And, of course, the list could go on at great length. The point, however, is that the common denominator of every example which could be mustered is that the relationship is one of colonialism. American Indian nations within the United States are held, then, as colonies -- internal colonies -- of the United States. Viewed in this light, all of the apparent inconsistencies and contradictions of U.S. "Indian policy" disappear; the policy is quite simply illegal under international law, from top to bottom, side to side, and at every step along the way; federal "Indian law" is not and was never so much a matter of law as it is U.S. colonial domination over every indigenous nation it encountered.

Many points can be made from this understanding, but what is of primary importance for this paper is that, as is the case in any colonial setting, the notion of "self-governance" among the colonized -- while its illusion is often deliberately fostered as a tactical expedient by the colonizer -- is a cruel hoax. Often, in advanced colonial settings (such as that evidenced within U.S.) the colonized are convinced to administer and impose upon themselves the policies and regulations set forth by their colonizers. This self-administration is what is so often cynically touted by the colonizers and their puppets among the colonized as being self-governance. In sum, it is both fair and accurate to state that America Indian self-governance does not exist within the United States at the present time, and that it in fact cannot exist until such time as the fundamental structural relationship between the U.S. and Indian nations is radically altered. American Indian nations, if they are ever to exercise self-governance, must confront the necessity of a decolonization struggle in the truest sense of the term.

FANTASY

The origin of what is typically passed off as being the "model of modern American Indian self-governance" can probably be dated from 1921, when Standard Oil sent a group of geologists to the northern portion of the Navajo Reservation to investigate the possibility that there were petroleum deposits in the area. The explorers' reports being highly favorable, Standard next dispatched a group of representatives to negotiate -- in cooperation with the Bureau of Indian Affairs -- a leasing arrangement by which the corporation could begin drilling and extraction operations. By provision of the 1868 treaty between the Navajo and the U.S., it was necessary that Standard secure both agreement from the Navajo government and approval of the Secretary of Interior in order for any such contract to be legal and binding. As it turned out, secretarial approval posed no problem, but the traditional Navajo Council of Elders voted unanimously to reject the idea of allowing the

corporation to exploit their land and resources.

Such and outcome was obviously unacceptable to Standard, and to the U.S. Department of Interior (under which virtually all "internal" development of lands and resources was lodged at the time). Consequently, in 1923, the federal government unilaterally appointed what it called "The Navajo Grand Council," a small group of hand-picked and "educated" (i.e.: indoctrinated in the values and mores of Euroamerica) Indians, from which representatives of the traditional Navajo government (with which the U.S. had entered into a solemn treaty) were entirely excluded. Washington then announced that this new council, devoid as it was of any sort of Navajo support, would henceforth be recognized as the sole "legitimate" governmental representative body of the Navajo Nation; the traditional Navajo form of governance was, at the stroke of the federal pen and with no popular Din_ (Navajo) agreement whatsoever, was totally disenfranchised and supplanted. And, of course, one of the very first acts of the Washington-appointed replacement entity was to sign the federally/corporately desired leasing instruments, setting in motion and "legitimizing" a sustained process of mineral expropriation on Navajo which has profited a range of non-Dine businesses and individuals quite mightily while leaving the Navajo people in truly abject poverty, their traditional subsistence economy ruined, and their land-base destroyed to the extent that it has been seriously considered for official designation as a U.S. "National Sacrifice Area."

Throughout the entire period since 1923, the forms of democratic governance at Navajo -- the inculcation of voting rather than consensus as a means of governmental selection, subdivision of the reservation into electoral districts, expansion of the council to include representatives from each district, the hypothetical division of governmental structure into executive, legislative and judicial spheres, and so on -- have been carefully installed and polished at Navajo. And the rhetoric of self-governance -- supposedly evidenced in the fact that leaders of the tribal council always affix their signatures to business agreements made "in behalf of" their people, that a Navajo lobbying office is maintained in Washington, and the like -- has been consistently advanced by Navajo and federal politicos alike. It is even possible that at least some of the actors on both sides of the equation actually believe what they are saying.

But reality is dramatically different from rhetoric. During the entire half-century in which the Navajo council has been functioning in its mature form, it has never been allowed to negotiate a single business agreement on its own initiative. It has continued to be totally restricted from entering into any agreement with any "foreign government" other than the that of the United States, whether for purposes of trade or for any other reason. Consequently, it has never been able to negotiate mineral extraction royalty rates on anything resembling favorable terms,

to establish or enforce even minimal standards of cleanup and land reclamation upon transient extractive corporations doing business upon its land, or even to determine the number of livestock which can be grazed within its borders. For that matter, the Navajo council has never -- as the ongoing "Navajo-Hopi Land Disputes" in the 1882 Executive Order and so-called Bennett Freeze areas of the reservation readily attest -- been able to exert any particular influence in the determination of exactly what the borders of the Navajo Nation actually are. Even the citizenry of the Navajo Nation has been defined by the federal government, through imposition of a formal eugenics code termed "blood quantum" and nearly a century of direct control over tribal rolls; these federal "methods" of manipulating and arithmetically constricting the indigenous population have become so embedded in the Indian consciousness and psyche that Washington can rely upon the "self-governance" mechanisms of Native America to abandon their own traditions and concern with sovereignty, adhering to federal definitions of Indian identity, thus imposing the burden of stark racism upon themselves.

Council members like to point out that they have a court system, police force and jails operating on the reservation, and submit that this is evidence of self-governance, but the fact of the matter is that Navajo possesses no jurisdictional authority at all over non-Navajos committing crimes within the Navajo Nation. For that matter, they have equally little jurisdiction over their own citizenry when it comes to felony and serious misdemeanor crimes, as well as in a number of important civil areas. In order to resolve issues between themselves and any of their corporate lessees, they have no recourse but to pursue matters in U.S. courts rather than their own. In order to resolve issues with the federal government, they must secure permission from that same government to litigate in that government's own courts. In order even to impose a severance tax upon their own mineral resources as these are extracted by trans-national corporations -- the uncontested right of every state of the union -- they must secure permission from the federal government to seek (and in limited way secure) a federal court opinion allowing them to do so. Things are at this point so confused that one can hear Navajo Tribal Chairman Peter McDonald, in all apparent seriousness and in the context of the same speech, spout the rhetoric of being head of a "sovereign, self-governing nation," and propose that the Navajo Nation be elevated to the status of a state within the United States.

This is national self-governance? The fact is that, fantasies to the contrary, the Navajo council and its chair have exactly zero control over any aspect of Navajo affairs. Every shred of their policy is and always has been utterly contingent upon the approval of the U.S. Interior Secretary, the federal courts, and often enough corporate leaders and the governments of the three states within which the Navajo Reservation technically lies. Beyond this it is true that -- with a minuscule number of exceptions -- the

same situation presently prevails in every reservation area of the country. The reason for this is that the Navajo Grand Council model had, by the early 1930s, proven itself so successful in simultaneously serving U.S. interests while offering illusions to the contrary that it was imposed across the face of Indian Country through 1934 Indian Reorganization Act (I.R.A.). Imposed is the correct word because, although each American Indian nation which was "reorganized" under the statute -- having its traditional governmental structure usurped and replaced by a council directly patterned after a corporate board -- supposedly voted affirmatively in a referendum to undergo the process, the reality is (as always, in these things) rather different. At the Pine Ridge Reservation (Oglala Lakota Nation), for example, a number of dead people somehow managed to crawl out of their graves to vote for reorganization; even after this was documented as being the case, the referendum results were allowed to stand and reorganization to proceed. At Hopi, to another example, more than 85% of all eligible voters (federally defined) opposed and actively boycotted the referendum; their abstentions were counted as "aye" votes by the Bureau of Indian Affairs and reorganization proceeded. The list of such examples can be extended, in one or another degree of virulence, to every Indian nation which was reorganized in accordance with the federal prescription.

All fantasies of self-governing characteristics aside, the absolute predicate of any I.R.A. government is its acceptance -- indeed, reinforcement -- of the emphatically sub-national status accorded American Indian nations by the U.S., to legitimize their peoples' subordination through their public endorsement of it, to toe the line of limitations decreed by the federal government and ultimately barter the genuine interests of their people in exchange for the petty position and essentially minor material compensation which serving as puppets of a foreign power affords them. This is advanced colonial administration in its very purest form, whether one wishes to draw one's parallel to the leadership of Vichy France or the Thieu regime in what was once called the Republic of South Vietnam.

Self-evidently, such governments will not, and in fact structurally cannot, pursue actual self-determination, self-governance and sovereignty. They will never and can never attempt to consolidate real control over their remaining land-bases, physically recover lands illegally taken from their people, throw the federal bureaucrats and supporting police off their reservations, try to physically bar the corporate rape of their territories, or enter into diplomatic and trade relations with other nations. They will not and they cannot, because in the final analysis they owe their fealty and their allegiance not to their won people (or even themselves) but to their colonizers. It is the colonizer, after all, not their people, who provides the positions they occupy, whatever claim to legitimacy it really carries, the means for its continuation. The relationship is one of symbiosis

and mutual perpetuation in an unbalanced sort of way.

From here it is but a short step to viewing I.R.A. governments, not as champions of American Indian self-governance, but as literal barriers to it. This is true in the mere fact of the existence of such entities, and the confusion this inherently engenders concerning "who are the real representatives of Indian people." But, more, it has become true in the sense that these self-proclaimed and federally validated "responsible (To Whom? To what?) representatives" of Native America have increasingly taken to lending their energies and their voices to discrediting any Indian or group of Indians audacious enough to address the questions attending true resumption of national prerogatives by American Indian peoples. We see this classically in example of former Rosebud Sioux Tribal Chairman Webster Two Hawk, wandering around on the federal dole like a clown, wearing a crew cut and "war bonnet," parroting the views of the Nixon administration vis a vis the American Indian Movement's finally (in 1972) calling the Bureau of Indian Affairs to account for its colonial arrogance and at least a few of its more blatant transgressions at the expense of Indian people. More grimly, we see former Pine Ridge Tribal Chairman Dick Wilson forming a cabal of gun-thugs known as the GOONs to act as surrogates for the FBI, engaging in outright mass murder to prevent an insurgent grassroots movement of traditional Oglalas pursuing their rights under the 1868 Fort Laramie Treaty from "spoiling" a planned secret expropriation of uranium deposits in the northwest quadrant of the reservation. And again, more immediately, we observe the same phenomenon -- somewhat less sharply defined -- in Navajo Tribal Chairman McDonald's sending of his gun-thugs (this time called "tribal police") to evict the staff of the Navajo Times newspaper from their offices for the offense of having publicly criticized and exposed certain of his federal/corporate relationships. And, as should be a sad refrain by now, this list of such examples could be extended at length.

PROSPECTS FOR THE FUTURE

Native America is at a crossroads. If the present hegemony of I.R.A.-style governance is maintained and allowed to continue its give-away program in terms of American Indian national rights, the future looks bleak indeed. Remaining on the course sketched above can result only in the permanent reduction of American Indian sovereignty and self-governance to, at best, the level of very minor components within the overall U.S. governmental/ political apparatus. In the case of many (or even most) of the smaller Indian nations, eventual termination -- "auto-termination" may be a better term -- and absorption directly into the "melting pot" seems the most likely outcome. In other words, the final liquidation of Native America is a distinct possibility over the next half-century or less.

Fortunately, alternatives have emerged since 1970. These have

related a considerable degree to the momentum created by the actions and activities of the American Indian Movement and related "militant" organizations, particularly during the period 1972-78. In retrospect, there can be no serious question that the 1972 Trail of Broken Treaties occupation of the Bureau of Indian Affairs Building in Washington, for example, did more to bring Indians into the BIA than all the petitions and letters of "more responsible" and "legitimate" tribal officials over the preceding 50 years. And the so-called Twenty Points advanced by Trail participants as a cohesive American Indian socio-political agenda still represent a benchmark expression of indigenous sovereignty. Ironically, those indians hired as a result -- during the major BIA "integration" period lasting from 1976-77 -- seemed to take it as a matter of faith that they should comport themselves in a manner which can only be described as anti-AIM.

Similarly, AIM's actions at Gordeon, Nebraska in 1972, and Custer, South Dakota in 1973, yielded an incalculable impact upon the concept of indian rights and the value of Indian life among reservation-adjacent non-Indians throughout the United States. In a tangible way, these AIM undertakings brought to a screeching halt a nation-wide rash of ritual or thrill killings of Indian people which had been mounting for some time. By any estimation, this was vastly more than had been accomplished by more than a decade of "polite" discussions about the "problem" by the federally-approved Indian leadership with state, local and national U.S. law enforcement officials. Yet, predictably, "official" Native America did little in response but criticize and condemn AIM's "violent tactics" (One is forced to ask here exactly how diminishing a wave of homicides through utilization of methods involving no loss of life could ever have been reasonably construed as "violence").

Again, AIM's stand on the Pine Ridge Reservation from 1973-76, refusing to swerve from its support of Oglala national rights under terms of the 1868 Fort Laramie Treaty -- in the face of a hideously lethal federal repression -- can only be viewed as a tremendously important point of departure for the general rebirth of American Indian pride in the U.S., and an increasing Indian willingness to stand and attempt to (re)assert their broader rights to genuine self-determination. As always, "duly elected" tribal officials tended overwhelmingly to attack AIM while defending the federal "right" to maintain "order" on the reservation, regardless of the cost and consequences of such order to Indians. It is now a sublime paradox that many tribal council members have themselves begun to mimic AIM viewpoints and AIM pronouncements of a decade hence, never having abandoned their clever description of those who showed them the way as being "Assholes In Moccasins."

What the AIM "radicals" were, and in many cases still are, demonstrating is that in order for Indians to make gains, to self-determine and self-govern, it is absolutely essential to proceed by something other than the self-serving "rules of the game" laid

down by the U.S. government. Put another way, those who would claim sovereignty must endeavor to exercise it, to rely upon their own sense of legality and morality, and to act accordingly. By the 1980s, this dynamic had become clearly consolidated in the occupation of Yellow Thunder Camp near Rapid City, in the Black Hills, part of an overt program of reclaiming Lakota territory guaranteed under the Fort Laramie Treaty, but illegally taken during the 1870s by the U.S. The same may be said of the ongoing resistance to federally imposed relocation of traditional Din_ from their land in the Big Mountain area of the Navajo and Hopi reservations in northeastern Arizona, and there are many other examples, ranging from the continuing fishing rights struggles in the Pacific Northwest to the stands taken by the Six Nations Iroquois Confederacy along the U.S.-Canadian border in the Northeast, to similar positions adopted by the O'Otam (Papago) along the U.S.-Mexican border in the Southwest, to the refusal of nearly half of all the Seminole people of Florida to accept federal recognition as a *validation* of their personal and national existence. Again, one might view the emergence of an American Indian presence in the international arena, through the United Nations Working Group on Indigenous Populations (a sub-part of the U.N. Commission on Human Rights) to have come from the same impetus and to be following the same general trajectory.

Perhaps the purest articulation of the AIM alternative to I.R.A. colonialism bay be found in the platform assembled under the title TREATY for use by Russell Means in his candidacy for the Pine Ridge tribal presidency in 1984. Here for the first time (at least in terms of the 20th Century) was offered a truly comprehensive program by which a given American Indian nation could undertake to recover control over its own affairs, abolishing the I.R.A. system and restoring political power to the traditional Councils of Elders, opening up diplomatic and trade relations with other nations than the U.S., begin a systematic effort at restoring its own land-base and revitalizing a traditionally oriented economy thereon, asserting jurisdictional prerogatives and control over the definition of its own membership/citizenry, and converting the educational system to its own rather than its opponents uses. All of this was conceived by way of using the I.R.A. structure against itself in a sort of exercise in political ju jitsu.

So effective and threatening was the TREATY concept seen by federal authorities and those Indians on Pine Ridge who owe their allegiance to that government rather than to their own ostensible constituents, that they conspired to disqualify Means from the reservation ballot, not on the basis of any alleged offense against the Lakota people or Lakota law, but because he had been convicted of expressing contempt toward an alien South Dakota court some years previously. Despite the fact that it was never actualized on Pine Ridge, the point should be made insofar as the I.R.A. establishment was prepared to go to such lengths to suppress the TREATY, it obviously bears extensive study, adaptation and

implementation by other Indians, in other places.

And, indeed, this appears to be occurring, either in literal or more diffused fashion. The Haida Draft Constitution, generated by a people whose territory is split between the U.S. and Canada in the Alaska region, embodies many of the same elements embodied in the TREATY Platform. Many of the gains posted by Pacific Northwest nations such as Quinault and Lummi in recent years also proceed in accordance with many of the same liberatory principles expressed in TREATY. And, to a certain extent at least, many of the ideas concerning Lakota land recovery and self-governance contained in the present S 705 "Bradley Bill" are drawn from the TREATY framework. These are all encouraging signs, and there are a number of others which might be cited.

It is time, if American Indian self-governance in any real sense -- as nations rather than as integral components of Euroamerican empire -- is to once again become a functioning reality, to begin to consciously destroy the I.R.A. system, to discard "leaders" who profess fealty to it, to renounce the "federal trust relationship" and reject all interaction with the BIA, and to begin to assert actual Indian alternatives. It will not be a quick or pleasant process. There will no doubt be severe costs and consequences associated with such a line of action and development. But the fact is that the costs and consequences attending subordination to the federal will are, and have always been, far higher. The choice is really between extinction and resurgence. And viewed in this way, there is simply no real choice at all.

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