

# **Living Like Neighbors: Supporting the Treaty Rights and Sovereignty of Indigenous Nations**

**A Report of the Northwest Community Alliance  
By Leah Henry-Tanner and Charles Tanner**

*“The earth is part of my body and I never gave up the earth....  
What person pretended to divide the land and put me on it?”*  
Nez Percé chief and spiritual leader Toohoolhoolzote, 1877

# **Northwest Community Alliance**

The Northwest Community Alliance (NWCA) is an emerging tribal sovereignty and treaty rights support organization based in Silverdale, WA. Through an integrated research, public education, and organizing program, NWCA is dedicated to supporting the treaty rights and sovereignty of indigenous people and opposing organized and institutional attempts to curtail the inherent rights of tribes to self-determination. By employing strategic research to analyze the anti-Indian activities of citizen and government actors, the NW Community Alliance will support alliances between Native and non-Native peoples to build communities in which the rights of all people are fully recognized and respected.

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Electronic copies of the report can be requested from the Northwest Community Alliance at P.O. 1564, Pouslbo, Washington 98370.

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## It's All Indian Country

What is Indian Country? Where is it located? Who lives there? The answer is simple: if you're in Idaho, Montana, Oregon, Washington, Wyoming, Virginia, Massachusetts, California, even Texas, you're in Indian Country. In fact, look around you; if you're in the United States, you're in Indian Country. This has been Indian Country since "time immemorial" and always will be.<sup>1</sup> Nothing the invading colonizers and their descendants ever did could change this simple fact. Indigenous peoples from hundreds of tribal nations have lived here, passing their tribal, cultural, and spiritual traditions to their families for thousands of years and continue to do so today, even through 500 years of genocide and theft. The circle continues.

In Idaho, Montana, Oregon, Washington, and Wyoming there are 94 tribes and bands, both federally recognized and not. These tribes come from Plains, Plateau, Coast Salish, Interior Salish, and Chinookan cultures and traditions and have long histories and stories that are shared among families and communities.

In addition to the reservations found in these states, there are urban Indian communities in Missoula, Montana; Medford, Oregon; Portland, Oregon; Spokane, Washington; Seattle, Washington and other cities. Native urban communities share many of the same issues as their reservation brethren, though often without community support.

### Indian Tribes in the Northwest

The following are both federally recognized and non-recognized tribes in our region. The states listed refer to the location of the tribes' present-day reservations or the center of their populations. However, it should be recognized that in a number of cases tribal homelands crossed state boundaries and tribes traveled and traded in areas across these boundaries. State boundaries were imposed on tribes upon statehood. The names listed for tribes may also not be the names that tribes use for themselves.

**Idaho:** Coeur d'Alene, Kootenai, Lemhi-Shoshone, Nez Perce, Shoshone-Bannock, Shoshone-Paiute

**Montana:** Blackfeet, Crow, Flathead (Salish, Kootenai, Pend d'Oreille), Fort Belknap (Assiniboine, Gros Ventre), Ft. Peck (Assiniboine and Sioux), Northern Cheyenne, Rocky Boy's (Chippewa-Cree), Little Shell (Chippewa)

**Oregon:** Burns Paiute, Confederated Tribes of Coos Bay (Coos, Lower Umpqua, Siuslas), Coquille, Cow Creek band of Umpqua, Confederated Tribes of the Grand Ronde Community (Calapooia, Chinookan Clackamas, Mollallas, Rogue River, Shasta, Umpqua), Klamath, Siletz, Umatilla (Cayuse, Umatilla, Walla Walla), Warm Springs

**Washington:** Chehalis, Chinook, Colville (Chelan, Colville, Entiat, Lake, Methow, Moses-Columbia, Nespelem, Nez Perce, Okanogan, Palus, San Poil, Wenatchee), Cowlitz, Duwamish, Hoh, Jamestown S'Klallam, Kalispel, Lower Elwha S'Klallam, Lummi, Makah, Muckleshoot, Nisqually, Nooksack, Port Gamble S'Klallam, Puyallup, Quileute, Quinalt, Samish, Sauk-Suiattle, Shoalwater Bay, Skokomish, Snohomish, Snoqualmie, Spokane, Squaxin Island, Steilacoom, Stillaguamish, Suquamish, Swinomish, Tulalip, Upper Skagit, and Confederated Tribes and Bands of the Yakama Nation (Kah-milt-pah, Klickitat, Klinquit, Kow-was-say-ee, Li-ay-was, Oche-chotes, Palouse, Piquose, Se-ap-cat, Shyiks, Skinpah, Wenatshapam, Wishram, Yakama)

**Wyoming:** Arapahoe, Eastern Shoshone, Northwestern Shoshoni

Prior to the coming of Europeans, tribes had for eons managed their own economic, social and political lives, determining who was a tribal member; where and when members would hunt and fish; which alliances would be formed with which tribes; and how the community would determine right from wrong and enforce its rules. Tribes also practiced and determined their own cultural and spiritual lives in this country. Its mountains, deserts, valleys, rivers and streams contain the sacred areas where tribal members lived and died; and the areas where the remains of their ancestors rest.

The coming of Europeans changed this. Tribal ways of life, land and society were undermined as colonists invaded Indian Country, submerging the basic rights of tribes to exist to the unquenchable thirst of the invaders for land, resources, and wealth.

Throughout this time, tribes struggled to remain. Their struggles have left a legacy that has also been passed along to their descendants. This legacy of has allowed tribes to continue the fight to maintain control of their own homelands. In the face of a federal government that has too often ignored its historic obligations to tribes; state and local governments that have too often sought to push into tribal homelands; and some citizens who have sought to overturn the basic rights of tribes, the indigenous peoples of this continent have persevered.

*Living Like Neighbors* is dedicated to this struggle and to those who have given their lives so that their peoples would continue. It is written to acquaint its readers with the basic rights of tribes to political sovereignty in their homelands, and the obligation of our citizens and government to uphold this right. The report describes 500 years of policies aimed at indigenous peoples by the European colonial powers and later, the United States government. It provides background on many issues presently facing indigenous people and describes modern campaigns to overturn the rights of tribes. And ultimately, it is written in a spirit activism, calling non-Indians to join with their tribal neighbors to uphold the rights of all indigenous people to self-determination.

The report is divided into four sections. Part I, *Sovereignty, Treaty Rights and the Periods of Indian Law*, discusses what is meant by sovereignty and treaty rights. It then provides an overview of the history of U.S. policies toward Indians and discusses how federal policies have shaped the rights of tribes. Part II, *The Organized Anti-Indian Movement*, briefly describes the ideas, strategies, and key players of the modern movement dedicated to overturning the basic rights of tribes; Part III, *Issues Facing Indian Country*, discusses some of the issues facing tribes at the national, regional, and local levels; and Part IV, *Organizing to Support Treaty Rights and Sovereignty*, discusses issues related to organizing to support tribal sovereignty and the rights of indigenous people; Part V, *A Call to Action*, ends with a call to action and general recommendations for those who seek to support tribes. *Appendices* provide a list of Native organization in our region and a list of resources where readers can find more information on tribal sovereignty and tribal issues.

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## **Part I: Sovereignty, Treaty Rights and the Periods of Federal Indian Law**

Late in his 2004 bid for re-election, President George W. Bush made an unlikely appearance at the UNITY 2004 convention, a gathering of people of color from journalism associations across the country. Asked by Shoshone-Bannock tribal member Mark Trahant from the *Seattle Post-Intelligencer*, “What do you think tribal sovereignty means in the 21<sup>st</sup> century?” Bush stumbled through an answer:

“Tribal sovereignty means that; it’s sovereign. I mean, you’re a – you’ve been given sovereignty, and you’re viewed as a sovereign entity. And therefore, the relationship between the federal government and tribes is one between sovereign entities.”<sup>2</sup>

While Bush’s misunderstanding that tribes are “given” sovereignty – as opposed to inherently possessing it – was widely criticized, his statement that the tribal-federal relationship is one between sovereigns stood in contrast to assertions made during his 2000 election bid. Queried by a reporter about his attempts to shut down a Texas Indian-run casino, Bush had responded, “My view is that state law reigns supreme when it comes to the Indians, whether it be gambling or any other issue.”<sup>3</sup>

Bush’s equivocation about sovereignty is of concern not only because a former governor and sitting president should know better. It also raises an important point: how we think about the nature and origins of tribal sovereignty influences the respect we give it. As U.S. Senator Tim Johnson (D-SD) stated following the 2004 Bush misanswer, “Tribal sovereignty isn’t something that is given to tribes, it simply exists, and requires our recognition.”<sup>4</sup> Conversely, if the United States “gives” sovereignty to tribes, it can simply take it back.

That the Bush Administration lacks a commitment to tribal sovereignty was evident when it recently opposed Senator John McCain’s (R-AZ) proposed changes to the 1990 Native American Graves Protection and Repatriation Act (NAGPRA), seeking to address weaknesses in the law and provide stronger means for the return of tribal ancestral remains currently held in American museums.

Rather than renounce grave-robbing, the Bush administration chose to support a 9<sup>th</sup> Circuit Court ruling that the “Ancient One” – known popularly as “Kennewick Man” – would not be returned to the Umatilla people because proof did not exist that the remains shared “special and significant genetic or cultural features with presently existing indigenous tribes.”<sup>5</sup> The Bush Administration’s opposition to the rightful return of indigenous remains demonstrates a disregard for tribal sovereignty. Its endorsement of the “genetic” link required in the 9<sup>th</sup> circuit ruling reflects a continued racialization of the federal-Indian relationship as well as a continued U.S. claim of the right to define who is, in fact, an Indian.

This example points to the need for social justice activists to develop an understanding of the unique rights of indigenous peoples in what is now the United States. By understanding the nature and origin of tribal rights, and how a variety of government and citizen actors in the U.S. seek to undermine these rights, progressives can become better allies to tribes in their struggles for self-determination.

## Sovereignty and Treaty Rights

To understand the rights of indigenous peoples in the United States it is useful to define sovereignty and treaty rights, discuss the basis of their existence and understand their importance for both Indian and non-Indian people. It is also important to understand the progression of Indian law as it has developed in the course of colonial and U.S. history. After first defining some basic ideas we will return to an overview of the history of U.S. Indian policies.

*What is tribal sovereignty?*

The word “sovereignty” is not of native origin, finding its beginnings in the claim of universal papal power and the “divine rights” of kings that developed over the course of late classical to post-medieval European history. However, long before European contact tribes regularly defined and enforced territorial boundaries. While these boundaries often involved overlapping areas of resource usage, they had long been understood by tribal members.

However, the concept of sovereignty is now commonplace in describing tribal rights. It is also of use in informing respectful and just relations with indigenous peoples. In this respect, sovereignty refers to a collective body or government holding the *ultimate political authority in a geographic area*. Under this authority, the “sovereign” is empowered to make a range of collective decisions, including those concerning group membership and social rights in the community; the use of resources; economic practices; the choice of institutional forms and external relationships; and socio-cultural and other matters. Sovereignty also includes the power to raise the revenues necessary for any government to exist and effectively govern.

Bush’s quote in the introduction echoed a common misunderstanding about tribal sovereignty in the United States – that it derives from powers given to tribes by the federal government.

Nothing could be further from the truth.

No act of the U.S. government ever bestowed – or, for that matter, justly curtailed – the right of indigenous peoples to govern their lands and resources and the populations living in their territories. The ultimate source of sovereignty, in fact, is the historic practice of collective decision-making by tribal nations in specific geographic regions. Among the practices that have established – and embody – this inherent right are:

- A history of tribal nations living in a geographic region
- Determining their internal forms of governance
- Determining external relationships and boundaries with other tribes and states
- Coordinating the use of resources and labor and the division of the social product
- Determining their own social life, values and culture
- Determining the pace and form of social and cultural change

For eons tribes engaged in these practices in their own homelands. It is this set of practices that provides the ultimate basis of tribal sovereignty.

While it did not create these rights, the U.S. government has recognized inherent tribal rights since at least the 1832 Supreme Court decision in *Worcester v. Georgia*:

- “The Indian nations had always been considered as distinct, independent political communities, retaining from their original natural rights, as the undisputed possessors of the soil, from time immemorial...
- The constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land... admits their [tribes] rank among those powers who are capable of making treaties.
- The words ‘treaty’ and ‘nation’ are words of our own language... We have applied them to Indians, as we have applied them to other nations of the earth.”<sup>6</sup>

As a result of tribal sovereignty tribes operate economic development and resource management programs; manage the sale and purchase of lands; manage social services for their people; defend their cultures and spiritual practices; hunt, fish and gather traditional foods and medicines; promote the preservation of tribal languages; and maintain an active voice in the health and well being of their communities. U.S. citizens also benefit from tribal sovereignty, such as through the jobs created by tribal enterprises or when the powers inherent in tribal sovereignty are utilized to protect the environment in which we all live.

#### *What are treaty rights?*

Understanding treaty rights is key to any understanding of tribal rights. While tribal rights are not created by treaty rights, legal and political aspects of treaties have been central to protecting hunting, fishing, water, governmental, land use and other rights of tribes.

Treaties are legal contracts between sovereign nations. In U.S. history, treaties emerged in part to legitimize the transfer of land from tribal peoples to European colonizers. In colonial and later periods, treaties were also means of achieving peaceful relations and establishing boundaries and material obligations. As seen by many tribal leaders, treaties also established multi-cultural unity and relations of support and alliance.

Under the U.S. Constitution, treaties may be entered into by the president with the advice and consent of the U.S. Senate. Once approved by the Senate, Article 6, Section 2 of the Constitution states that “[A]ll Treaties made, or which shall be made, under the Authority of the United States Shall be the supreme law of the land.”

By signing treaties with tribes, the U.S. government explicitly and implicitly recognized their existence as sovereign nations. In addition to the portions of *Worcester v. Georgia* (1832) cited above, this was again reaffirmed in 1979 in *Washington v. Washington State Commercial Passenger Fishing Vessel Association*, which stated that “A treaty, including one between the United States and an Indian tribe, is essentially a contract between two sovereign nations.”<sup>7</sup>

It is often said that treaties have given rights to tribes. Likewise, anti-Indian leaders and activists frequently claim that tribes have received “special rights” and “supercitizen” status as a result of treaties.

Such ideas are simply incorrect.

Rather, treaties *reserved* rights that tribes already possessed. In exchange for land tribes secured recognition of their status by the federal government and a federal commitment to encroach no further on the rights made explicit and implied in treaties.

The idea of treaty rights as reserved rights was recognized by the United States Supreme Court in 1905 in *U.S. v. Winans*:

[T]he treaty was not a grant of rights to the Indians, but a grant of rights from them – a reservation of those not granted ...And the right was intended to be continuing against the United States and its grantees as well as against the State and its grantees.”<sup>8</sup>

That is, treaties gave nothing to tribes. In fact, through entering into treaties the citizens and government of the United States obtained the land and resource base that have allowed it to become the wealthiest society on earth.

While the United States incurred obligations of trust by signing treaties with tribes, it is important to recognize that our government has maintained an unequal colonial relationship with tribes. This was clear in *Lone Wolf v. Hitchcock* (1903), in which the Supreme Court ruled that,

“Plenary authority over the tribal relations of the Indians has been exercised by Congress from the beginning, and the power has always been deemed a political one, not subject to be controlled by the judicial department of the government...The power exists to abrogate the provisions of an Indian treaty.”<sup>9</sup>

In this racist and unjust decision, the U.S. Supreme Court ruled that Congress can create agreements abrogating treaties even when the agreements are based on fraud and misrepresentation and take place without tribal consent. Congress is generally assumed to act in the best interest of Indians whether they do or not. This remains an element of the institutional racism that characterizes the federal relationship with indigenous peoples in the United States.

Despite the failure of the U.S. government to fully respect treaty rights and tribal sovereignty, and as a result of the struggles of tribal peoples, treaties have secured for tribes a body of recognized legal rights and moral claims on the citizens and government of the United States.

For instance, treaties signed with Puget Sound and other northwest tribes in the 1850s were interpreted in 1974 in *U.S. v. Washington* to mean that signatory tribes were entitled to one-half the fish that traveled through their “usual and accustomed” fishing sites. This ruling was later extended to include shellfish. In concert with the 1983 *Voigt* decision – which established that such rights apply to tribal individuals as well as tribes collectively – these rulings, and the tribal struggle they supported, have been crucial in upholding the fishing rights of tribal members, fostering the growth of tribal fisheries and institutionalizing a role for tribes in fisheries management. These rights have likewise been vital in preserving tribal culture and economic well-being.<sup>10</sup>

## **Periods of Federal Indian Law**

As we saw above, the actions of the U.S. government did not create tribal sovereignty. However, the development of U.S. Indian Law and the institutional relationships it has created have played a major part in “legally” defining the rights of tribes.

To understand where we are in U.S.-Indian relations, it is important to understand how we arrived here. Historians of these relationships tend to divide this history into periods distinguished by the shifting policies implemented over time. The periods generally described are Discovery and Conquest; Treaty-making; Removal; Allotment; Indian Reorganization; and Self-Determination. Each period has left a legacy that continues to shape aspects of the U.S.-tribal relationship.

While this discussion examines Federal Indian Law, it is important to recognize that this does not refer to the laws and mores of tribes. Rather, Federal Indian Law refers to the legal concepts created by the United States in the process of colonizing the continent and developing relationships with tribal nations. While the struggles of tribes to maintain their land base and rights shaped these periods of law, the following discussion emphasizes these laws as they became defined by the colonial powers and, later, the United States government.

It is also important to recognize that the development of Federal Indian Law was a product of colonialism. Colonialism refers to the process by which states impose their political and “legal” supremacy over politically and culturally distinct societies and engage in the economic exploitation of these “colonies.” The U.S. case can more specifically be characterized as *settler colonialism* in that it involved the expulsion of indigenous peoples from their lands and the migration of members of the colonizing population into these lands.

The history of U.S. interactions with tribes exhibited a recurring pattern of incursion and settlement in Indian country, and the subsequent extension of U.S. state powers to “protect” the settlers. The “periods of Indian law” represent the often contradictory legal principles developed in the process of taking Indian land and incorporating “Indian Country” into American law. As such, these “periods” can be understood as overlapping policy orientations rather than distinct temporal periods. Treaty-making, Removal and Assimilation, for instance, overlap in much of the 19<sup>th</sup> century in American policy, each aiding the removal of Indians from their lands and the imposition of U.S. political “supremacy” over tribes.

While contradictions appear throughout this history, patterns are discernable. These policies have tended to revolve around three broad axes:

- The abject rejection of tribal land, resource and cultural rights, including expelling tribes from their lands through war and genocide.
- Efforts to coerce the assimilation of tribes to the interests, language and values of the dominant white society.
- Recognition of limited forms of tribal sovereignty and tribal self-determination.

### **“Discovery” and Conquest (13<sup>th</sup> century to late 19<sup>th</sup> Century)**

Europeans did not discover the “New World.” Nearly 800 tribes inhabited the land now known as North America, diverse in language and social organization. However, the period has been termed the “Age of Discovery” because this history has been largely written by Europeans and their American descendants. The term “discovery” may also refer to the “legal” ideas created to justify the colonial occupation of Indian Country: the so-called Discovery Doctrine.

The eventual articulation of American Federal Indian Law had its origins in three sources: an 11<sup>th</sup> century papal doctrine justifying the extension of European powers into the lands of “heathens” and “infidels;” the re-articulation of this doctrine by British colonizers; and the conflict between colonies and the central British authority (and later between the American national government and states).

The papal doctrine of discovery developed as a legal framework for the Crusades of the 11<sup>th</sup> to 13<sup>th</sup> centuries. This doctrine framed the “rights” of popes and their representatives to intervene in and occupy the lands of “heathen” and “infidel” peoples seen as possessing laws at odds with Catholic doctrine. The Discovery Doctrine addressed the manner and circumstances under which papal authority could be imposed, first on Muslims and later on indigenous peoples in the “New World.” Related ideas would be used to justify slavery and the expulsion of Jews from European countries. This doctrine was most fully articulated by Pope Innocent IV in the late 13<sup>th</sup> century:

“The pope has jurisdiction over all men and power over them in law ... if a gentile, who has no law except the law of nature...does something contrary to the law of nature, the pope can lawfully punish him...

The pope can order infidels to admit preachers of the Gospel in the lands that they administer... [I]f the infidels do not obey, they ought to be compelled by the secular arm and war may be declared against them by the pope and not by anyone else.”<sup>11</sup>

Such ideas were used in the 1430s when a Papal decree “granted” the “exclusive right” to Portugal to colonize Africa, and in 1493 when Pope Alexander IV’s papal bull granted Columbus the right to “subdue the said mainlands and islands, and their natives and inhabitants, with God’s grace.”<sup>12</sup> In 1513 Crown lawyers added an air of process to colonial invasion with the creation of the *Requerimento*. This legal tool was to be read to “heathens” contacted by papal emissaries, requiring the recognition of papal rule and the entry of Catholic missionaries into their lands. If refused, this document asserted that indigenous people would face warfare in which “we shall take you and your wives and your children and shall make slaves of them, and as such shall sell and dispose of them as their highnesses may command.”<sup>13</sup>

British colonizers later echoed the ideas of “discovery” as when a patent issued by King James to the Virginia Colony envisioned that colonists may in time “bring the Infidels and Savages, living in those Parts, to human Civility, and to a settled and quiet Government.”<sup>14</sup> Lord Chief Justice Edward Coke, a leading “common law jurist” and legal advisor to the Virginia colony, declared Christians and infidels to be “perpetual enemies” and declared the laws of “infidels” to be “abrogated” upon being conquered by colonial powers on the grounds that “they [laws] be not only against Christianity, but against the law of God and of nature.”<sup>15</sup>

In addition to the Discovery Doctrine, federal-Indian laws would be shaped by the conflict between the central colonizing power – England – and the colonies. This conflict was seen in the royal Proclamation of 1763 barring settlement in the areas west of the Appalachians. This proclamation was ignored by land speculators such as George Washington who saw the proclamation as a temporary expedient to “quiet the minds of the Indians.”<sup>16</sup> It foreshadowed conflicts that would develop between the federal republic and states following the ratification of the Constitution.

It was in this political-legal environment that Chief Justice John Marshall adapted the discovery doctrine to an expansionist American context. Marshall's ruling in *Johnson v. McIntosh* (1823) illustrates the link between this emerging field of American law and the previous colonial doctrine:

"The United States, then, have unequivocally acceded to that great and broad rule by which its civilized inhabitants now hold this country...They maintain, as all others have maintained, that discovery gave an exclusive right to extinguish the Indian title of occupancy, either by purchase or by conquest...[T]he Indian inhabitants are to be considered merely as occupants...deemed incapable of transferring the absolute title to others."<sup>17</sup>

Even as he created a legal framework for colonial domination, Marshall's later rulings also established the basis of the federal obligations to tribes. In *Cherokee Nation v. Georgia* (1831) the Supreme Court termed tribes "domestic dependent nations" and asserted that the tribal relationship to the U.S. "resembles that of a ward to his guardian."<sup>18</sup> Out of this legal relationship has emerged the trust responsibility requiring the federal government to act in the interest of Indian tribes. Finally, in *Worcester v. Georgia* (1832) the Supreme Court legally resolved its conflicts with states over the control of Indian policy, articulating an inherent political status for tribes as nations and barring the extension of state jurisdiction into Indian country.<sup>19</sup>

Such ideas formed the "legal" foundation for the occupation of the continent as well as the basis of modern American Indian Law. As a legal rationale for occupation of tribal lands across the continent, this doctrine also became a legal rationale for genocide.

These rulings by Marshall continue to provide a foundation for Federal Indian Law in the shape of the Congressional "Plenary Power" in which Congress claims broad unilateral powers to legislate in Indian Country, including the power to seize tribal lands and terminate the tribal-federal relationship; the manner in which the Supreme Court interprets Indian Law cases by deferring to Congressional intent as it existed at different times in U.S. history; and the "legal" possession of lands held as a result of Removal, Termination and Allotment Acts by Congress under its "plenary power." The legal concepts established in Marshall's rulings also remain a basis for the federal recognition of tribes as independent political communities and a constraint on the extension of state and local laws into Indian Country.

### **Treaty-Making (1600s to 1871)**

Treaty-making had been adopted in the colonial era as colonists – outnumbered, militarily compromised, and at times dependent on tribes – sought a means of legitimating the transfer of tribal lands to colonial control. In addition to effecting land transfer, treaties in this era were also seen as a means of fashioning military alliances and achieving peaceful relations. Treaties were often seen by tribes as a means of securing goods in exchange for land and assuring relations of mutual assistance and multi-cultural unity between colonists and tribes. As would be the case throughout the history of treaty-making, tribes of the early colonial era recognized that treaties were regularly violated by colonists.<sup>20</sup>

The United States government continued this means of relating to Indians. Between the 1778 treaty with the Delawares and the 1868 treaty with Nez Perce, some

400 treaties were signed with Indian tribes. Treaty-making further received support from Congressional “trade and intercourse acts” of the late 18<sup>th</sup> and early 19<sup>th</sup> centuries. These acts required that U.S. citizens obtain federal permits to trade with tribes and banned states from entering into agreements to obtain land from tribes. Agreements passed in violation of these laws are important today in land struggles in the eastern U.S. where tribes have pressed claims over illegally obtained state lands.

In 1871 the period of treaty-making was formally ended when, in a rider attached to an appropriations bill, Congress declared that tribes would no longer be recognized for the purpose of making treaties. Reservations continued to be created by Congressional Act and, until 1919, by Presidential executive order. However, the formal end of treaty-making signaled the coming of a period of coerced assimilation (see below, p.13).

It is important to recognize the unequal context in which treaty-making occurred. Treaty-making occurred alongside the period of conquest and removal and was accompanied by repeated wars of aggression by the United States against indigenous peoples. While not all treaties were signed under conditions of ongoing removal, warfare and genocide against tribes, many were. In addition treaties were negotiated in English and limited inter-tribal languages, a fact that was used to the advantage of military and government leaders.<sup>21</sup> In addition, treaties were sometimes altered in the process of Senate confirmation without tribal approval.

This unequal relationship has been recognized by the Supreme Court. This has been reflected in the development of certain “canons of construction” used to interpret Indian law cases. For instance, these canons hold that treaties be interpreted as they would be understood by tribes; be interpreted liberally in support of tribes; require explicit Congressional intent to terminate tribal rights; and require that all rights not “granted away” by tribes are to be reserved to them. While these rules have produced favorable rulings for tribes, they have often not been used in judging tribal cases and, in the end, take place in a context of claimed plenary powers by the U.S. Congress over tribes.<sup>22</sup>

Despite this inequality, treaties remain a vital means of protecting tribal rights and holding the federal government accountable to tribes.

### **American Conquest: Forced Removal and Relocation (1810s to 1890s)**

Despite treaties barring further encroachment into tribal lands, colonists continued to stream into Indian Country virtually unchecked. By 1800 some 700,000 Americans had settled west of the Appalachians. The impetus for removing tribes to lands in the West increased following the 1803 “Louisiana Purchase.” With this purchase of Indian lands from France, Thomas Jefferson became one of the early American political leaders to advocate Indian removal, even implementing a removal policy during his presidential tenure. While Jefferson promoted the idea that debt might be used to obtain Indian land, he recognized that tribes might resist encroachment and that violence might ultimately be necessary to take their lands. Jefferson’s views on Indian resistance to American occupation were expressed in an 1803 “unofficial and private” letter to Indiana Territorial Governor William Henry Harrison:

“Our settlements will gradually circumscribe and approach the Indians, and they will in time either incorporate with us as citizens of the United States, or remove beyond the Mississippi...As to their [Indian] fear, we presume that our strength and their weakness is now so visible that they must see we have only to shut our hand to crush them, and that all our liberalities to them proceed from motives of pure humanity only. Should any tribe be foolhardy enough to take up the hatchet at any time, the seizing of the whole country of that tribe, and driving them across the Mississippi, as the only condition of peace, would be an example to others and a furtherance of our final consolidation.”<sup>23</sup>

Jefferson would later write that Indian violence (i.e., resistance) “will oblige us now to pursue them to extermination, or drive them to new seats beyond our reach”<sup>24</sup>

The impetus for an “*era of removal*” grew out of the aggressive campaign of expansionist southern slave states to seize hold of the lands of the Cherokees, Creeks, Chickasaws and Choctaws. Between 1827 and 1833 the legislatures of Georgia, Alabama, Mississippi and Tennessee passed laws extending their laws into Indian country. The Georgia and Alabama laws outlawed all tribal “laws, usages and customs.”<sup>25</sup> In fact, it was the outgrowth of this conflict that ultimately led to the Marshall Doctrine described above.

The 1828 election to the presidency of Andrew Jackson, who had previously prosecuted vicious wars against the Seminole and Creek, opened a window of opportunity for advocates of removal. In 1830 the passage of the Indian Removal Act empowered the president to “exchange” lands west of the Mississippi and “provide” for the removal of eastern tribes to those lands. While the act did not endorse forced removal, Jackson used the act as a cover to institute the coerced removal of tribes to areas west of the Mississippi.<sup>26</sup> In a December 1830 message to Congress, Jackson expressed the ideas that lay behind the policy:

“The present policy of the Government [i.e., removal] is but a continuation of the same progressive change by a milder process. The tribes which occupied the countries now constituting the Eastern States were annihilated or have melted away to make room for the whites...”<sup>27</sup>

While removal is generally thought of as involving tribes in the southeastern United States, the practice of removing tribes to reservations occurred throughout the 19<sup>th</sup> century, stretching from the southwest and Midwestern states, to the Northern Rockies and Pacific Northwest.<sup>28</sup> The outcome of an unquenchable thirst for Indian lands, and a Doctrine of Discovery fashioned to fit the American context, the policy of forced removal led to egregious crimes by the United States, including repeated wars of aggression and genocide against multiple indigenous peoples.

### **Coerced Assimilation and Allotment (1880s to 1930s)**

The idea of assimilating Indians to the laws of Christian Europe had existed since the 1400s. Efforts at coerced assimilation also accompanied the periods of removal and treaty-making, as seen in efforts to press tribes into agricultural production, the placement of Christian ministers on reservations, and provisions found in some treaties for allotment of lands to individuals.

The Assimilation and Allotment era, however, is associated with the period between 1887 and the early 1930s when the U.S. government pursued an aggressive

policy of allotting tribal lands and coercing the assimilation of tribal peoples to the dominant society. The origins of this shift in policy lay in the growing recognition of the failure of the reservation system as a means of forced assimilation. Reports from Indian Commissioners of the 1840s to 1870s indicate this perception, attributing the failure to the communal control of lands by tribes, the payment of annuities to tribes, and the “savage habits, customs and prejudices” of the “full blood Indian.”<sup>29</sup>

An early step toward coerced assimilation had been the extension of federal criminal jurisdiction into tribal lands. For instance, the General Crimes Act of 1817 had imposed concurrent federal jurisdiction over crimes in Indian Country in which the victim or accused are non-Indian; and the Assimilative Crimes Act of 1825 had extended the range of crimes under federal jurisdiction in such cases.<sup>30</sup> Following the Supreme Court’s ruling in *Ex parte Crow Dog* (1883), holding that the United States had no jurisdiction over Indian crimes against Indians on reservation, and in the wake of more than a decade of BIA and Interior Department lobbying, Congress passed the Major Crimes Act of 1885. In this act, the U.S. unilaterally seized control of the prosecution of seven major crimes in Indian country when Indian offenders were involved.

The capstone legislation of the period was the 1887 General Allotment or Dawes Act. In retrospect, Theodore Roosevelt would describe the Act as a “mighty pulverizing engine to break up the tribal mass;” more sympathetic observers described it as “one aspect of a broad-based national policy to open the West for settlement” which included the homestead legislation of the 1860s.<sup>31</sup> In effect, the Allotment Act implemented what had often been the dual purposes of federal Indian policies – securing Indian lands for American expansion and coercing tribes to assimilate.

The Allotment Act empowered the president to survey reservation lands and “allot” the lands to individual tribal members – family heads “received” 160 acres and each person over 18 “received” 80 acres. Allotees were also made U.S. citizens. The remaining lands were opened to purchase by non-Indian settlers. As a result, tribes lost more than two-thirds of their lands, or some 90,000,000 million acres, and a checkerboard pattern of land ownership emerged on reservations across the country – a fact that would have significant implications in later Supreme Court attacks on tribal sovereignty (see below, p. 17-18).

Other assimilation policies in this period included “agreements” implementing the Allotment Act on specific reservations; the growth of a system of boarding schools used to impose Anglo values and language on Indian children; the 1924 Indian Citizenship Act; and the criminalization of native religious practices.

The over-arching goal of this period is exemplified by the boarding schools of the late 19<sup>th</sup> to mid-20<sup>th</sup> century. Begun by Captain Richard Henry Pratt in 1879 with the establishment of the Carlisle School in Pennsylvania, by the 1930s some 100,000 native children had attended some 500 boarding schools. Children were forcibly taken from their homes, forbidden to practice their language or religion, and physically punished for doing so. Many native children died in these schools that sought to implement Pratt’s vision as expressed in 1892 before the Annual Conference of Charities and Correction in Denver: “All the Indian there is in the race should be dead. Kill the Indian in him, and save the man.”

## **Indian Reorganization (1930s to 1950s)**

By the early 20<sup>th</sup> century the egregious results of more than a century of Indian policy had become evident to many. In the teens and 20s a series of reports documented dismal health, employment, and education conditions in Indian Country. While many of these reports advocated mild reforms of Indian policies, they would provide an impetus for another shift in federal Indian policies.<sup>32</sup>

In addition to such reports, a rising interest in cultural pluralism on the part of Indians rights associations became a factor in this shift. John Collier and other Indian Rights' advocates promoted the idea that tribes and tribal cultures possessed inherent worth and that strengthening tribal self-governance would allow tribes to determine their own adaptation to American society. Finally, amidst the New Deal era which expanded access to government resources and jobs for broader segments of the population, this rising concern resulted in the passage of the 1934 Indian Reorganization Act (IRA). With John Collier appointed the Commissioner of Indian Affairs in 1933 the stage was set for a dramatic shift in federal policy.

The IRA announced that "No Land of any Indian reservation...shall be allotted in severalty to any Indian." The IRA's most prominent features provided for tribes to draft and ratify Constitutions and prevent the "sale, lease, or encumbrance of tribal lands." Further, the IRA provided for tribes to create charters of incorporation as a means of managing and regaining lands. Contrary to most previous Indian policy, the IRA also allowed for tribes to determine whether they would participate in the program. The act also created a revolving fund for tribal economic development and provided for an Indian employment preference in the Bureau of Indian Affairs.

Some 180 tribes quickly adopted the IRA, with 77 rejecting it and another 14 having the IRA imposed on them after the tribes did not hold elections. Within 12 years 161 constitutions and 131 corporate charters were adopted under the IRA. While tribes not adopting the IRA could form governments, they were ineligible for development loans under the act.<sup>33</sup>

While an advance over the previous policy, the IRA maintained elements of the colonial relationship with tribes. In particular, the IRA required approval of the Secretary of Interior for tribal constitutions and has been criticized for by-passing traditional tribal governments.

Under the IRA, tribes regained more than 2 million acres of land while federal spending increased for native health care, irrigation projects, housing, education, and roads.<sup>34</sup> Under IRA governments, tribes across the country manage social services, resource programs, and economic development; hold elections and send representatives to meet with U.S. government and international officials; and practice self-determination. And, despite the continued dominance of the IRA process by the U.S. government, IRA governments have given tribal members and leaders an institutional terrain on which to struggle for self-determination.

## **Termination (1950s to 1960s)**

The IRA faced conservative opposition as soon as it was passed. This opposition was exemplified by a 1943 Senate Report calling for the abolition of the BIA. The report criticized the IRA for making Indians satisfied with the “limitations of a primitive life” and aiding tribes in maintaining “worn-out cultures which are now a vague memory to him and are absolutely unable to function in his present world.”<sup>35</sup> Such racist misconceptions of tribal societies would appear throughout the termination era.

The coming of termination was signaled by the 1945 resignation of John Collier as BIA Commissioner and the 1949 Hoover Commission Report calling for the “complete integration” of Indians into “the mass of the population as full, taxpaying citizens.” The 1952 election of Republican Dwight Eisenhower and attainment of House and Senate majorities by the Republicans from 1953 to 1955 opened a window of opportunity for yet another shift in federal Indian policy.

The period is most associated with the passage in 1953 of House Concurrent Resolution 108 (HCR 108). The resolution expressed the “sense of Congress” that tribes should be “freed from Federal supervision and control.” That is, the federal trust relationship between tribes and the United States articulated in the Marshall era should be ended and all U.S. laws be imposed on tribal peoples.

HCR 108 called initially for terminating the federal relationship with all tribes in California, Florida, New York and Texas. Subsequent extensions terminated specific tribes in Wisconsin (Menominee), Oregon (Klamath and 61 smaller tribes and bands), Utah (some Utes, Southern Paiute), Oklahoma (Peoria, Ottawa), South Carolina (Catawba) and Nebraska (Ponca). The Secretary of Interior was further empowered to recommend legislation “to accomplish the purposes of this resolution.”<sup>36</sup>

Other actions in this period reoriented the federal government toward termination. Public Law 280 (1953) extended state criminal and civil jurisdiction into Indian Country in specified states. In addition, many federal education functions were transferred to states; legislative and administrative activity supporting tribal economic development decreased; and efforts continued to press Indians to relocate to urban areas.<sup>37</sup>

The effects of termination were quickly felt by tribes. One-hundred-nine tribes and bands were terminated over the period, losing over 1.3 million acres or some 3.2% of tribal lands. Over 11,000 tribal members were effected (3% of total tribal members), with the accompanying cut in federal support and loss of lands leading to social crisis and increased poverty. In addition, many states quickly moved to expand their own jurisdiction and powers of taxation into Indian Country.<sup>38</sup>

## **Self-Determination (1960s to Present?)**

The damaging effects of termination quickly galvanized tribal leadership to opposition. A 1954 National Congress of American Indians conference was called in Washington, D.C. to protest termination. This era also saw a 1961 national conference to address termination and the emergence of dramatic struggles for fishing rights that would culminate in significant victories by the 1970s, among other struggles.

Federal actors also indicated wavering support for termination, as when the Secretary of Interior stated in 1958 that termination was “unthinkable” without tribal

consent and President Kennedy took no action to advance termination. During Johnson's Great Society, tribes were incorporated into federal support programs. Lyndon Johnson's 1968 address about "The Forgotten Americans" also foreshadowed Nixon's call for an end to termination and an increased role for tribes in managing federal programs.<sup>39</sup>

The period of Congressional Acts supporting many aspects of tribal self-governance has become known as the *era of self-determination*. Tribes made advances in many areas in the wake of legislation passed from the 1960s to the 1990s. The legislation addressed many areas of tribal collective rights, increasing power of tribes over the fate of native children; increasing legal and material capacity for mineral and forest resource management; easing the contracting process to foster tribal economic development; supporting tribal education and law enforcement; facilitating land reacquisition; providing Congressional support for tribal-state gaming compacts; and creating a federal process for the repatriation of tribal ancestral remains.

While tribes gained considerably during this period, the colonial relationship between the United States and tribes continued and the effectiveness of self-determination policies has been impacted by the differential commitment of U.S. public officials. A statement by BIA Commissioner Marvin Franklin in 1973 indicated the bigoted ideas that remained as he described tribal culture as a "special handicap" that served to "straightjacket" tribal peoples and "make it tough" for Indians to "compete on equal terms with" fellow citizens. In addition, the BIA did little to aid tribes in developing revenue codes. And, self-determination in the eyes of political leaders has often been reduced to tribal management of federal programs, itself an important aspect of sovereignty. For instance, many Reagan-era cuts in social spending undermined the programs upon which tribal self-management depends.

Throughout this era, tribes further sought and often won support for their inherent rights in the federal courts. Tribal rights won in Supreme Court cases in the post-WWII era include fishing, hunting and resource rights; taxation powers; federal support for the native hiring preference in the BIA; and an increased role for tribal courts, among other victories. In this manner the Supreme Court remains an arena in which tribal rights have and can be advanced.

The same era of self-determination, however, has seen a retreat from aspects of the Marshall doctrine that upheld some rights of tribes, particularly their rights vis-à-vis lower levels of government in the federalist system. A troubling feature of Supreme Court jurisprudence over this period has been the coupling of tribal sovereignty to property ownership. In such rulings, the Supreme Court has translated the checkerboard pattern of land ownership caused by Allotment into an attack on tribal sovereignty. Four cases illustrate this trend:

- *Oliphant v. Suquamish* (1978) – Tribes do not have jurisdiction over non-Indian criminal acts on reservation, undermining the ability of tribal law enforcement to protect the safety of reservation residents.
- *Montana v. US* (1981) – Tribes do not have fishing/hunting jurisdiction on non-Indian owned fee land except when non-Indian actions pose a direct threat to tribal self-governance or when non-tribal persons or groups enter into contracts with tribes.

- *Brendale v. Yakima* (1989) – So-called “open” areas on reservations – areas in which non-Indian ownership of land predominates – can be subject to local government regulation.
- *South Dakota v. Yankton Sioux* (1998) – Ceded on-reservation non-Indian-owned fee land on which an incinerator existed to the state of South Dakota. This was done by arguing that Congress had intended to remove this land from tribal control under an agreement implementing the 1887 Allotment Act.

The legacy left by this history is mixed. On one hand the federal government recognizes a limited form of sovereignty for tribal communities and an overarching federal power to decide Indian policies. On the other hand through the struggles of tribes and the legacy of policies and court rulings that have recognized inherent tribal rights, tribes practice many aspects of self-determination – and continue their struggle to practice many more.

Even as this contradictory history has created institutional bases for tribes to practice self-governance, it has left areas of ambiguity which have encouraged state and local governments to seek to impose their own rules and regulations on Indian people. As a general rule, the laws of state and local government are null and void in Indian Country. Exceptions to this exist, however, where Congress has passed laws allowing such an extension – as it did in Public Law 280 which pressed state jurisdiction onto a number of reservations.

The Supreme Court cases cited above have also created further jurisdictional confusion and undermined tribal rights. In effect, under U.S. law, who has jurisdiction in a civil case or land use dispute often depends on a combination of the “race” of the individual in question and whether the land is held in trust for the tribe or individual tribal members, owned by an Indian in fee simple, or owned in fee simple by a non-Indian. It also depends on the extent to which lower levels of government are willing to assert themselves into the lands of tribes. Such rulings have placed limits on the degree to which the U.S. Supreme Court can be considered an arena for advancing the rights of tribes.

It is in this context in which support from allies of tribal societies becomes important. Allies can demand that local and state governments engage in respectful government-to-government relationships with tribes and that the federal government live up to its obligations to respect sovereignty and treaty rights.

## Part II: The Organized Anti-Indian Movement

One threat faced by tribal peoples is an organized anti-Indian movement dedicated to the termination of tribal governments and abrogation of the treaty-protected rights of indigenous peoples. Rather than seeking to resolve differences with tribes through tribal courts or respectful government to government relationships, anti-Indian groups seek to resolve issues by overturning tribal rights. This movement harkens back to periods such as conquest, removal and termination in their opposition to tribal rights and the rhetoric they employ.

Since their incarnation in the 1960s, modern anti-Indian groups have focused most of their attention on overturning two types of tribal rights – the *on reservation* jurisdiction of tribal governments and the *off-reservation* resource rights protected by treaties. While they often attack these rights in a piecemeal fashion, ideas found in their literature and statements indicate an ultimate goal of terminating both tribal governments and treaty rights – in effect seeking the coerced assimilation of native peoples' into American society.

Organized efforts to overturn tribal rights are inherently racist because they mobilize to end fundamental rights possessed by Indian people in a context of broad institutional domination by whites. While anti-Indian activists claim this is not racist, they do so by limiting the definition of racism to overt prejudice and denying that they “hate” Indians. While this is itself probably not true in many instances, it is the act of seeking to deny fundamental rights to Indian people that is racist. Just as it would be racist to seek the overturn of the 1964 Civil Rights Act – even if a person said they do not hate African-Americans – so is it racist seek the suppression of tribal rights.

Anti-Indian groups share the characteristics of political social movements in that they mobilize multiple groups across multiple issues in a quest for broad institutional change. In effect, anti-Indian organizations seek to overturn the rights established in Supreme Court rulings, Congressional Acts, and executive decrees and during the periods of treaty-making, reorganization and self-determination. The aims of the anti-Indian movement would create U.S. policies that go beyond those of the termination era to end all collective tribal rights.

Anti-Indian activists engage in a broad range of strategies and tactics. These include protest; lobbying; seeking to shape opinion through public forums and propaganda; operating print, electronic, and video media outlets; serving as information sources for mainstream media; suing tribes in state and federal courts; and engaging in electoral activity. The anti-Indian movement has also employed intimidation and violence. During the 1980s hostile mobs gathered a boat docks in Wisconsin to protest the treaty-protected spearfishing rights of the Anishinabe (Chippewa) people. Anishinabe people were assaulted and shot at while attempting to exercise their rights.<sup>40</sup>

Anti-Indian groups often ally with members of other social movements. Most commonly, they ally with the Wise Use or property rights movement, activists dedicated to overturning regulations that foster socially responsible property practices. The Citizens Equal Rights Alliance, for instance, takes part each year in a gathering hosted by the property rights group the Alliance for America. The United Property Owners of Washington, long involved in opposing the fishing rights of Puget Sound tribes, recently joined with petroleum and farming interest groups in Oklahoma to form One Nation

United. Anti-Indian leader Jack Metcalf also allied with animal rights activists to oppose the treaty-protected right of the Makah tribe to hunt whales.

The anti-Indian movement is also characterized by its public rhetoric. Most anti-Indian activists assail the rights of tribes in a language of equality. Disparaging Indian people as “supercitizens,” and accusing Indians of claiming “special rights,” anti-Indian activists have claimed that they only want “One People Under One Law.” While this rhetoric echoes the language of civil rights, its end would be the termination of tribal rights. Recently, anti-Indian activists have adopted rhetoric akin to that used by organized anti-Semites, casting Indians as all-powerful actors who control the federal government through casino-derived wealth, favorable court decisions and participation in the political process.

Most frequently, the anti-Indian movement has operated at the local or regional level to oppose rights held by specific tribes. The movement originated at the *local* level in the 1960s when fee land owners organized to oppose tribal jurisdiction on the Lummi, Quinault and Suquamish reservations in Washington state. In recent years anti-Indian organizations have existed on or near the Lummi, Swinomish, Nez Perce, Yakama, Suquamish, Muckleshoot, and Flathead reservations, among others. Groups such as the United Property Owners of Washington (UPOW) organized in the 1990s against the treaty-protected fishing and shellfishing rights of Puget Sound tribes.

Anti-Indian activists have also formed *national* umbrella organizations in an effort to influence national policy makers. In the 1970s anti-Indian groups formed the Washington-based Interstate Congress on Equal Rights and Responsibilities (ICERR), and later the Citizens Equal Rights Alliance (CERA), as umbrella organizations for local groups. In 2004, the United Property Owners joined forces with One Nation, Inc. to form a national anti-Indian lobby called One Nation United.

And, anti-Indian organizations have mobilized at the *regional* level. In recent years anti-Indian organizations from Idaho, Washington, Oregon and Montana held gatherings to develop common strategies for opposing tribes. Organized by the Citizens Stand-Up Committee from Toppenish, Washington, these “Stand-Up Round-ups” have seen groups like the Association of Property Owners and Residents of the Port Madison Area (APORPMA), the North Central Idaho Jurisdictional Alliance (NCIJA), the Sandy Point Alliance, UPOW and CERA join to coordinate their strategies and public messages.

Anti-Indian activists have often been successful at gaining political office and influencing policies. Among the successes of the anti-Indian movement in Washington and Idaho have been:

- In 2004 former UPOW attorney James Johnson was elected to the Washington State Supreme Court.
- The North Central Idaho Jurisdictional Alliance (NCIJA) – dedicated to diminishing the Nez Perce reservation – is itself comprised of over 20 local governmental bodies.
- Anti-Indian figures have held county or city offices in Whatcom, Kitsap, and Yakima counties in Washington State; and in Lewis, Idaho and Clearwater counties in Idaho.
- In 2000, anti-Indian leader John Fleming led the passage of a termination plank at the annual Washington state Republican Party convention.

- Longtime anti-Indian leader Jack Metcalf served three terms (1994-2000) in the U.S. House from Washington state. UPOW activist Fairalee Markusen served as a staff person in Metcalf's Bellingham office.
- In the late 1990's Idaho state judge Barry Woods adopted the anti-Indian "diminishment" language of the NCIJA in ruling against the Nez Perce tribe in a water rights case.

## **Who's Who in the Anti-Indian Movement**

Below are brief descriptions of prominent anti-Indian organizations that operate in our region or are influence by Northwest leaders. This list is by no means exhaustive, but illustrates some of the type of organizations that oppose tribal rights.

**Citizens Stand-Up Committee:** Located in Toppenish, Washington on the Yakama reservation, this organization has opposed the on-reservation rights of the Yakama government. The group recently failed in its bid to avoid paying fees to the Yakama for its provision of utilities services to Indian and non-Indian residents of the reservation. The group has also played a lead role since 2001 in brining together anti-Indian activists from around the region to craft common strategies. Stand-Up executive director Elaine Willman and former president Rusty Jones are currently running for positions on the Toppenish City Council.

**North Central Idaho Jurisdictional Alliance (NCIJA):** This organization consists of more than 20 local governmental bodies, including the Idaho, Clearwater and Lewis County Commissions, several city councils, school districts and highway districts. The NCIJA opposes the "claims of the Nez Perce tribe to jurisdiction...over the residents and property of the area within the 1863 treaty boundary." It has sought legal action to diminish the reservation and recently joined the Water Rights Coalition, which opposes the tribe's water settlement with the state of Idaho. NCIJA executive director Dan Johnson has participated in the Stand-Up Roundup events organized by the Citizens Standup Committee.

**United Property Owners:** This Redmond, Washington and California-based group was formed in the early 1990s as the United Property Owners of Washington by former leaders of S/SPAWN, an organization opposed to the treaty-reserved fishing rights of Puget Sound and Northwest tribes. UPOW continued to attack tribal treaty fishing and shellfishing rights. After losing in the courts, UPOW turned to lobbying Congress in opposition to multiple tribal rights. UPOW leader Barbara Lindsey has played a prominent role in national anti-Indian activity, currently serving as director of the Oklahoma-based One Nation United.

**One Nation United:** This organization is comprised of Oklahoma-based petroleum, farming and grocery interest groups and the United Property Owners. UPO leader Barbara Lindsey serves as the director of the organization which is dedicated to opposing tribal taxation, casinos, environmental regulation, political contributions, and fee-to-trust land transfers, among other rights.

**Citizens Equal Rights Alliance:** This Montana-based group serves as an information clearinghouse for the movement, providing articles attacking a range of tribal rights and peddling anti-Indian books. The group hosts an annual Washington, D.C. gathering and lobbying event and has sponsored a number of amicus briefs in court cases. Elaine Willman of the Citizens Stand-Up Committee currently serves as the CERA board chair.

**Association of Property Owners and Residents of the Port Madison Area (APORPMA):** The anti-Indian group has opposed the sovereignty of the Suquamish Indian tribe since the 1960s. Led by Buzz Whiteley and Cindy Rasmussen, the group recently unsuccessfully opposed the return of the 1.1 acre Old Man House State Park to the tribe. In recent years the group has participated in regional anti-Indian coalitions. Rasmussen has also been active with the United Property Owners.

## **Part III: Issues Facing Indian Country**

The U.S. occupation of Indian country and its establishment of political-legal dominance over tribes resulted in a long list of social inequalities between tribes and the U.S. government and citizens. In this process, tribal economies were destroyed, traditional forms of tribal governance undermined and tribal members pressured to leave the reservation and relocate to urban areas.

While this history began to reverse in the reorganization era, and again in the era of self-determination, it left indigenous people in the United States facing a significant set of obstacles in meeting the needs of their people and practicing their inherent rights to sovereignty and self-determination. These issues affect native people both on and off the reservation.

The National Congress of American Indians (NCAI) a national organization dedicated to serving tribal governments across the country, and the Affiliated Tribes of Northwest Indians (ATNI), which works to support tribal governments in the Northwest, have identified a number of issues important to tribal governments and tribal communities. The following examples, drawn from NCAI, ATNI and the observations of these authors, are by no means the only issues facing indigenous peoples in the United States. They do, however, provide a brief look at some of the issues that tribal communities around the region face. They also point to important arenas in which allies can act to support tribes in their struggles for self-determination.

### ***Tribal Governance***

Many issues are involved in governing a community or a nation. This is especially the case when the communities involved have faced historic and entrenched forms of inequality and its governing institutions have been undermined. As the discussion of Federal Indian Law demonstrated, all of these have been the case with tribal nations in the borders of the United States.

One challenge faced by tribal nations is the simple matter of providing for the safety of the community. In the last decade, Indian people and Alaska Natives have faced rates of violent victimization twice that of all other groups in the United States, experiencing about 1 violent crime for every 10 residents aged 12 or over. Approximately 60% of these acts were committed by offenders described as white. About 1 in 4 suspects investigated by U.S. attorneys for violent crimes were in Indian Country while nearly 75% of such investigations in Indian country were for violent crimes.<sup>41</sup>

As we saw in the discussion of Federal Indian Law, Supreme Court cases such as *Oliphant v. Suquamish* (1978) have undermined the ability of tribes to protect tribal members from violence at the hand of non-Indians. Strengthening the ability of tribal governments to protect their members is affected by several things. First, tribes must maintain effective law enforcement agencies and courts. Second, because tribal sovereignty has been undermined by recent Supreme Court rulings, it is especially important that tribes maintain good government-to-government relations with states and localities, including cross-deputization with local governments.

While cooperative agreements between states and tribes have been developed – such as the Centennial Accords between Washington State and tribes (committing both

parties to government-to-government relations) and the North of Falcon process (in which tribes and Washington State agencies negotiate and agree to enforce fish quotas) – much needs to be done in the way of providing law enforcement protection for all reservation residents. Fostering positive government-to-government relationships is an area of U.S.-tribal relations in which allies can play an important role by holding their own governments accountable to the jurisdiction of tribes and to addressing issues with tribes in a respectful manner.

Other areas that must be advanced are strengthening requirements for federal consultation with tribes when legislation or executive acts affects tribes; full inclusion of tribes in emergency preparedness processes; strengthening tribal powers of taxation; and limiting the powers of state and local governments to extend their taxes, fees and regulations into Indian country.

Some tribal members have made advances in issues of governance by running for political office in state legislatures. In 2004, for instance, 8 Native legislators (all Democrats) were elected to the state legislature in Montana. However, a majority of the Native legislators have difficulty passing bills.<sup>42</sup> This and other aspects of tribal governance offer areas in which allies could support tribes and tribal members in their efforts to uphold the rights of tribes.

### *Community Development and Health and Human Services*

Centuries of destructive federal policies have devastated tribal communities and tribal economies, leaving them underdeveloped. This remains an aspect of the colonial relationship, with the core economies of the United States both larger and more diverse than peripheral tribal economies.

The effects of this inequality have been persistent poverty and economic inequality among Native peoples. According to the 1997 National Survey of America's Families, some 54% of Native American and Alaska Native families are below 200% of the federal poverty level and 31% below the poverty level. Nearly 60% of low income indigenous families have experienced food or housing hardship as have 32.1% of higher-income native families – both higher than for any other racial or ethnic group in the United States.<sup>43</sup>

Tribal governments have sought to address such inequalities through two general routes – taking steps to foster economic development and managing health and human services programs. On the development front, tribes have faced a number of obstacles. They have tended to lack capital for development; have faced intense competition from non-Indian communities; have often been located away from markets; and have often faced situations compounded by educational inequalities and contested control of their own resource base.

In the face of these inequalities, tribal governments have implemented economic development projects that benefit both tribal members and non-Indians. These have included efforts to build transportation, telecommunications, technology, and financial infrastructure. Tribal gaming has also been a means of building a financial base of support for both tribal social services and greater diversity in economic development. Anti-tribal gaming groups have cropped up from California to Washington to oppose this tribal right of economic development.

Housing is another pressing community development issue. This was addressed at the 2005 spring gathering of Affiliated Tribes of NW Indians when a resolution was passed calling for support for organizations that aid homeless American Indians and Alaska Natives in urban areas in the Northwest. This resolution was particularly significant because it strengthens relationships between tribal governments and urban Indian organizations. At times, tribal efforts to address housing inequality have come under attack by opponents of tribal governance, as when anti-Indian activists opposed a tribal low-income housing plan on the Suquamish reservation in Washington State.

Protecting the health and welfare of tribal members through managing health and human services is also a major duty of tribal governments and urban Indian organizations. Health and human service issues include addressing the needs of elders, veterans, and disabled tribal members, adoption and foster care, employment training, and alcohol and substance abuse treatment and prevention. Native people face a number of health issues including high rates of diabetes, suicide, and obesity.

Education is also a health and human services issue impacting tribal communities. Tribal communities face high dropout rates, insensitivity to Native culture, unequal discipline policies for Native students, and high numbers of Native students in special education classes. To begin addressing some of these concerns, the Washington state legislature passed Substitute House Bill 1495 during the 2005 legislative session. The bill, sponsored by Tulalip tribal member Rep. John McCoy (D-Marysville), will require public schools to teach about Indian history and culture. An important role for allies of tribes will be monitoring the implementation of this legislation.

### *Land & Natural Resources*

Protecting lands and natural resources are important struggles for tribal peoples. Tribes are also re-acquiring lands through purchases or transfers that were ceded in treaties or seized “legally” and illegally. Land and natural resources issues include environmental protection, energy development, timber, agriculture, and land consolidation. Below are examples of a few of the land and natural resource issues facing tribal communities.

*Water rights* are of great importance to tribes. While tribal rights to water have long been established in U.S. law, tribes have sometimes sought to secure water and other rights by entering into agreements with state governments. For instance, in Idaho the Nez Perce Tribe settled a long dispute with the federal and state governments by negotiating a settlement to their water rights claims. While there is wide support for the settlement, several sources of opposition have emerged. The Water Rights Coalition, which includes the anti-Indian North Central Idaho Jurisdictional Alliance, several county and city governments, and a number of resource industry interest groups, is opposing the agreement. In addition, the Shoshone-Bannock Tribe in southeastern Idaho opposes it because they claim it gives the Nez Perce Tribe water rights in their territory. Such a case provides an example of the types of issues that allies must grapple with in supporting tribes (see *Organizing for Treaty Rights and Sovereignty* for more on this type of conflict).

*Nuclear waste* is another land and natural resources issue tribes are addressing as a result of environmental racism. In eastern Washington state there is an abandoned open pit uranium mine on the Spokane reservation. Local environmental justice activist Deb Abrahamson, a Spokane tribal member and head of Saving Our Health, Air, Water, & Land (S.H.A.W.L.), is working to address this hazard in her community.

*Protecting sacred sites, traditional cultural properties, sites with religious and cultural significance, and historic sites* is also a struggle for indigenous peoples. The Affiliated Tribes of NW Indians recently passed a resolution “Opposing Amendments to the National Historic Preservation Act Which Diminish Protections of Tribal Sacred Sites.” The National Historic Preservation Act is the primary tool used by tribes in the West to protect quickly diminishing such sites. The amendments are opposed because they could negatively impact the way historic properties are identified and evaluated.

Many such sites are currently the subject of struggle by native peoples in the region. In Port Angeles, Washington, Tse-whit-zen Village, an ancient village of the Lower Elwha S’Klallam people, was violated when a development by the state Transportation Department uncovered the remains and artifacts of tribal ancestors. After negotiating with the Lower Elwha S’Klallam Tribe, who opposed the disturbance of their ancestors, the state’s Transportation Department decided to abandon the site. In addition to facing attacks from local public officials, the state is currently holding the remains. This has led the tribe to sue in order to regain the remains.

Other sacred sites in the region include Snoqualmie Falls, Washington; Valley of the Chiefs (also known as Weatherman Draw), Montana and Semiahmoo, Lummi Nation, Washington. Wyoming tribes have organized to protect Mato Tipila (also known as Devil’s Tower) and the Bighorn Medicine Wheel.

Another important issue of ancestral remains has been the case of the Ancient One, known in the popular press as “Kennewick Man.” The Ancient One was discovered in July 1996 on the banks of the Columbia River in Kennewick, Washington. The Umatilla Tribe, with the support of the Nez Perce, Yakama, and Colville tribes asked the Army Corps of Engineers to repatriate the remains to them for proper re-burial.

The Corps agreed to the tribe’s request. However, a group of scientists opposed the tribe’s effort because they wanted to study the remains. The scientist filed a lawsuit in district court seeking to stop the repatriation and the court ruled in their favor. Upon appeal, the 9th Circuit Court of Appeals sided with the scientists, agreeing that no existing tribe could claim a genetic or cultural connection with the Ancient One; therefore, the Native American Graves Protection and Repatriation Act (NAGPRA) did not apply.

To address flaws in NAGPRA, Sen. John McCain (R-AZ) drafted an amendment to the act as a provision of Senate Bill 536 (S. 536), that would strengthen tribal claims to ancient remains. During the hearings on S. 536, the Bush administration opposed the amendment to NAGPRA, stating that it would allow tribes to claim remains and artifacts that they are not entitled to. In addition, the Bush administration wants to add provisions that would give the Interior Department authority to take “unclaimed” Indian lands and eliminate its trust responsibilities to thousands of Indian people. This could affect the beneficiaries of highly fractionated lands and some 49,000 Individual Indian Money (IIM) accounts, worth an estimated \$73.9 million.

Tribes and their allies support McCain's bill, without the provisions from the Bush administration. This is another issue where progressives can ally with tribes by mobilizing their own bases to support these amendments without the Bush provisions.

*Tribes have the inherent right to decide who can and cannot be on tribal lands.* The Affiliated Tribes of NW Indians passed a resolution opposing lobbying efforts by energy companies and the New Mexico Oil and Gas Association to include a provision in federal energy legislation that would allow the Secretary of Interior (Gale Norton) to approve rights of ways over tribal lands without tribal consent. Affiliated Tribes of NW Indians opposes all amendments to federal laws that would remove tribal consent.

Tribes are also continuing their struggle to practice their *treaty-protected fishing and shellfishing rights*. The 1974 Boldt decision (*U.S. v. Washington*) determined that treaties signed in the 1850s reserved one-half of fish that pass through the "usual and accustomed" fishing sites of Northwest tribes. In 1994 this decision was extended to include shellfish. A second part of the Boldt decision concluded that the right to fish was non-existent if environmental degradation caused dramatic decline in fish populations. This became known as Boldt II. As a result tribes have a legal claim on state and federal agencies to protect the environment in which salmon live. In 2001 twenty Northwest tribes filed a suit in federal courts alleging that culverts created by the State of Washington were damaging salmon habitat. Because of declining salmon stocks, tribal fisheries in the Puget Sound have reduced their harvests by 80% in the last two decades.<sup>44</sup> The full implementation of the Boldt decision remains an arena of treaty rights struggle for tribes in the region.

Another issue faced by some tribes is that of *federal recognition*. This issue raises the question of who decides who is a "real Indian"?" Federal recognition is an important issue facing non-recognized tribes such as the Duwamish and Chinook tribes in Washington, who have endured many years of frustration. In January 2001, during the waning days of the Clinton administration, both tribes received full recognition only to have that status revoked by the Bush administration in July 2002. The tribal councils of the Duwamish and Chinook continue their struggle for recognition and should have the support of all people who believe in justice. In Idaho, the Lemhi Shoshone people, Sacajawea's people, are also seeking recognition from the federal government.

These are just some of the issues facing indigenous peoples in the United States. While space does not provide for more discussion, other issues include maintaining adequate levels of federal appropriations for existing tribal programs and services for off-reservation Indians; anti-defamation and Mascot issues; media racism toward Indians; disproportionate rates of Native incarceration; Alaska Native and Native Hawaiian issues; issues of international rights as indigenous peoples; and the need to register and mobilize the native vote among many others.

## Part IV: Organizing to Support Treaty Rights and Sovereignty

Organizing to support the treaty-rights and sovereignty of indigenous peoples involves several types of activity. The first is *working to build grassroots relationships of respect and support between non-Indian and Indian people*. While advances have been made by tribal governments, these have often occurred at the level of relationships between tribal government and U.S. government actors (at several levels of government in the federalist system). While an important and necessary aspect of sovereignty, such relationships have generally not brought together tribal members with non-Indians in and around their communities. This leaves alive the possibility that conflict between non-Indians and tribal communities will emerge with little non-Indian support for tribes. A key to supporting tribal rights is therefore establishing respectful relationships between members of tribal communities and non-Indians.

Second, this organizing must include *building broad bases of support for the practice of tribal sovereignty and treaty rights*. This may include a range of things, such as supporting tribes in the face of attacks on on-reservation tribal jurisdiction or off-reservation rights (such as fishing rights, environmental protections, preservation of sacred sites and the rights of tribes to the return of ancestral remains); responding to unjust actions by businesses or citizens on or near reservations; or supporting urban Indian communities. While this involves building strong grassroots relationships between tribal and non-tribal people, it also includes providing *support for tribal-led organizations seeking to advance the concerns of Native people and seeking mobilization by non-Indian groups to hold government and citizen actors accountable to tribes*.

All of these activities can be strengthened by *strategic research and public education*. By developing an understanding of the range of attacks on tribal sovereignty, supporting tribal-led efforts to educate non-Indians on sovereignty and treaty rights, and integrating research with organizing efforts, both grassroots relationships and effective bases of political mobilization can be strengthened.

In undertaking to support tribal rights, allies of tribes confront a number of dynamics that are different in both kind and degree than other kinds of social justice organizing. By being aware of these differences, activists can be better allies to tribal peoples.

### *Treaty Rights and Sovereignty are Distinct Kinds of Rights*

Most progressive groups in the U.S. address problems caused by the stratified nature of American society. This includes hierarchies built on the unequal economic relations that characterize capitalism and centuries of racial and gender inequality and discrimination. Strategies developed to address these types of inequality have sought to give those with less power greater say *in these stratified institutions*. This has included, for instance, seeking to change public policies so that government constrains the negative effects of hierarchy through regulation and wealth redistribution; acting outside government channels to hold institutional decision-makers accountable to marginalized constituencies; and establishing alternative forms of institutional governance that embody equality and respect.

While tribal members also face economic, racial and gender inequality, tribal rights are distinct in important ways. Treaty rights and sovereignty can be understood as affected by *geographic* or *territorial* hierarchies. That is, these rights are characterized by the rights of tribal peoples to be the primary decision makers in their historical geographic territories. These rights have been threatened by the encroachment of both government and citizens who seek to deny tribes the right to make decisions in their own homelands – including both reservation areas and ceded territories.

Activists seeking to support tribal rights must go beyond the regulatory, redistribution and equality paradigms that have been usefully employed to confront various institutional inequalities. They must, alternatively, recognize that tribal rights are rights to geographic jurisdiction over resources, institutions and people. It becomes paramount in this context that allies take care not to insert themselves into internal political matters in Native communities. Rather, they must focus on supporting treaty and sovereignty rights and addressing those U.S. governmental and citizen actors that seek to curtail these rights.

The unique nature of tribal rights also offers opportunities for activists concerned about environmental degradation. Because they are recognized by the federal government, tribal rights can block anti-environmental action of business and government actors. Just as non-Indians can be good allies in supporting tribal rights, tribes can be good allies in advancing concerns about environmental degradation. Again, however, it is not the place of non-Indians to intervene in decision-making processes of tribes where they differ from the goals of progressive groups.

### *Opposition to Tribal Rights Sometimes Comes From Progressive Movement Allies*

Organizing in societies stratified by class, race and gender presents many challenges for those who seek justice for all people. One of these challenges is that progressive organizations sometimes mirror the dominant relations in society. For instance, progressive groups can be dominated by white, heterosexual, male staff and leadership; ignore forms of inequality faced by marginalized groups; practice insensitive behavior in relationships with members of marginalized communities; or even oppose the rights of marginalized communities. Anti-racism/sexism assessment tools and undoing racism/sexism/heterosexism trainings have been useful tools for organizations seeking to address these problems. Interest-based alliances across groups can also help build effective and respectful relationships.

The failure of progressives to deal respectfully with marginalized communities is perhaps more common in relationships with indigenous peoples than with any other group. Native peoples are unrepresented or underrepresented in nearly all progressive organizations; and these organizations often have a limited understanding of the unique nature of tribal rights.

Perhaps related to the predominance of equality-based paradigms among progressives, Indian people have also faced *overt opposition to their rights from progressives*. This has included opposition to sovereignty and treaty rights by environmental groups, animal rights groups and organized labor.

Predominantly white environmental organizations have been criticized by advocates of environmental justice on a number of fronts. These have included the failure

to address environmental racism; a lack of people of color in leadership positions; seeking funds for environmental justice work while not actually doing it; and becoming influenced by opponents of the rights of people of color, as in the anti-immigrant campaigns that have taken place inside the Sierra Club.

While anti-immigrant campaigns have occurred in environmental organizations and networks, other environmentalists have organized to oppose them. Conversely, some environmental and animal rights groups faced little opposition from within their own movements when they have organized to oppose tribal rights. This was true when animal rights activists mobilized to oppose the rights of Makah peoples to hunt whales. Environmental organizations have also opposed tribal land reacquisition and efforts to achieve protection and exclusive tribal use of reservation lands.<sup>45</sup>

This is not to say that environmental groups have not allied and supported tribal organizations. However, it is to say that when tribes act contrary to the desires of some environmental and animal rights organizations, these organizations have sometimes sought to suppress the rights of tribes to self-determination with little intra-movement opposition.

This has also occurred from the ranks of organized labor, where unions have undertaken organizing campaigns – and successfully sought the extension of National Labor Relations Board jurisdiction – in Indian Country contrary to the wishes of tribes. Labor unions also opposed the breaching of dams along the Snake River as a means of addressing salmon decline – a step favored by numerous tribes along the Columbia and Snake Rivers; and, in 1996, taking a narrow approach to the problems of globalization, the Boeing Machinist Union endorsed anti-Indian leader Jack Metcalf in his bid for the U.S. House with no visible opposition from AFL-CIO leadership.

Examples such as these point to the need for progressive activists to speak out and educate movement allies when they engage in anti-tribal activity.

### *Spiritual Appropriation in the Progressive Movement*

Another issue that must be addressed is the appropriation of tribal spiritual practices by some activists involved in New Age or counter-culture spiritualities. While the formation of counter-cultures is an important aspect of opposing pervasive socio-cultural inequality, some progressives have done so by adopting “tribal” cultural forms, giving themselves “Indian names,” wearing native clothing and mimicking aspects of Native ritual and religious practice. While religions such as Christianity and Islam seek to expand their membership, this is not so with Native peoples and mimicking traditional Native spirituality is not welcomed. Progressive activists must challenge such behavior when it takes place in our movement.

### *Conflicts Between Tribal Governments*

Because tribes have governments that set policies and assert territorial claims, these governments can sometimes be in conflict with one another. While tribes historically had conflict with other tribes, such conflict today is often shaped by the colonial context of the tribal-federal relationship in which tribes compete for a limited pool of resources. This has occurred, for instance, when some federally recognized tribes

have opposed the recognition of non-recognized tribes; or when tribes have opposed the addition of other tribes to ongoing resource agreements.

Part of respecting sovereignty requires that allies not insert themselves into such tribal conflicts. Rather, support for sovereignty and treaty-rights should guide the decisions of allies in such situations. While it is not the place of non-Indians to take sides in tribal conflicts, it is the place of non-Indians to support the rights of all tribes to recognition, sovereignty and treaty rights. It is also the place of non-Indians to demand that our own government and citizens respect the full treaty rights and sovereignty of all tribes.

### *Conflicts Within Tribes*

As with any socio-political community, not all tribal members agree with one another or with their governments. While this is true of any community, it is distinct in tribal communities because of their relationship to their own governments and social institutions. As a result, tribal members may sometimes be in conflict with other tribal members and with decisions made by tribal government officials.

Here again, allies of tribal sovereignty must not take sides in tribal conflicts. They must also refrain from inserting themselves into tribal disagreements in order to advance their own agendas. Such was the case, for instance, when the Sea Shepherd Conservation Society, and other animal rights groups, used the opposition to whaling by a handful of Makah tribal members to justify its own attack on the treaty-reserved rights of the Makah people to hunt whales.

Rather, allies of tribal communities must remain focused on supporting the rights of tribes to determine their own practices and policies; supporting the treaty-reserved rights of tribes; and monitoring and addressing the unjust behavior of U.S. governmental actors, businesses, and citizens. By limiting our attention to these issues we can best support tribal self-determination. Supporting tribal sovereignty means recognizing that tribal members, not non-Indians, have the right to chart tribal political and social destinies.

## **Organizing Case Studies**

The following case studies demonstrate different ways in which native and non-native people have allied to support the sovereignty and treaty rights of indigenous people. Each used different approaches and addressed different issues, but stand as testaments to the gains that can be achieved when communities join together to uphold the historic rights of tribes.

### ***The Native American Women's Dialog on Infant Mortality (NAWDIM) Group: A Community Response to High Infant Death Rates in Seattle & King County***

This case study involves a Native created and led organization that joined with a non-Indian non-profit and both tribal and non-tribal health agencies to implement culturally appropriate means of health education in urban Native communities. In addition to highlighting an effective alliance, it is an example of organizing to address the needs of urban native populations who are located in cities as a result of policies implemented by the federal government.

In Washington State, Native babies die at a rate 2.7 times higher than the general population. In Seattle and King County the rate is four times higher. Sudden Infant Death Syndrome (SIDS), the leading cause of Native infant death, is three times higher among Native families.

Research has shown a connection between maternal stress and poor pregnancy outcomes. The Centers for Disease Control are exploring racism as the over-arching contributor to chronic stress for people of color, and an underlying cause of racial disparities in poor pregnancy outcomes. According to reports by the Seattle Indian Health Board and the Public Health Seattle & King County, Native women face stressful life events, such as domestic violence, relationship conflict, economic stress, family tragedies, drug and alcohol use by family members, and legal problems, at a higher rate than other King County residents.

To address the high infant mortality rate Native women, in collaboration with Public Health Seattle & King County (PHS&KC), formed the Native American Women's Dialog on Infant Mortality (*NAWDIM*). Also included in this process was the SIDS Foundation of Washington's High Risk Initiative. As a result of this collaboration, *NAWDIM* developed the Cradleboard Project to share information on infant mortality and factors leading to poor birth outcomes; and to collect information from Native women in order to learn the issues they face and types of support they need. Approximately 100 women have participated in the Cradleboard Project, where they learn to make cradleboards, participate in a Talking Circle, eat, and socialize. In addition, culturally appropriate educational materials were developed by the SIDS Foundation of Washington in consultation with *NAWDIM*'s lead organizer.

A survey conducted in 2004 by the National Institutes of Health and the Back to Sleep Campaign indicated that Native women in Seattle and King County had more information on SIDS than Native women in eight other Indian Health Service areas in the United States. Women reported receiving their information on SIDS from participating in the Cradleboard Project and receiving culturally appropriate educational materials developed by the SIDS Foundation from Seattle Indian Health Board perinatal outreach workers. The Cradleboard Project was featured by CityMatch as a "Promising Practice" for improving urban women's health and has expanded to include Muckleshoot, Lummi, and Port Gamble S'Klallam nations. This project, begun to address issues confronted by Indian people in an urban setting, has now expanded to link urban and reservation Indians in a culturally sensitive approach to health education.

### ***Old Man House State Park and the Suquamish Struggle to Regain Culturally Significant Lands***

This case study demonstrates how effective support for tribal sovereignty can be achieved when grassroots relations are built between tribal members and non-Indians on and near the reservation. The case study also demonstrates how these relationships can translate into effective mobilization to support the return of lands to a tribe.

Old Man House State Park is a culturally significant site to the Suquamish Tribe, located on the Kitsap Peninsula in Washington State. The Park is the site of the tribal

longhouse and home of Chief Sealth (also known as Chief Seattle). The land on which the park sits was taken by the United States War Department in 1904 to build forts. It was later sold to a developer and turned into lots for individual homes. The Park itself was created in the 1950s by the State of Washington.

Beginning in the 1980s the tribe began efforts to regain control of the Park. In 2003 when negotiations between the state and the park moved forward, opposition to the tribe regaining the land began to emerge. A group calling themselves “Friends of the Park” organized to oppose the transfer, later joined by anti-Indian activists from the Association of Property Owners and Residents of the Port Madison Area (APORPMA), the Citizens Equal Rights Association (CERA) and the Citizens Stand-Up Committee. The “Friends” group circulated a petition opposing the Suquamish Tribe’s efforts, obtaining over 650 signatures from across the state. At public hearings, opponents of the land transfer reinforced racist stereotypes in their comments.

- “Those Indians are nothing but ‘spoiled children’ and seem to get everything they ever wanted...”
- “To my knowledge the Tribe has no facts to substantiate their cultural claims – it’s all opinions. Americans have owned it from day one.”
- “Tribes everywhere in the nation do not take care of their property. Beauty is in the eye of the beholder. Tribes do not view land as something to be kept beautiful and tidy.”
- “How can the Tribe keep the park clean (including outhouse and garbage) when they do not keep their ‘slab’ or teen center or most of their yards presentable?”

As opposition developed, several community organizations mobilized to support the tribe. The Suquamish Olalla Neighbors (SON) played a lead role.<sup>46</sup> The group had been formed in 2001 following the desecration of Chief Sealth’s grave. The group was approached by tribal leaders to support the transfer of the Park to the tribe. SON had worked to build relations between tribal and non-tribal members through social events. Some members of SON had been members of the Friends of the Park, but supported the land transfer after hearing from tribal members.

To support the return of the park, members of SON began a letter and e-mail campaign which saw messages sent to the Parks Commission by numerous interest groups and individuals; mobilized attendance at county commission meetings concerning the Park; and sent supporters to Olympia to meet with state parks officials. The SON also worked closely with the tribe to develop a park management plan.

The Kitsap Human Rights Network (KHRN), an organization formed in 1997 to address bigotry and discrimination, mobilized members to local meetings and engaged in letter writing, as did members of the local progressive faith community. KHRN had also built previous relationships with the tribe through supporting tribal anti-racism efforts in the public schools; participating in forums with tribal leaders; and including tribal members in the organization’s leadership.

In August 2004 the commissioners of the Washington State Parks Department voted to return Old Man House Park to its rightful caretakers, the Suquamish Tribe. Grant makers should look for opportunities to support such alliances when resources are requested.

## **Part V: A Call to Action: Recommendations for Supporting Tribal Sovereignty and Treaty Rights**

There are over 90 tribes and bands in the states of Idaho, Montana, Oregon, Washington, and Wyoming; each with their own histories, stories, and traditions. As U.S. citizens living in tribal homelands, we have a duty learn about the people whose homelands we occupy and the issues they face. We should strive to be good neighbors and allies. We also have the duty to hold our government officials and fellow citizens accountable for promises made to tribal nations.

Taking the time to build respectful relationships with tribal communities is paramount for supporting sovereignty and treaty rights. By creating trust with tribal communities, supporters of tribal sovereignty can be strategic allies when tribal communities face attacks on their rights and confront issues facing their communities.

Progressive organizations in the region should expand their political analyses to include an analysis of tribal sovereignty and treaty rights and how these issues connect to their organizational program. Leaders of progressive organizations should facilitate education for their members on the issues impacting tribal communities and develop strategies for ongoing sovereignty and treaty rights support.

Progressive funders should expand funding to tribal communities and organizations. Tribal communities and organizations receive a very small amount of foundation dollars to support their organizing and public education efforts. Funders should also support non-tribal organizations who are working to build alliances with tribal communities.

The authors of this report have also identified a need for a regional organization to conduct research on tribal issues and public education in progressive networks, tribal communities and the broader public. We have also identified the need for a regional organization to foster relationships between tribal communities and progressive allies; and to mobilize support for treaty rights and sovereignty across the region. To address these needs, we have created the Northwest Community Alliance to integrate research, public education and organizing in a program to support the treaty rights and sovereignty of indigenous peoples, and oppose organized and institutional attempts to curtail the rights of tribes.

# Appendices

## Appendix A: Indigenous Organizations in the Pacific Northwest

Listed below are a number of indigenous organizations active in Idaho, Montana, Oregon, Washington, and Wyoming. These organizations work on a wide variety of issues, but have the common thread of promoting the rights of native peoples. This list is not exhaustive and does not include, for instance, the numerous pow-wow and sports tournaments committees that are located in communities throughout the region.

### Idaho

Fort Hall Landowners Alliance, Fort Hall

An emerging Nez Perce environmental justice organization, Lapwai

Tribal-Latino Caucus (Coeur d'Alene, Kootenai, Nez Perce, Shoshone-Paiute, and Idaho Hispanic Caucus)

### Montana

Center Pole Foundation, Garryowen

Chief Mountain Traditional Camp, Browning

Helena Indian Alliance, Helena

Indian Family Health Center, Great Falls

Indian Health Board of Billings, Billings

Missoula Indian Center, Missoula

Montana People's Action, Missoula

Montana-Wyoming Tribal Leaders Council, Billings

Medicine Wheel Alliance, Lame Deer

Native Action, Lame Deer

North American Indian Alliance, Butte

Piegian Institute, Browning

Wakina Sky Learning Circle, Helena

### Oregon

Affiliated Tribes of Northwest Indians, Portland

Columbia River Inter-Tribal Fish Commission (Nez Perce, Umatilla, Warm Springs, Yakama), Portland

National Indian Child Welfare Association, Portland

Native American Leadership Institute, Medford

Native American Rehabilitation Association, Portland

Northwest Area Indian Health Board, Portland

Warm Springs Community Action Team, Warm Springs

## **Washington**

American Indian Women's Service League, Seattle  
Center for World Indigenous Studies, Olympia  
Chief Seattle Club, Seattle  
Colville Indian Environmental Protection Alliance, Nespelem  
Inter-Tribal Ceremonial Cultural & Spiritual Protection Coalition, Valley  
Lummi CEDAR Project, Bellingham  
Native Action Network, Seattle  
Native American Women's Dialog on Infant Mortality, Seattle  
Native Youth Action, Seattle  
Northwest Community Alliance, Silverdale  
Northwest Indian Fisheries Commission (Hoh Indian Tribe, Jamestown S'Klallam,  
Lower Elwha S'Klallam, Lummi, Makah, Muckleshoot, Nisqually, Nooksack, Port  
Gamble S'Klallam, Puyallup, Quileute, Quinault, Sauk-Suiattle, Skokomish, Squaxin  
Island, Stillaguamish, Suquamish, Swinomish, Tulalip, Upper Skagit), Olympia  
Northwest Urban Indian Community, Olympia  
Saving Our Health Air Water & Land, Wellpinit  
Seattle Indian Center, Seattle  
Seattle Indian Health Board, Seattle  
South Puget Sound Intertribal Planning Agency, Olympia  
Stalsquix-w, Inchelium  
Tahoma Indian Center, Tacoma  
United Indians of All Tribes Foundation, Seattle  
Urban Indian Health Institute, Seattle

## **Wyoming**

Wind River Alliance, Ethete

## Appendix B: Resources on Tribal Sovereignty, Treaty Rights and Tribal Issues

Listed below are a number of resources provided for further information on treaty rights, sovereignty, policy history and other issues facing indigenous communities and peoples. It includes books, organizational websites, production companies that produce Native videos, and Native media sources.

### Books

- American Friends Service Committee. 1970. *Uncommon Controversy: Fishing Rights of the Muckleshoot, Puyallup, and Nisqually Indians*. Seattle, WA: University of Washington Press.
- Berkhofer, Robert F. Jr. 1978. *The White Man's Indian: Images Of The American Indian From Columbus To The Present*. New York, NY: Vintage Books.
- Cohen, Fay G. 1986. *Treaties On Trial: The Continuing Controversy Over Northwest Indian Fishing Rights*. Seattle, WA: University of Washington Press.
- Coward, John M. 1999. *The Newspaper Indian : Native American Identity in the Press, 1820-90*. Urbana: University of Illinois Press.
- Deloria, Vine Jr. and Clifford M. Lytle. 1984. *The Nations Within: The Past And Future Of American Indian Sovereignty*. New York, NY: Pantheon Books
- Deloria, Vine Jr. and Clifford M. Lytle. 1983. *American Indians, American Justice*. Austin, TX: University of Texas Press.
- Drinnon, Richard. 1997. *Facing West: The Metaphysics of Indian-Hating and Empire Building*. Norman, OK: University of Oklahoma Press.
- Getches, David H., Wilkerson, Charles F. and Robert A. Williams Jr. 1998. *Cases and Materials on Federal Indian Law, 4<sup>th</sup> Edition*. St Paul, MN: West Group.
- Halliday, Jan and Gail Chehak. 2000. *Native Peoples of the Northwest, 2<sup>nd</sup> Edition*. Seattle, WA: Sasquatch Books.
- Jaimes, M. Annette, ed. 1992. *The State of Native America: Genocide, Colonization and Resistance*. Boston, MA: South End Press.
- McWhorter, L.V. 1992. *Hear Me, My Chiefs! Nez Perce Legend & History*. Caldwell, ID: Caxton Printers, Ltd.
- Pevar, Stephen L. 1992. *The Rights of Indians and Tribes: The Basic ACLU Guide to Indian and Tribal Rights, 2<sup>nd</sup> Ed*. Carbondale, IL: Southern Illinois University Press.
- Prucha, Francis Paul. 1990. *Documents of United States Indian Policy, 2<sup>nd</sup> Edition, Expanded*. Lincoln, NE: University of Nebraska Press.
- Ross, Luana. 1998. *Inventing the Savage: The Social Construction of Native American Criminality*. Austin: University of Texas Press.
- Ryser, Rudolph C. 1995. *Anti-Indian Movement on the Tribal Frontier*. Olympia, WA: DayKeeper Press.
- Thornton, Russell. 1987. *American Indian Holocaust and Survival: A Population History Since 1492*. Norman, OK: University of Oklahoma Press.
- Weston, Mary Ann. 1996. *Native Americans in the News: Images of Indians in the Twentieth Century Press*. Westport, CT: Greenwood Press.
- Whaley, Rick and Walt Bresette. 1994. *Walleye Warriors: The Chippewa Treaty Rights Story*. Warner, NH: Writers Publishing Cooperative.
- Williams, Robert A. Jr. 1990. *The American Indian in Western Legal Thought: The Discourse of Conquest*. New York: Oxford Press.

## Organizations

Affiliated Tribes of Northwest Indians – [www.atntribes.org](http://www.atntribes.org)  
Center for World Indigenous Studies – [www.cwis.org](http://www.cwis.org)  
Columbia River Intertribal Fish Commission – [www.critfc.org](http://www.critfc.org)  
Indian Law Resource Center – [www.indianlaw.org](http://www.indianlaw.org)  
Native American Rights Fund – [www.narf.org](http://www.narf.org)  
National Congress of American Indians – [www.ncai.org](http://www.ncai.org)  
Northwest Indian Fisheries Commission – [www.nwifc.wa.gov](http://www.nwifc.wa.gov)  
Urban Indian Health Institute – [www.uihi.org](http://www.uihi.org)

## Video Production Companies

Native Voices Graduate Program for Documentary Filmmaking at the University of Washington, Seattle, WA - <http://depts.washington.edu/nvoices/>

Films Include:

*A Century of Genocide: The Residential School Experience* – By Rosemary Gibbons and Dax Thomas  
*White Shamans and Plastic Medicine Men* – By Terry Macy and Daniel Hart  
*Without Reservation: Notes on Racism in Montana* – By Native Voices

Upstream Productions – Seattle, WA e-mail: [sandyosawa@aol.com](mailto:sandyosawa@aol.com)

Films Include:

*Lighting The 7<sup>th</sup> Fire*  
*Usual and Accustomed Places*  
*For a catalog of films produced by Upstream Productions, call 206-526-7122*

## Native Media

American Indian Radio on Satellite – [www.airos.org](http://www.airos.org)

*Indian Country Today* – [www.indiancountry.com](http://www.indiancountry.com)

*indianz.com* – [www.indianz.com](http://www.indianz.com)

Native American Public Telecommunications – [www.nativetelecom.org](http://www.nativetelecom.org)

*News From Indian Country* – [www.indiancountrynews.com](http://www.indiancountrynews.com)

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<sup>1</sup> It is important to note that this definition of Indian Country differs from that used by the federal government. While the term Indian Country was used in the early 18<sup>th</sup> century to refer to a separate area that would be set aside for Indians, the definition in a 1948 criminal statute became the standard definition employed by the federal government for both civil and criminal cases:

“[T]he term ‘Indian country’ . . . means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have been extinguished, including rights-of-way running through the same.” Cited in Getches, David H., Wilkerson, Charles F. and Robert A. Williams Jr. 1998. *Cases and Materials on Federal Indian Law*, 4<sup>th</sup> Edition. St

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Paul, MN: West Group, p.439-440. See also Pevar, Stephen L. 1992. *The Rights of Indians and Tribes: The Basic ACLU Guide to Indian and Tribal Rights*. Carbondale, IL: Southern Illinois University Press.

This legal definition is utilized in this report's description of the extension of state and local jurisdiction in "Indian Country;" and the right to on-reservation jurisdiction discussed in defining tribal sovereignty and anti-Indian attacks on tribal rights. However, these authors believe that the broader definition used in this introduction can better inform a progressive commitment to tribal rights. The means by which areas now outside the federal definition were taken and made U.S. territory were categorically unjust. Those who seek to take steps toward just relations with tribes should realize that we all live in Indian Country and act with according respect.

<sup>2</sup> Transcript: Bush's Remarks to Unity, August 6, 2004. <http://www.washingtonpost.com/wp-dyn/articles/A45340-2004Aug6.html>; Bush tells journalists tribes 'given' sovereignty, Indianz.com, August 9, 2004.

<sup>3</sup> Indianz.com, August 9, 2004

<sup>4</sup> *ibid*

<sup>5</sup> *Bonnichsen et al v. United States*, February 4, 2004, 9<sup>th</sup> Circuit Court

<sup>6</sup> *Worcester v. Georgia*, 1832, 31 U.S. (6 Pet) 515, 8 L.Ed. 483. Supreme Court cases cited in this report were included in Getches, Wilkinson and Williams 1998.

<sup>7</sup> *Washington v. Washington State Commercial Passenger Fishing Vessel Association*, 1979, 443 U.S. 658, 99 S.Ct. 3055, 61 L.Ed.2d 823.

<sup>8</sup> *United States v. Winans*, 1905, U.S. Supreme Court, 198 U.S. 371, 25 S.Ct. 662, 49 L.Ed. 1089.

<sup>9</sup> *Lone Wolf v. Hitchcock*, 1903, U.S. Supreme Court, 187 U.S. 553, 23 S.Ct. 216, 47 L.Ed. 299.

<sup>10</sup> For information on the importance of these cases, in combination with tribal fishing rights struggle, in upholding tribal fishing rights in the Midwest and Northwest, see Cohen, Fay. 1986. *Treaties on Trial: The Continuing Controversy over Northwest Indian Fishing Rights*. Seattle: University of Washington Press; and Whaley, Rick and Walt Bressette. 1994. *Walleye Warriors: The Chippewa Treaty Rights Story*. Warner, N.H.: Writers Publishing Cooperative.

<sup>11</sup> Getches, David H., Wilkerson, Charles F. and Robert A. Williams Jr. 1998. *Cases and Materials on Federal Indian Law, 4<sup>th</sup> Edition*. St Paul, MN: West Group. p. 43. See this text p.42-52 for a discussion of the origins and development of the so-called "Doctrine of Discovery."

<sup>12</sup> *Ibid*, p.46.

<sup>13</sup> *Ibid*, p.48.

<sup>14</sup> *Ibid*, p.53.

<sup>15</sup> *Ibid*, p.54.

<sup>16</sup> From a 1767 letter from Washington to friend and business associate William Crawford. The letter instructed Crawford to survey 2000 acres along the Ohio in violation of the 1763 Proclamation. Cited in Getches, David H., Wilkerson, Charles F. and Robert A. Williams Jr. 1998, p.59.

<sup>17</sup> *Johnson v. McIntosh*, 1823, 21 U.S. (8 Wheat) 543, 5 L.Ed. 681.

<sup>18</sup> *Cherokee Nation v. Georgia*, 1831, 30 U.S. (5 pet.) 1, 8 L.Ed. 25

<sup>19</sup> *Worcester v. Georgia*, 1832, 31 U.S. (6 Pet.) 515, 8 L.Ed. 483.

<sup>20</sup> Williams, Robert A. Jr. 1997. *Linking Arms Together: American Indian Treaty Visions of Law and Peace, 1600-1800*. Oxford: Oxford University Press.

<sup>21</sup> See *Uncommon Controversy: Fishing Rights of the Muckleshoot, Puyallup and Nisqually Indians*. American Friends Service Committee, for a discussion of Washington territorial Governor Issac Stevens' manipulation of the language of translation of treaties signed with Puget Sound tribes.

<sup>22</sup> Wilkinson, Charles F. and John M. Volkman. 1975. Judicial Review of Indian Treaty Abrogation: "As Long as Water Flows or Grass Grows Upon the Earth" – How Long is That? *California Law Review* 601(63):608-619.

<sup>23</sup> Cited in Drinnon, Richard. 1997. *Facing West: The Metaphysics of Indian-Hating and Empire Building*. Norman, OK: University of Oklahoma Press, p.89. Also, see Drinnon, especially p. 78-116 for Jeffersons place in articulating Indian removal as a future policy.

<sup>24</sup> This comes from an 1813 letter to Baron von Humboldt. Cited in Drinnon, Richard. 1997. *Facing West: The Metaphysics of Indian-Hating and Empire Building*. Norman, OK: University of Oklahoma Press.

<sup>25</sup> Getches, Wilkerson and Williams (1998); Garrison, Tim Alan. 1999. Beyond Worcester: The Alabama Supreme Court and the Sovereignty of the Creek Nation. *Journal of the Early Republic* 19(3):423-450.

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- <sup>26</sup> Cave, Alfred A. 2003. Abuse of Power: Andrew Jackson and the Indian Removal Act of 1830. *Historian* 64(6).
- <sup>27</sup> <http://www.pbs.org/wgbh/aia/part4/4h3437.html>
- <sup>28</sup> Getches, Wilkinson and Williams (1998), p. 128.
- <sup>29</sup> Indian Commissioner Medill. *Annual Report of the Commissioner of Indian Affairs*, November 30, 1848. In Prucha, Francis Paul, ed. 1990. *Documents of United States Indian Policy, 2<sup>nd</sup> Edition*. Lincoln, NE: University of Nebraska Press. See also Getches, Wilkinson and Williams (1998), p.144-150.
- <sup>30</sup> Ross, Luana. 1998. *Inventing the Savage: The Social Construction of Native American Criminality*. Austin: University of Texas Press.
- <sup>31</sup> *Ibid*, p.175.
- <sup>32</sup> See Deloria, Vine Jr. and Clifford M. Lytle. 1984. *The Nations Within: The Past And Future Of American Indian Sovereignty*. New York, NY: Pantheon Books
- <sup>33</sup> Comment, Tribal Self-Government and the Indian Reorganization Act of 1934. 1972. *Michigan Law Review* 70:955-979, included in Getches, Wilkerson and Williams 1998; Pevar, Stephen L. 1992, op cit.
- <sup>34</sup> See Pevar, Stephen L. 1992.
- <sup>35</sup> Cited in Getches, Wilkinson and Williams Jr. 1998, op cit, p. 203.
- <sup>36</sup> *ibid*, p.205
- <sup>37</sup> Getches, Wilkinson and Williams Jr. 1998
- <sup>38</sup> Wilkinson, Charles F. and Biggs, Eric R. 1977. The Evolution of Termination Policy. *American Indian Law Review* 139:151-154. Included in Getches, Wilkinson and Williams Jr. 1998.
- <sup>39</sup> See Getches, Wilkinson and Williams Jr. 1998, p.225-251 for discussion and relevant documents about the period of self-determination. This discussion draws largely on this material.
- <sup>40</sup> For more on anti-Indian violence in Wisconsin, see Whaley, Rick and Walt Bressette. 1994, op cit.
- <sup>41</sup> Perry, Steven W. 2004. *American Indians and Crime: A BJS Statistical Profile, 1992-2002*. U.S. Department of Justice, Bureau of Justice Statistics.
- <sup>42</sup> *Billings Gazette*, July 25, 2005
- <sup>43</sup> Staveteig, Sarah and Alyssa Wigton. 2000. Racial and Ethnic Disparities: Key Findings from the National Survey of America's Families. Urban Institute.
- <sup>44</sup> Frank, Billy Jr. Being Frank: All Habitat Is Critical. Northwest Indian Fisheries Commission. January 3, 2005. <http://www.nwifc.wa.gov/newsinfo/beingfrank.asp>
- <sup>45</sup> See Richard Clow and Imre Sutton, eds. 2001. *Trusteeship in Change: Toward Tribal Autonomy in Resource Management*. Boulder: University of Colorado Press.
- <sup>46</sup> For an excellent discussion of the events surrounding the return of Old Man House State Park to the Suquamish, see the article *Going Home* by Sarah Ruth van Gelder, a founder of the Suquamish Olalla Neighbors, in the Winter *Yes Magazine*. Positive Futures Foundation, P.O. Box 10818, Bainbridge Island, WA 98110. <http://www.yesmagazine.org/article.asp?ID=1177>.