Strengthening Tribal Sovereignty Through Indian Participation in American Politics: A Reply to Professor Porter

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Strengthening Tribal Sovereignty
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A Reply to Professor Porter

John P. LaVelle

I hope that we have had enough fighting amongst ourselves.¹

The occasion for this essay came about in a peculiar way. I missed the first day of fall 2000 classes at the University of South Dakota School of Law because my wife and I were attending the Democratic National Convention in Los Angeles. When I returned to my office at the law school, I opened the following e-mail message from Professor Rob Porter:

Hi John,

We haven’t crossed paths much, so I thought I’d try and do something about that. I’d like to invite you to participate in our tribal law conference on Oct. 13-14, which would include a presentation by you and preparation of a paper for publication in our law journal. Federal Indian control law, of course, is off limits — unless you’re talking about decolonizing it! . . . If you can do it, do you have any topic ideas? Let’s talk.²

I responded to Professor Porter as follows:

Hi, Rob:

Sorry for taking this long to get back to you. I’m finally back in the saddle at the law school after attending (don’t hit me!) the Democratic National Convention.

Thanks for the invitation to participate in the tribal law conference. I’m very interested, but I would like to discuss further your indication that “Federal Indian control law” is off-limits.

From reading some of your excellent writings criticizing “establishment” Indian law and policy, I, of course, have

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I would like to thank Professor Robert B. Porter (Seneca) of the University of Kansas School of Law for inviting me to speak at KU’s Fourth Annual Tribal Law Conference and for suggesting this topic for both my presentation and essay.

1

2
have in mind. Generally, I share your view that Indian law historically has been little more than a projection of the process of colonization and ethnocide/genocide. Still, in my own nascent research, I am attracted primarily to analyzing and exposing the oppressive Indian law decisions of the Rehnquist and Burger Courts. Does this make me a “Federal Indian control law” freak, in your mind?\(^3\)

In my e-mail message I went on and on with a detailed description of two essays-in-progress concerning “Federal Indian control law,” naively hoping that Professor Porter wouldn’t notice or mind my straying into the region of The Forbidden Topic. My message continued: “Does this second article (which I envision to be shorter, thank God) qualify as focusing on ‘decolonizing’ federal Indian law for purposes of your conference? If not, then I am still open to suggestions about cranking out a more relevant piece.”\(^4\) Alas, Professor Porter did both notice and mind. He sent me the following astute reply: “John, John, John, . . . it sounds like you are too deep in the belly of the beast! Let’s talk on Monday . . . . [W]e’ll see if we can’t get you properly aligned.”\(^5\)

Eventually, Professor Porter did get me properly aligned by suggesting that I provide a rebuttal to his recent article *The Demise of the Ongwehoweh and the Rise of the Native Americans: Redressing the Genocidal Act of Forcing American Citizenship upon Indigenous Peoples.*\(^6\) Professor Porter had zeroed in, of course, on the fact that I had attended the Democratic National Convention; perhaps he saw me as the perfect foil for his lengthy criticism of Indians who get involved in American politics. When I explained that it was my wife, Connie Bear King, and not I, who had been graced with the delegates’ privilege of being smuggled daily past the tear gas and rubber bullets and into L.A.’s Staples Convention Center, Professor Porter was unfazed: he still wanted me to take on his *Demise* article. Despite a gnawing suspicion of being made less the perfect foil and more the perfect fool, I reluctantly acceded to Professor Porter’s challenge.

I rehash this preliminary electronic exchange concerning this essay’s origins to protest that my nay-saying critique of Professor Porter’s article was Professor Porter’s own idea,\(^7\) and to inform the morbidly curious that Rob Porter and I are not — I repeat not — hereby opening an Indian law professors’ chapter of Fight Club.\(^8\) Credit for doing that goes to Rob Williams and Bob Laurence in any event.\(^9\)

I. US V. THEM: SHADOWBOXING WITH “NATIVE AMERICANS”

The *Demise* begins by positing the existence of a widening “cultural divide” between the Ongwehoweh — “[m]eaning ‘real people’ in the Seneca language” — and the “Native Americans,” defined initially as “those individuals of Indigenous ancestry who seek to assimilate into and become a part of American Society.”\(^10\) The “real people,” on the other hand, “seek to preserve their distinct existence and right of self-determination”; but their ability to accomplish this objective is constantly being obstructed by the assimilative activity of the “Native Americans,” whose “conflict” with the “real people”
the “real people” is “a symptom of the efforts taken by the United States throughout its history to colonize Indigenous lands and incorporate Indigenous peoples into its polity.”11 Hence, from the outset, *The Demise* — which is written, we’re told, “primarily for an Indigenous audience”12 — endeavors to draw a line in the sand between “us” and “them,” impliedly demanding of its audience for the remainder of the article an answer to the unspoken question “Which side are you on?”

There is no question which side Professor Porter is on. Nor is there any question which side every red-blooded American Indian *should* be on. The only real question is whether *The Demise*’s yawning “cultural divide” between “us” and “them” really exists. In endeavoring to identify and discuss “them,” *The Demise* wields the label “Native Americans” as a term of disparagement. I happen to share Professor Porter’s dislike for that term. As *The Demise* notes, when referring (in English) to “the general category of people who are the descendants of the Indigenous peoples of what is now known as the United States, such people invariably use the term ‘Indian.’”13 I do not know who first started calling Indian people “Native Americans,” but I doubt it was an Indian. Most likely it was a “liberal”14 think-tank at some college on the East or West coast which decided the word “Indians” is too embarrassing a reminder of Christopher Columbus’s erroneous belief in 1492 about whom and what he had “discovered.” In any event, “Native Americans” is not the word used by Indian people in Indian country to self-identify; “Indians” is, and that fact alone should serve as a sufficient linguistic primer for non-Indians wishing to do more than pay lip-service to the concept of Indian self-determination.15

The problem with *The Demise*’s appropriation of “Native Americans” therefore is not Professor Porter’s obvious disdain for that term. Nor is it particularly troubling that Professor Porter endeavors to define “Native Americans” so as to exclude from that definition all “real [Indian] people.”16 What is objectionable, however, is *The Demise*’s efforts to impugn as “Native Americans” persons who clearly are “real [Indian] people,”17 and to do so simply because these persons advocate for Indian rights within the arena of mainstream American politics. If it is doubtful the asserted “cultural divide” actually existed prior to publication of *The Demise*, Professor Porter’s very insistence that some of “us” are really part of “them” tends to create such a “divide” by way of a kind of self-fulfilling prophecy.

Part of the problem is Professor Porter’s invocation of four divergent, if not wholly irreconcilable, definitions of the term “Native Americans.” As pointed out previously, *The Demise* first defines “Native Americans” as “those individuals of Indigenous ancestry who seek to assimilate into and become a part of American society.”18 Next, Professor Porter adverts to “the racial minority group known as ‘Native Americans,’ which is composed of persons who are not Indigenous citizens but are of Indigenous descent.”19 Third, “Native Americans” is said to comprise “those people of Indigenous ancestry who
have fully accepted American citizenship and rejected any notion of retained Indigenous citizenship." Finally, the classification "Native Americans" is stated to consist of "Americans of Indigenous ancestry with unequivocal political allegiance to the United States." Perhaps one could view these different definitions as simply reflecting discrete attributes of a broader (or narrower?) composite conceptualization of "Native Americans" as "those individuals of Indigenous ancestry who (1) "are not Indigenous citizens"; (2) "seek to assimilate into and become a part of American society"; (3) "fully accept\[ ] American citizenship"; (4) "reject\[ ] any notion of retained Indigenous citizenship"; and (5) possess "unequivocal political allegiance to the United States."

So defined, it is not beyond reason to suppose that such "Native Americans" actually exist. What is beyond reason, however, is the implication that the dozen or more Indian rights advocates, political activists, and tribal leaders whom The Demise effectively singles out as examples of such "Native Americans" qualify as such under any of Professor Porter's disparaging definitions of the term. Put differently, The Demise's apparent argument that these leaders are not "real [Indian] people" is unpersuasive, for a number of reasons. First, to the extent The Demise by definition excludes all tribal citizens as such from the offensive designation, most if not all of Professor Porter's examples are not and cannot be "Native Americans," since these leaders' tribal citizenship status ipso facto disqualifies them from that classification.

But apart from this (perhaps inadvertent) syntactical quandary, there is something more fundamentally disturbing about The Demise's brandishing of "Native Americans" as a term of opprobrium vis-à-vis the diverse political work of modern Indian leaders. In essence, The Demise argues that notwithstanding the possession of tribal citizenship status as a formal matter, people of American Indian descent who take part in the internal political life of the United States are "Native Americans" as opposed to "real [Indian] people" because such participation — whether the participants realize it or not — necessarily endangers the survival and flourishing of Indian nations as separate sovereigns and is thus anti-tribal in nature. As Professor Porter puts it, "Indian participation in the American political system serves to undermine the quality of Indigenous government, and thus, Indigenous sovereignty."

To drive home its criticism of these so-called "Native Americans" as individuals whose political work is "widening" the "cultural divide" between "us" and "them," The Demise posits a number of eyebrow-raising assumptions about these leaders' objectives and motives. As mentioned previously, "Native Americans" — by definition, according to The Demise — "seek to assimilate into and become part of American Society"; they "fully accept\[ ] American citizenship and reject\[ ] any notion of retained Indigenous citizenship"; and they maintain an "unequivocal political allegiance to the United States." In addition, these "Native American" leaders "primarily identify themselves politically as Americans"; indeed, some "have chosen to forego...
identification [as citizens of Indian nations] in favor of exclusive identification as . . . American[s].”

By participating in American politics, these erstwhile and would-be Indians “casually relinquish the unique path for Indigenous citizens carved out and preserved by the treaties with the United States,” and hence they and their proponents “undervalue the fact that Indians also have their own Indigenous governments and political processes.” Those “Native Americans” most directly involved in American politics “appear themselves to already be a part of the American political establishment,” exhibiting a “mentality” that “suggests a predisposition in favor of federal, rather than tribal, solutions to the problems facing Indian people.”

Professor Porter would be hard-pressed to locate a single flesh-and-blood Indian person involved in mainstream American politics today whose actual convictions or activities reflect even remotely this anti-tribal “disposition” depicted in The Demise. Certainly none of the Indian political leaders adverted to (by innuendo or otherwise) in The Demise as living illustrations of this “disposition” in reality manifests any of the loathsome attributes of The Demise’s sellout “Native Americans.” Rather, The Demise in effect manufactures a collection of “straw men” — the hypothetical, anti-tribal “Native Americans” — as a rhetorical device for advancing, in decidedly antagonistic terms, a simple, laudable message: that “real [Indian] people” who work heroically to strengthen tribal sovereignty through effective participation in the American political system.

II. HORSEMEN OF A DIFFERENT COLOR: REINING-IN THE INDIAN APOCALYPSE

In sounding its alarm about the perils of Indian involvement in American politics, The Demise skillfully (and ironically) appropriates a potent image from Christian eschatology — what Professor Porter refers to as the “Four Horsemen of the Indian Apocalypse”:

The ultimate solution to the Indian problem that emerged in the late nineteenth century was designed to effectuate the total assimilation of Indigenous people into American society. Christian activists and other social reformers were deeply troubled by how “uncivilized” and “pagan” the Indians were. Because they were convinced that the Indians were a doomed race, these interests concluded that the best approach would be to “kill the Indian and save the man.” Thus, they sought to “civilize” Indians through a four-pronged attack that served as a kind of Four Horsemen of the Indian Apocalypse: convert the Indians to Christianity, force Indian children to obtain Western education, allot tribal common lands to individual Indians, and extend to the Indians American citizenship.
LaVelle

*The Demise* invokes the apparition of the “Four Horsemen” to stress the multifaceted and coercive nature of the “benevolent” efforts of nineteenth century social reformers to exterminate tribal cultures, a crucial observation that Professor Porter abundantly supports throughout Part I of his article, a section aptly titled “America’s Crusade to Wipe Out the Savages.”

But the “Four Horsemen” image does double duty by lending a foreboding atmosphere to *The Demise’s* leading and perhaps most controversial argument, viz., that Indian people who exercise the rights and obligations of United States citizenship today—or indeed who simply “accept that they are American citizens”41—are guilty of complicity in what the article’s subtitle decries as “the Genocidal Act of Forcing American Citizenship upon Indigenous Peoples.”42 *The Demise’s* denunciations concerning Indian people’s alleged “Acceptance of American Citizenship”43 are discussed in subsequent Parts of this essay.44 Here, I note simply that American citizenship—and along with two of the remaining “Horsemen,” at least—can be and often has been tamed, reined-in, and otherwise expertly handled by “real [Indian] people”45 as a vehicle for strengthening rather than destroying tribal sovereignty.

A. Horseman #1: Education

This is not to doubt, of course, that annihilating traditional cultures was the goal of nineteenth century “reformers” and other governmental agents in loosing these “Horsemen” on Indian tribes. As Professor Porter notes, beginning in the late nineteenth century the United States, in collaboration with Christian churches, undertook a massive effort to “educate” Indian children at boarding schools in the spirit of the famous edict of Colonel Richard Henry Pratt—“the father of Indian education”—to “kill the Indian and save the man” (a statement of ethnocidal intent if ever there was one).47 But does the fact that education historically has been employed as a vehicle of cultural genocide compel the conclusion that for Indian tribes, the institution of “Western” education today is necessarily and inherently evil? I seriously doubt that Professor Porter—who teaches law, as I do, at a “Western” educational institution, and one operated by the State, no less—can, with a straight face, maintain that his career as a legal educator, especially in relation to teaching Indian students, serves no purpose other than proliferating cultural genocide.

It is not mere cognitive dissonance, moreover, that informs teachers like Professor Porter and me that “Western” education can be, should be, and must be utilized by Indian people as a vehicle for helping Indian nations survive and flourish. Rather, what gives us faith, as Indian educators, in the capacity of education to serve as a conduit for helping to secure justice and liberty for Indian tribes is the knowledge that what passed for “education” at Indian boarding schools in the late nineteenth century was in fact the *antithesis* of education; that despite the arrogant paternalism and moral blindness of Pratt
Indian Participation in American Politics

and other agents of ethnocide, it was they, and not the children whom they humiliated, tortured, and abused, who personified "savagery" and "barbarism"; and that unless we as Indian educators constantly teach others about the humanity, aspirations, and suffering of Indian people, our tribes once again will be in danger of being openly brutalized by the colonizers' ignorance. Education, then, doesn't necessarily reduce to an instrument for destroying Indian tribes. Indeed, this particular "Horseman" can be, should be, and must be converted into a vehicle for strengthening tribes through the dissemination of the truth about the historic relationship between Indian nations and the United States.48

B. Horseman #2: Christianity

What about the carrying capacity of Professor Porter's remaining "Horsemen"? Undoubtedly, the aggressive efforts of military-backed Christian missionaries in the nineteenth century to "convert" Indian people to Christianity was, like the forced imposition of Western education, a clear example of ethnocide in action, deployed for the stated purpose of destroying tribal societies.49 But even this "Horseman," I submit, is susceptible of being transformed by Indian people into a vehicle for supporting rather than destroying tribal sovereignty. This argument is a harder sell than the one concerning education, I realize, because of the fact that so many "heads" of that "hydra-headed" beast known as Christianity50 — and especially the modern "talking head," T.V. evangelist-type — continue to peddle, in the name of their "God," sundry brands of religious bigotry and white cultural supremacism. Yet, despite the persistence of vicious strains of "Christianity" in Indian communities (and elsewhere) today,51 many of us who condemn the devastation that this kind of "Christianity" has wrought among our tribes stop short of condemning or criticizing our own relatives who embrace the Christian faith. And we do so not simply because we believe it is shameful to behave disrespectfully toward our relatives, especially our elderly relatives (although this traditional sensibility certainly exerts a strong influence), but also because we recognize that the religious faith of our relatives, including our Christian relatives, is something sacred and deserving of respect.

It is the appalling lack of such respect for Indian people's religious faith, of course, that reduced the work of white nineteenth century Christian missionaries to an intensive labor in the service of cultural genocide. The renowned Santee Dakota physician and humanitarian Charles Alexander Eastman provides incisive commentary on the "benevolent" aggression of Christian missionaries in his 1911 book The Soul of the Indian:

The first missionaries, good men imbued with the narrowness of their age, branded us pagans and devil-worshippers, and demanded of us that we abjure our false gods before bowing the knee at their sacred altar. They even told us that we were eternally lost, unless we adopted a tangible symbol and professed a particular form of their hydra-headed faith.

....
There was undoubtedly much in primitive Christianity to appeal to [the Indian], and Jesus’ hard sayings to the rich and about the rich would have been entirely comprehensible to him. Yet the religion that is preached in our churches and practiced by our congregations, with its element of display and self-aggrandizement, its active proselytism, and its open contempt of all religions but its own, was for a long time extremely repellant.

... [E]ven in those white men who professed religion we found much inconsistency of conduct. They spoke much of spiritual things, while seeking only the material. They bought and sold everything: time, labor, personal independence, the love of woman, and even the ministrations of their holy faith! The lust for money, power, and conquest so characteristic of the Anglo-Saxon race did not escape moral condemnation at the hands of his untutored judge, nor did he fail to contrast this conspicuous trait of the dominant race with the spirit of the meek and lowly Jesus.

When distinguished emissaries from the Father at Washington, some of them ministers of the gospel and even bishops, came to the Indian nations, and pledged to them in solemn treaty the national honor, with prayer and mention of their God; and when such treaties, so made, were promptly and shamelessly broken, is it strange that the action should arouse not only anger, but contempt? ... It is my personal belief, after thirty-five years’ experience of it, that there is no such thing as “Christian civilization.” I believe that Christianity and modern civilization are opposed and irreconcilable, and that the spirit of Christianity and of our ancient religion is essentially the same.

Eastman’s cogent insights into the hypocrisy of nineteenth century Christian missionaries are echoed in the comments of other Indian people who, like Eastman, exhibit a distinctly Indian manifestation of the Christian faith. In his 1968 book *The New Indians*, Stan Steiner profiles observations on the paradox of Indian Christianity as articulated by the late Reverend Vine Deloria, Sr., a member of the Standing Rock Sioux Tribe and an archdeacon of the Episcopal Church:

[Rev. Deloria] had accepted Christianity easily, he said. It was easy for the Indians to do, because philosophically they believed in Christianity, long before the missionaries came.

“Christianity was not new to the Sioux; the Sioux had their own kind of Christianity. We just did not call it that. We believed in one God, the Great Spirit. We believed in our own kind of Ten Commandments. And we behaved as though we believed in them. That’s why it was easy to change to the white man’s religion. It was there to start with.”

In his easy chair, with his Bible on his knees, much penciled with marginal thoughts, the Reverend Deloria leaned back and closed his eyes. He is a man of the prairie, lean, clear as the wind, his eyes sharp, his words hard. There is a Sioux’s resilience, unflinching and severe, beneath his dignified warmth.
Indian Participation in American Politics

... Sometimes I despair of the white man’s ever becoming a Christian. Sometimes the Holy Bible does not seem to teach people anything. And the Lord seems to have forsaken us. I go down to the cellar of my house when I feel that, where I have my drum, and I beat my drum quietly. Quietly so the Lord will not hear me, so that the Lord will not be offended. Though I think the Lord would not mind the drum.

“I feel better then. I feel Indian.”

In more recent years, Christian Indians, in the spirit of Eastman and Deloria, have spread the gospel of tribalism to non-Indian unbelievers of all denominations. In his 1996 collection Native and Christian, Professor James Treat brings together a host of Christian Indian voices that speak movingly of the protection of tribal values as the highest moral imperative of an evolving Christian faith. Stan McKay, a Cree Indian from the Fisher Reserve in Ontario and an ordained minister of the United Church of Canada, emphasizes respect for traditional Indian religions as indispensable to realizing the Christian ideal of love:

Each day we are given is for thanksgiving for the earth. We are to enjoy it and share it in service of others. This is the way to grow in unity and harmony. There is a word that is central to the movement into harmony with other communities and that is respect. In Christian teachings the word used is love. It allows for diversity within the unity of the Creator. ... The situation will be one of sharing stories instead of dogmatic statements and involves listening as well as talking.

Marie Therese Archambault, a Hunkpapa Lakota of the Standing Rock Sioux Tribe and a Sister within the Roman Catholic Order of Saint Francis, describes how “the church has obscured the face of Christ through ignorance of or outright dismissal of Native cultures,” placing “many Indian people ... in the profoundly impossible situation of accepting the Gospel for their own good on the one hand while, on the other, having to devalue their culture and thus themselves.” She writes:

We must learn to subtract the chauvinism and the cultural superiority with which this Gospel was often presented to our people. We must, as one author says, “de-colonize” this Gospel, which said we must become European in order to be Christian. We have to go beyond the white gospel in order to perceive its truth.

When we do this, we shall meet Jesus as our brother and recognize him as one who has been with us all along as the quiet servant, the one who has strengthened us through these centuries. Then we will know that the cry of Jesus Christ from the cross was the cry of our people at Wounded Knee, Sand Creek and other places of the mass death of our people. He was our companion during these years of our invisibility in this society.
LaVelle

Professor William Baldridge of Central Baptist Theological Seminary in Kansas City, Kansas — a Cherokee and an ordained Baptist minister — likewise addresses the need for liberating the Christian faith from the legacy of “Christian colonialism”:

Native Americans have not been passive toward Christian colonialism. Today’s generation of Native Americans, like the generations that preceded us and those to follow, are bound by the spiritual power of freedom and dignity, gifts from our Creator. . . . We are not denying history or the weight of the forces pushing us down. We are also not willing to forsake our spiritual birthright as children of God. Colonial Christian definitions to the contrary, we will not label our ancestors nor teach our children that they are spiritually illegitimate. So, as well as resisting we are retrenching, reaching down, down to the bedrock of our continent, down where our spiritual vitality is grounded. . . . Native people’s thoughts need not be determined by the definitions of the colonizer if they know who they are and where they stand, if their identity is anchored in bedrock. We are the embodiment of this hemisphere. God made us and placed us here.

. . . Many missionaries served as federal agents and in that role negotiated treaties which left us no land. Most missionaries taught us to hate anything Native American and that of necessity included hating our friends, our families, and ourselves. Most refused to speak to us in any language but their own. The missionaries functioned and continue to function as “Christ-bearing colonizers.” If it were otherwise the missionaries would have come, shared the gospel, and left. We know, of course, that they stayed, and they continue to stay, and they continue to insist that we submit to them and their definitions. . . .

. . . Fighting the oppression of the missionary system is a struggle for justice that unavoidably becomes a struggle for power. Power lies at the core of Christian colonialism. Refusing the terms of the struggle is an essential first step in regaining the spiritual perspective of Native America.58

Testimonials such as these suggest that, like the campaign to bring about the extinction of tribalism through “education,” the efforts of nineteenth century reformers to “Christianize” Indians into nonexistence have backfired: Christian Indians, like educated Indians, are transforming the very institutions intended to destroy Indian nations into vehicles for strengthening tribal sovereignty and protecting traditional Indian culture. Moreover, this t’ai chi-like maneuver of Christian Indians — deflecting a cultural attack by turning the aggressor’s momentum against him — is a defensive response to colonial violence that is neither cynical nor of recent origin. In his historical survey American Indians and Christian Missions, Professor Henry Warner Bowden explains how the Pueblo Indians in the eighteenth century, for example, used “a compromising technique, known as compartmentalization,” to “cooperate[ ] outwardly with dominant [Spanish] social patterns while maintaining their ancient integrity”:59
They adjusted to the foreigners' control over secular matters wherever necessary but rarely allowed Christianity to penetrate the private sphere of their religious sensibilities. 

... If the Pueblos adopted elements of Hispanic Christianity, it was only the externals of the European faith, to appease the missionaries and keep them at arm's length. This double standard of external acquiescence and internal resistance assured Christianity only a peripheral status. The Pueblo religion survived because its tenacious network of voluntary societies withstood every attempt to exterminate them. These durable, highly sophisticated institutions offer an important suggestion about what factors help native culture systems endure in the face of white domination.

Later generations of Pueblos grew up in an environment in which one could be nominally Catholic and still be loyal to another tradition. Church attendance and Hispanic holidays had some place in village routine, but Catholic elements that contrasted with baseline religious values were politely ignored. Since 1700, the Pueblos have added an unobtrusive Christianity to traditional patterns without fundamentally altering their solid precontact core. Such compromises and the enabling compartmentalization process have relegated Hispanic influences to secondary importance. Christian agencies exist in the general sum of things, but they have not really changed the world-view and ethos that sustain Pueblo life.  

In Steiner's book *The New Indians*, Isleta Pueblo Governor Andy Abeita provides a revealing glimpse into how this ingenious and enduring technique of "compartmentalization" helped the Pueblos not only "keep [the missionaries] at arm's length," but to do so in a way that facilitated, paradoxically, an authentic flourishing of values and culture that were (and are) distinctively Pueblo:

"Long ago, when the Spaniards came, they got our corn, our wheat, our land. And what did we get? The Franciscan fathers gave us their religion. Wise men of the pueblo took that in. The old people had a meeting. 'What can we give the Christ?' they said. 'We are poor. We have nothing to give Him. We have our customs, but that is all we have. We will give him our dances then. We will dance in his church for Him.'

"And that is what they did. The old people danced the Indian dances in the church for Christ. . . .

"In those days they did not take the saint into the fields. One year there was a drought. The governor of the pueblo, at that time, he said, 'We will take the saint into the fields, into the plaza, into the community center. And we will dance before him.' That is what they did, in reverence. That is what we do now, when we dance in the plaza, before the church. That is our reverence."  

A final illustration of how Indian people have transformed some of the aggressively imposed institutional trappings of Christianity into avenues for preserving and expressing uniquely Indian values and traditions is one that will be of particular interest to Professor Porter: the advent of Seneca language versions of Christian hymns.
for use in worship services. As a preface to his analysis of these hymns, Professor Thomas McElwain asserts:

Researchers have been blind to a rich source of information on native spirituality in the native Christian traditions. Just as the Iroquois have the curious habit of dividing everything into halves, researchers have felt justified in neglecting the Christian half of Iroquois religious belief. By calling part of the community Christian, the Iroquois people unwittingly give the impression that Iroquois Christians have conformed to white religion in ways that Longhouse people have not. Despite the many similarities between Iroquois and white Christians, Iroquois Christianity remains an excellent source of specifically native religious values.

Professor McElwain examines several early nineteenth century Seneca "paraphrases" of Christian hymns, noting that "a paraphrase paradoxically stimulates the selection of expressions equivalent to the English ones on one hand, while giving leeway for native elements foreign to the original text." He shows how the paraphrases often reject Judeo-Christian concepts that are incompatible with traditional Seneca religious sensibilities and philosophy. Hence, in the Seneca version of "Before Jehovah's Awful Throne," "non-Iroquoian feelings and expressions are largely omitted. There is no name of Jehovah, no awful throne, . . . no creation of men from clay, no wandering sheep brought back into the fold . . . . In fact, most of the religious sentiments expressed by Isaac Watts have been rejected." In the Seneca version of "Guide Me, O Thou Great Jehovah," the English line "Be thou still my strength and shield" becomes a Seneca phrase meaning "only you set my mind at peace"; and "Let the fiery, cloudy pillar lead me all my journey through" becomes "The rainbow will carry me always where my path leads."

As McElwain observes, "[a]lthough in theory there should be no contrast between the cultures here [in appropriating references to God suggesting a providential concept of the world], the one, in fact, needs a divine shield from the world, while the other is intimately bound to it by the rainbow."

The author further indicates the persistence and preservation of traditional Seneca values and religious sensibilities in the choices made by Seneca paraphrasers with respect to the biblical subject matter of the "translated" hymns. He suggests, for example, that the Seneca paraphrasers' "interest in miracle stories [drawn from the Gospels] is reminiscent of the sung origin myths of the secret Seneca medicine societies." He points out that these Bible-based Seneca paraphrases "skip over the torturous aspects of the cross" and "focus . . . on natural phenomena" as well as those chapters of the Book of Revelation "describing the paradise awaiting the saints." McElwain illustrates the tradition-oriented selectivity of the hymns' paraphrasers by profiling Seneca treatment of a favorite Old Testament passage, Ezekiel 37:1-14:
Indian Participation in American Politics

The famous story of the dry bones coming to life is unique in the Bible, but contains a typical motif of Seneca mythological tales. The humorous aspects of the dry-bone resurrection is often expressed in the mismatching of bones as well as in the dramatic rustle of their coming together. This vivid picture from Seneca storytelling was no doubt too tempting for the hymn-writer, and one may well imagine the enthusiasm with which Hymn 76 was sung, perhaps to the slight discomfort of the missionaries.71

With respect to Seneca hymns in general, McElwain theorizes:

To the extent that the Seneca paraphraser finds that the vocabulary converges with Seneca thought, the paraphraser will follow the vocabulary of the [English] hymnwriter, but in other cases depart from it. In the case of a Bible paraphrase, the Seneca paraphraser remains close to the vocabulary of the text, using only selection to accommodate to Seneca thought.72

Professor McElwain’s conclusion that “[a] large portion of [Seneca] hymn material reflects pre-Christian cosmology and ceremonials”73 is consonant with the observations of others concerning Indian people’s remarkable ability to adapt to the ethnocidal constraints imposed by Christian missionaries in ways that have facilitated the preservation, rather than the destruction, of the values that inform American Indian tribalism. Just as the Pueblo people successfully negotiated Catholic demands by holding traditional communal dances on Catholic feast days, the Seneca people effected an ingenious “compartmentalized” response to missionary pressures by composing unique tradition-sensitive versions of Protestant hymns for use in Seneca Christian worship services. In each instance, the indigenous adaptive reaction to Christian demands led to the preservation of “specifically native religious values.”74 These illustrations of strategic tribal responses to “Christian colonialism,”75 along with the many examples of pro-tribal advocacy by Christian Indians, as discussed previously,76 underscore the validity of Professor Bowden’s paradoxical conclusion after surveying the history of Christian proselytizing efforts among Indian tribes in North America:

The Americanization process seemed to be successful in removing native obstacles to cultural homogeneity and in leaving the churches free to Christianize Indians further, according to their differing theological perspectives. But government planners failed to notice that the principal obstacle to assimilation was rooted in Indian spirituality, a wellspring of inner strength not easily affected by superficial changes. As long as independent religious vitality survived, it filled the Indians with a sense of their own identity and cultural importance, with a power that defied alien control.77

In view of the historic and contemporary role of Christian Indians in, paradoxically, protecting Indians from Christianity (or, more accurately, from the ravages
of "Christian colonialism"), the second of The Demise’s “Four Horsemen of the Indian Apocalypse” appears to be — like the “Horseman” of Western education — essentially tamable. As a result of the expert handling of these “Horsemen” by “real [Indian] people,” contact with the institutions of Western education and Christianity no longer poses a grave threat to the survival of Indian tribes as distinct nations and cultures. Indeed, both of these “Horsemen,” and especially Western education, today are increasingly being skillfully worked as beasts of burden in Indian people’s efforts to protect and support tribal sovereignty and the corresponding values of tribalism.

C. Horseman #3: Allotments

The Demise’s third “Horseman,” however — the breaking up of communally held tribal lands into individually owned “allotments” — is an incurably rabid animal that deserves no fate other than to be put out of its misery. Unlike Western education, Christianity, and, as discussed below, United States citizenship, the forced allotment of tribal lands was and is a static rather than dynamic institution (if it can be called, properly speaking, an “institution” at all) and not one whose prospective development is readily amenable to discipline and correction by Indian people. Thankfully, with the passage of the Indian Reorganization Act (IRA) in 1934, Congress ended its devastating policy of allotting tribal lands, a policy that Congress had set in full motion a half century earlier by enacting the 1887 General Allotment Act. Enactment of the IRA, then, may be regarded as one instance in which Congress heeded the adjuration that “eliminating the forces that continue to threaten a distinct Indigenous existence rests primarily with the party that created them in the first place — the United States.” By the time the IRA was passed, however, the most severe damage to tribalism already had been done; as Professor Porter notes, “two-thirds of all Indian lands held in 1887 — 87 million acres — were lost to Whites by 1934.” Moreover, despite Congress’s eventual repudiation of this devastating policy, “its legacy lingers on,” as Professor Judith Royster explains, in the form of recent Supreme Court decisions “that give present effect to the discredited policy of allotment and assimilation.” Without question, this “Horseman” is still dragging us all at an open gallop toward the looming specter of an “Indian Apocalypse.”

But Indian people are not without power to alter the sinister course of even this runaway “Horseman.” As Professor Porter notes, a large part of the devastation wrought by the allotment policy stems from the resulting “checkerboarding” of land ownership within reservation boundaries, and Congress’s tentative efforts to address this problem in recent years by permitting small fractionated interests in allotted lands to escheat to the tribes have been struck down by the Supreme Court as unconstitutional takings of private property. While it is important to note that these cases form an integral part of a disturbing trend of anti-tribal decisionmaking by the modern Supreme Court, they also may be understood as reflecting a hastily devised “once-size-fits-all” federal approach to
Indian Participation in American Politics

the problem of fractionated heirship lands on Indian reservations, an approach that was destined to encounter tribal opposition because of differing (and valid) tribal perspectives on what must be done to remedy the "checkerboarding" problem on particular reservations.91 To this extent, I take exception with The Demise's rush to judgment as to what caused the Indian plaintiffs to bring suit in the Supreme Court's two fractionated lands cases92 — viz., The Demise's castigation of these plaintiffs as having "so assimilated the colonizing nation's property values that they have thwarted modern efforts by Congress to remedy the checkerboarding problem that would directly benefit their tribal nation."93 In my own conversations with Indian residents of the reservations in South Dakota, I am aware of a grassroots concern, for example, that tribal officials might have "developed" lands acquired under Congress's escheat provisions in a manner incompatible with traditional tribal conservational values; for these residents, the failure of Congress's "solution" renders more likely a process of consensus-building toward the advent of a more appropriate tribal solution to this vexing fractionated lands problem.94 Here, then, may be the early stages of what promises to materialize as another example of how, even in the most forlorn of circumstances, Indian people are devising unique strategies for keeping the "Four Horsemen of the Indian Apocalypse" at bay.95

D. Horseman #4: American Citizenship

The Demise's fourth and final "Horseman" is the institution of American citizenship for Indian people. This "Horseman," of course, is the primary subject of Professor Porter's article, and hence of my reply essay as well. What I hope to have established in the foregoing rejoinder to The Demise's portrayal of education, Christianity, and allotments as components of a multifaceted attack on tribal sovereignty is that while this view is valid, Indian people have demonstrated a remarkable ability to transform both education and Christianity into institutions that support tribalism, and have begun brainstorming about how to deal with the corrosive problems spawned by the proliferation of reservation allotments in the aftermath of failed attempts at "federal Indian control law" solutions. What remains is for me to help Professor Porter regain some optimism concerning the ability of Indian people to work a similar reversal/transformation with respect to the institution of American citizenship. Accordingly, the remainder of this essay addresses discrete obstacles in The Demise to recognizing and affirming the crucial work of Indian people in strengthening tribal sovereignty through participation in American politics.

III. THE DRY-BONE RESURRECTION OF CALEB CUSHING: DENYING THE DUAL NATIONAL CITIZENSHIP STATUS OF TRIBAL PEOPLE

The Demise's main thesis is that when tribal members exercise the rights and obligations of United States citizenship today, they thereby necessarily jeopardize the
ability of Indian tribes to continue existing as separate sovereign nations. In elaborating this argument, *The Demise* confronts — as it must — the question of whether an Indian person legitimately can be simultaneously a citizen of his or her tribal nation and a citizen of the United States. As Professor Porter intimates, as a matter of federal law this question has long been definitively answered, and the settled answer to that question is "yes": dual national citizenship for Indian people is legally valid, as United States citizenship does not displace tribal citizenship. Professor Porter seems dissatisfied with this answer, however — and understandably so, since federal recognition of Indian people’s dual national citizenship status undercuts the efficacy of *The Demise*’s argument that Indian people’s “acceptance” of United States citizenship is a threat to tribal sovereignty. Consequently, *The Demise* lingers over the long-discarded view that under federal law, tribal citizenship presents a “legal barrier” to the conferral of United States citizenship:

> Early [American] citizenship was deemed to be exclusive; because Indians had an allegiance to their own Indigenous nation, they could not become American citizens.

. . . .

Assimilated Indians . . . were not necessarily deemed citizens. In an 1856 opinion, United States Attorney General Caleb Cushing was called upon to determine whether a mixed-blood Chippewa could be considered an American citizen. . . .

A . . . question addressed in this opinion was whether Indians “by continual crossing of blood, cease to be Indians” and thus no longer be considered incapacitated and ineligible for citizenship. His answer was “undoubtedly” and that such a matter was to be determined by the states. While he acknowledged that “[m]any persons of this class . . . are of most respectable character, and mentally and morally capable to be citizens of the United States,” this could only occur “by ceasing to be a member of the tribe.” The Attorney General concluded that it was “reasonable and just” that one “who claims and takes the benefits of such tribal membership, shall not be allowed at the same time to claim benefits which are attached by law to persons not Indians.”

The fact that a long-forgotten antebellum attorney general espoused an opinion a century and a half ago concerning the citizenship status of Indian people that was and is wrong, oppressive, and invalid as a matter of federal law is, of course, of some interest to the general reader. To students of federal Indian law and policy, however, the existence of such a misguided nineteenth century opinion is hardly surprising. What is more intriguing is *The Demise*’s exhuming of this dead-and-buried relic of wrong-thinking from a century past in the context of advancing essentially the same argument today, i.e., that being a citizen of the United States is and should be, as a matter of federal law, incompatible with being a citizen of an Indian nation. Hence, *The Demise* proposes the adoption of federal legislation that would erect a new “legal barrier” to Indian people’s exercise of federal citizenship rights by “requir[ing] that Indians choose between
Indian Participation in American Politics

retaining either their American citizenship or citizenship in their Indigenous nation."¹⁰⁰ Recognizing the coercive nature of this proposed "Choice of Citizenship Act," Professor Porter protests that "this 'tough love approach' " is needed in any event to keep "those Indigenous people who reject American citizenship" from "continu[ing] to fall prey to [American citizenship's] destructive assimilating influence."¹⁰¹

The difference between Professor Porter's preference for depriving Indian people of dual national citizenship status and Caleb Cushing's is that Porter's is motivated by a desire to strengthen tribal sovereignty, whereas Cushing's presumably flowed from the prevailing aspirations of nineteenth century federal policymakers that tribalism should be eradicated. The two perspectives are ironically similar, however, in that they both appear to embrace the mutual exclusivity of United States citizenship and tribal citizenship as a federal normative choice to be effected by "forc[ing] law upon them [i.e. Indians]"¹⁰² for their own good.¹⁰³ In Professor Porter's case, the irony is heightened by the fact that enactment of such federal legislation forcing Indians to choose between "us" and "them" is being advocated by the leading expositor of the evils of "federal Indian control law"¹⁰⁴— with the stated objective of "restoring choice on this issue,"¹⁰⁵ no less!

IV. VIEWING PRO-TRIBAL POLITICAL WORK AS ANTI-TRIBAL

A. Appearance v. Reality

Irony isn't necessarily a bad thing, however; and The Demise's call for congressional passage of "an equal and opposite act of colonial aggression" to cure a "virus" that threatens "to destroy Indigenous political identity by paving it over with American citizenship" might commend itself if that "virus" truly exists as the horrible hemorrhagic plague Professor Porter diagnoses it as being.¹⁰⁶ But The Demise fails to prove that Indian people's dual national citizenship status really is the lethal menace whose epidemic spread of contagion Professor Porter so dreads. This failure stems largely from The Demise's repeated efforts to make Indian people who fight for Indian rights within the American political system — whom The Demise effectively disparages as "Native Americans"¹⁰⁷— "appear" as though they are either indifferent about or actively hostile to the preservation and strengthening of tribal sovereignty. Hence, The Demise posits that by engaging in "political activism, voting, and direct participation in the American legislative process," such individuals "appear to have totally relinquished their status as citizens of their own Indigenous nations"¹⁰⁸ that they "appear[ ] to be driven by the genuine belief that working through the American political system is the only way to effectuate the Indian political agenda";¹⁰⁹ and that they "appear . . . to . . . be a part of the American political establishment," manifesting a "mentality" that "suggests a predisposition in favor of federal, rather than tribal, solutions to the problems facing Indian people."¹¹⁰
All of these abstract denunciations serve to remind us that appearances can be deceiving, especially when we mold empirical data to amplify a counterintuitive thesis about what really drives people to engage in empowering, value-laden political work — political work of which we happen to be suspicious. As I intimated previously, Professor Porter fails to carry the heavy burden of proving that any of the politically engaged Indians whom The Demise condemns as unwitting co-conspirators in the deployment of an intrinsically anti-tribal political agenda in truth manifests — as collateral fallout from mainstream political work or otherwise — the kind of apathy or hostility toward tribal sovereignty that The Demise alternately accuses them of harboring. Professor Porter argues, for example, that “participating in the American political system wholly abandons the notion of Indigenous sovereignty and the nation-to-nation relationship established by the treaties with the United States”; yet Indian activists within the American political system work constantly to secure respect for that nation-to-nation relationship, by educating non-Indian political operatives with whom they interact about the crucial need for recognizing and affirming the sovereignty of tribal nations. Likewise, Professor Porter asserts that “[v]oting in American elections, running for political office and lobbying American officials totally concedes to the United States the controlling authority that it has long sought”; yet when Indian people engage in these efforts, they typically do so precisely for the purpose of leveraging the institutions of American government to support the political self-determination and autonomy of Indian nations, or at least to induce the United States to stop undermining tribal sovereignty through the application of coercive instruments of “federal Indian control law.” It is simply untrue that by participating in American politics, Indian people “undervalue the fact that Indians also have their own Indigenous governments and political processes.”

In reality, Indian political activists highly value the unique and enduring nation status of Indian tribes; indeed, they actively manifest this supreme value by working energetically to remind federal policymakers of the importance of this status — and within precisely those spheres of political influence and power where that reminder is desperately and constantly needed.

One explanation for The Demise’s angst-filled obsession with “appearances” is its unquestioning acceptance of the validity of the cause-and-effect assumptions underlying “America’s Crusade to Wipe Out the Savages.” As discussed previously, the efforts of nineteenth century reformers to “educate” and “Christianize” Indian people to the point of cultural and national nonexistence backfired because the reformers underestimated the resilience of tribal identity. Professor Porter’s fears about the deleterious impact of United States citizenship on tribalism derive from the same flawed causation calculus. Thus, The Demise predicts that “dual citizenship” will cause a diminishment in the “loyalty” and “commitment of Indigenous citizens to their own Indigenous nation[s],” and hence “will have the effect of destroying the Indigenous nation[s] from within. This
The conclusion must be true," Professor Porter deduces, "because, after all, American citizenship was forced upon Indigenous peoples for precisely that reason."\(^{118}\)

The conviction that "[t]his conclusion must be true" reposes too much blind faith in the reformers’ ability to accomplish their ethnocidal mission in the face of Indian people’s tenacious and time-tested “sense of their own identity and cultural importance.”\(^{119}\) A probing factual, as opposed to theoretical and speculative, inquiry into whether “[w]illing and aggressive participation in the American political system” actually causes Indians to “forg[et] that [they] are citizens of [their] own [tribal] nations”?\(^{120}\) would reveal that it actually doesn’t.\(^{121}\) Unfortunately, The Demise attempts no such inquiry.

B. The Movement to Take Back “America”

In Part III of Professor Porter’s article — a section titled “Acceptance of American Citizenship and Minority Status by Indigenous Peoples”?\(^{122}\) — The Demise “gets personal” by criticizing a number of Indian people who engage in various kinds of political work, addressing this work under the subheadings (1) “Activism”; (2) “Voting and Lobbying”; and (3) “Acceptance of Racial Minority Status.”\(^{123}\) First, The Demise denounces Indian involvement in what it calls “the Red Power movement,”\(^{124}\) selecting another outdated “liberal” label\(^{125}\) for Indian activism (albeit one of possible Indian origin)\(^{126}\) used less frequently by Indians today than the term “Native Americans” is used when Indian people in Indian country self-identify.\(^{127}\) According to The Demise, “[t]he Red Power movement came to an end during the late 1970s and early 1980s”\(^{128}\) — news that will come as a surprise to, for instance, the thousands of dedicated American Indian Movement (AIM) members and supporters who have advocated for Indian rights in reservation and urban communities during the past two decades.\(^{129}\) While conceding that Indian activism since the 1960s has served as “a wellspring of transformation and renewal,”\(^{130}\) The Demise opines that

\[\text{[u]nfortunately these positive benefits overshadow the fact that the Red Power movement contributed greatly to the assimilation of Indians into American society. . . . Indian advocacy was directed away from the government-to-government relationship between the Indian nations and the United States and shifted toward the individual rights orientation of the civil rights movement. Individual Indians, and not the recognized or even traditional Indian leadership, were the primary leaders and spokespersons of the Red Power movement. This blurred the conception of Indian status in the eyes of both Americans generally as well as the Indians involved in the movement.}

\[\text{By adopting the tactics of the civil rights movement, Indigenous people relinquished much of the power associated with being citizens of separate sovereigns located within the United States. . . .}

\[\text{The lasting legacy of the Red Power Movement, then, is that it promoted the absorption of the Indian nations into American society. The Movement led to broad}\]
acceptance of the view held by both Indians and non-Indians that Indian nations are part of America, that Indians are Americans, and moreover, that Indians are simply members of a minority group — "Native Americans" — on par with other minority groups . . . .131

AIM members today would be no less shocked to learn that their dedication to the Movement has "blurred" their "conception" of themselves as citizens of sovereign Indian nations than they would be to hear that the Movement died twenty years ago. AIM members, and Indian rights activists in general, have always taken a bold, visceral, and often defiant stand on the issue of tribal sovereignty, thereby helping to make the American public aware of the existence and perseverance of sovereign Indian nations in North America.132 AIM’s core principles of spirituality, sovereignty, and solidarity133 instill a disciplined "orientation" toward "strengthening Indigenous sovereignty"134 for all participants in AIM demonstrations and events. The prevalence of this pro-tribal "orientation" simply cannot be squared with The Demise’s assertion that Indian rights activists have "relinquished much of the power associated with being citizens of separate sovereigns located within the United States" or that the work of these activists has promoted the "view . . . that Indians are simply members of a minority group."135

As Professor David Wilkins notes,

the Indian activist movement of [the 1950s, 1960s and 1970s] was not fundamentally a part of the other racial or ethnic social movements (e.g. Black civil rights), although it certainly benefitted from those movements by adopting some of the symbols and other aspects of those movements and by taking advantage of the changed political atmosphere to push through their agenda. In a greater sense, then, "the Indian movement is a continuing resistance which has its basic roots in the Indian experience of the last [five] centuries."136

Also meriting rebuttal is The Demise’s depiction of a state of fear and discord dividing Indian rights activists, on the one hand, from "the recognized or . . . traditional Indian leadership," on the other.137 In reality, many traditional and grassroots Indian people have counted themselves among the ranks of the most dedicated activists, and prominent tribal leaders have found Indian rights demonstrations and protest activities to be a crucial training ground for sharpening political acumen, building networks of solidarity and support, and acquiring and refining additional skills and abilities for effective tribal governance. For example, Wilma Mankiller, the renowned former principal chief of the Cherokee Nation, has written:

[N]o matter where my path leads me, I must always remember where the journey started. It was in San Francisco — at Alcatraz, and at the American Indian Center, and in my own home where, starting about the time of the Alcatraz takeover, native people often came to sip coffee, make plans, and build indestructible dreams. The occupation of Alcatraz
excited me like nothing ever had before. It helped to center me and caused me to focus on my own rich and valuable Cherokee heritage.

The entire Alcatraz occupation was such an important period for me. Every day that passed seemed to give me more self-respect and sense of pride. Much of the credit for that awakening has to go to the young men and women who first went to Alcatraz and helped so many of us return to the correct way of thinking. 138

Indeed, for confirmation of tribal leaders’ indebtedness to the Indian rights movement, Professor Porter would have had to look no farther than his own backyard (to borrow a line from Dorothy in The Wizard of Oz), because one short month before his fall 2000 tribal law conference, several such leaders participated in a different conference there in Lawrence, Kansas, held jointly by the University of Kansas and Haskell Indian Nations University, titled “American Indian Leaders: Red Power & Tribal Politics.” 139 One of the featured speakers was Ramona Barrett, who “served as the Puyallup tribal chair from 1970 to 1978” and who “was involved with fishing rights in the state of Washington and the BIA building takeover in 1972, and . . . led the tribe’s armed occupation of Cascadia Juvenile Reception and Diagnostic Center in 1976.” 140 Another speaker was Onondaga Chief Oren Lyons, who “was . . . raised in the traditional ways of the Iroquois” and who, among his many other noted accomplishments, “led the Haudenosaunee (Iroquois) delegation through the federal blockade at Wounded Knee in 1973 in support of the Lakota Nation.” 141 Clearly, there is no shortage of tribal leaders who have been nourished and empowered by the Indian rights movement and who would disagree with the statement that “the nature of [Indian rights] advocacy was genuinely ill-suited to redressing the problems associated with Indigenous self-determination.” 142

Indian rights activism thus is not the assimilative force at odds with the exercise of tribal sovereignty that The Demise claims it is. The history of AIM activism, for instance, shows that AIM supports strong tribal governments and revitalized cultural traditions while opposing federally induced corruption that threatens to destabilize those governments and cultures and to undermine tribalism generally. There is nothing in this kind of activism that “promote[s] the absorption of the Indian nations into American society.” 143 As for The Demise’s lament that Indian rights activism has “led to broad acceptance of the view . . . that Indian nations are part of America,” 144 this is true, but only insofar as that “view” embodies the faith that, with the help of American Indian people, “America” is capable of evolving morally and politically until it becomes at last a place where all Indian tribes are accorded respect and support as permanent, indestructible, sovereign nations indigenous to the continent. 145 Only then will non-Indian citizens of the United States deserve the privilege of being called “Americans.” 146
C. Profile of a Sovereignty Warrior: A Conversation with Frank LaMere

After prostrating Indian activism, The Demise trains its crosshairs on its number-one nemesis: Indian voting and lobbying. Here, The Demise "pinpoint[s]" a number of prominent Indian political figures "who might be responsible for the increase in Indian voting during the last decade."147 These include United States Senator Ben Nighthorse Campbell (criticized for arguing that "'you've got to get on the inside to make policy changes'");148 former Assistant Secretary of the Interior for Indian Affairs Ada Deer (criticized for urging Indians to get involved politically to help spare Indian programs from budget cuts);149 then-incumbent Assistant Secretary of the Interior for Indian Affairs Kevin Gover (criticized for working to "'get out the Native vote'" for the Democratic Party);150 former Idaho Attorney General Larry Echohawk (criticized for having "focused on getting more 'Native American people involved in the [American] political system'");151 then-incumbent Cherokee Nation Principal Chief Joe Byrd (criticized for "believing that '[Indians] must rise up to defend issues that are important to all of us — not only as citizens of tribal government, but as citizens of the United States' ");152 and Indian educator Dean Chavers (criticized for opining that "'[i]t makes eminent sense... to vote in the national elections..."").153 The Demise's primary complaint, to reiterate a point made previously, is that by "supporting an increased role for Indians in the American political process," these Indian leaders manifest a preference for "federal, rather than tribal, solutions to the problems facing Indian people," exhibiting, in some instances, sheer "deference to federal power."154 And, Professor Porter adds, "there is always the possibility that support for Indian voting may be driven by the more self-interested motives of promoting one's political career by offering up Indian votes to the White political establishment."155

What is missing from this panoramic picture of politically engaged Indian leaders as self-serving stooges and lackeys who undermine tribalism by welcoming federal dominion over Indian people's lives is any discussion of these leaders' own explanations for trying to get more Indian people involved in the American political process. Recently, I had an opportunity to probe the mind of one of The Demise's targets: Frank LaMere, a member of the Winnebago Tribe of Nebraska, vice chairman of the Nebraska Democratic Party, and a member of the Democratic National Committee. Frank has been, and continues to be, a spokesman for his tribe and an advocate for Indian rights in the environs of Sioux City, Iowa, where I was born and raised and where my wife, Connie Bear King, and I now reside; and so I have been aware of Frank's leadership in our community all my life. I've become more familiar with Frank's legendary political work in recent years as a result of Connie's growing involvement in Democratic Party politics locally and nationally. I interviewed Frank at a Sioux City coffee shop in the fall of 2000, having provided him a copy of Professor Porter's article in advance. Because many of Frank's
Indian Participation in American Politics

remarks comprise a crucial counterpoint to The Demise’s denunciations of Indian involvement in mainstream American politics, I quote from the interview at length.

I began the interview by asking Frank what he thought generally of The Demise’s depiction of the work of Indian political activists. He said that he thought the portrayal was “overly simplistic” and that the article’s author “seems to come from a position where he is never wrong.” He continued with an extended reflection on his work as a promoter of tribal interests within the arena of national American politics:

Sovereigns in the world are influenced by other sovereigns, through direct and indirect, internal and external, actions and influences. Indian tribes, as sovereigns in the world, are not exempt from these influences. That’s the nature of change.

What has driven me politically is not a desire to change things for all of society, but for a small part of society. The bulk of my efforts have been directed at educating others about native issues and tribal governments. . . . I’m involved in the political process because I wish to see the federal government respect tribal governments and deal with them like they deal with other sovereigns.

. . .

I am involved with the political processes that enable us to seek positive change. I am not involved with the institutions that implement those changes and that many times fight to protect the status quo. I do not represent institutions that protect the status quo, as any involvement there can only cloud my idea of what can and should be done to protect our sovereignty.

You cannot buy into the system and comment on how others outside of the system should perceive you. I buy into no system. I only seek change through the only vehicle I have: the political process. It guarantees nothing, but it gives me a chance to work for everything.

Frank expressed discomfort with abstract discussions of tribal sovereignty generally, divorced from the realities of how sovereigns function in the political world:

We will have attained true sovereignty when we do not have to turn to others to ask them if this is what sovereignty is.

The discussion of sovereignty in this way defeats the purpose of advancing sovereignty. The discussion of sovereignty and all that it explores . . . takes away from sovereignty. Sovereignty is experienced, not discussed. It is lived, and not dissected.

The discussion of sovereignty itself shows the vanity of those who would discuss it. Past civilizations had no time to discuss the limits of their power. They only had time to talk of the limits put upon us by the elements and by the Creator. . . . Indian people were in a period of self-actualization. They knew exactly where they fit in the world.

The taking away of our sovereign powers, as has been discussed for the past two centuries, began when we first started discussing these powers. The discussion of these powers is nothing more than a scheme for taking them away. . . . The initial discussion of sovereign powers was dictated not by Native people, but by foreign governments.
Next, Frank spoke of the need for Indian people to move beyond theoretical discussions of sovereignty, and to engage in the hard work of defending and supporting tribes in the political process:

We strengthen tribal government the way that governors strengthen state government. And that is done by engaging other sovereigns in the political process. State governments are vigilant, and they function well as sovereigns. Our approach, on the other hand, has been a haphazard one, and the protection of our sovereign tribal powers has been hit-and-miss. We have not been vigilant. That is the difference. . . . We have worked outside of the system, and it has caused us problems.

. . . .

Tribal governments must change with the times, just like state governments must change with the times. If we become stagnant, we get left behind. There are tribes that wish to be left behind. To me, sovereignty represents the ability of a people to be recognized, to be heard. Tribes who remain outside of the political process simply remain ignored. I'm sure there are benefits and drawbacks to that, which only the tribes themselves will feel.

It's the same way with the states. States that sit out the process are the ones that get the short end of the stick. Sovereignty is something that needs to be fought for and protected. If another sovereign comes to the doors of your reservation demanding a right of way, chances are that they do not respect your sovereignty, and that your isolation has hurt you.

I asked Frank what he thought of The Demise's suggestion that his political work, and that of other politically engaged Indian leaders, "appears to be driven by the genuine belief that working through the American political system is the only way in which to effectuate the Indian political agenda." Frank responded:

Let me oversimplify the situation like Porter did. We have never been sufficiently involved or engaged in this process. It is my belief that full engagement in this process will result in great and meaningful and lasting changes — positive changes — in our government-to-government relationships. Whether we like it or not, the reality is that other governments are truly unaware of our sovereign powers, and will remain skeptical of our claims of tribal sovereignty unless and until we engage them politically.

. . . .

We want this pure, unadulterated, untouched sovereignty — sovereignty that we probably did not enjoy even in our best days generations ago. People want the storybook version of sovereignty. We want our sovereignty to be recognized, but we are afraid to draw attention to ourselves. We have to overcome this fear. We want the fruits of sovereignty without the labor. . . .

. . . .

We complain about how our sovereign powers will be deteriorated if we engage in the political process. But that kind of complaining goes on all the time in the world of
other sovereigns. Radio talk shows discuss how state sovereignty is being deteriorated by what goes on in Washington. Advocates for those other sovereigns move past the point of complaining and engage in political work to protect and support the sovereigns they truly care about. We must do so as well.

Political activism is not the answer to everything. Involvement in the political process guarantees nothing. It only provides a chance at making positive change. But the prospect of our arriving at a positive result is what keeps this process healthy. You get from the process what you put into the process, if you are lucky and if you are vigilant. And let there be no mistake about it: more involvement means that our interests will be heard more often.162

I asked Frank to comment on the increasing visibility of his work to facilitate Indian involvement in the Democratic Party. He responded:

I’ve been engaged hardcore in this political process only since 1987. Yet I am viewed as the most influential, connected, committed, involved American Indian Democrat in the nation. That is scary. If you go into a room of one hundred political activists, half of them will have been involved most of their lives. The vast majority will have been involved longer than Frank LaMere. So how can any of us say what our political involvement can bring? . . . Political activism stems from our need to represent our tribes’ interests. And the more Indian people we have in that process, the more our tribes’ interests are protected.

I sat on an ad hoc committee to get more Indians on the DNC. The committee report called for the party to concentrate on giving the nations an opportunity to achieve caucus status . . . That came from one person being engaged in that process. As a DNC member, I introduced a resolution calling for this party to protect our sovereignty — and they passed the damn thing! This is an example of what one person can do. When we’re engaged in the process, we’re there to protect our interests. 163

I asked Frank if he, as an Indian individual who is not a tribal government official, had experienced any conflicts or difficulties when attempting to advance specifically tribal interests in the political arena. He replied:

Individuals who support states’ interests, and who are not state officials, will espouse the wishes of the states that have been reached by lawmaking and consensus. The role of Indian people in the political process is the same. I find myself espousing the tribal “party line” because the recognition of tribal interests benefits me.

Where there is a clash, I would probably just sit that one out. I’ve never had to deal with that one.

Let me talk about the impact of our tribal decisionmaking processes on my work as a political activist. It behooves me to support the decisions that tribes have agreed
upon, because it’s in my interest to do so. I have a right to disagree with them, but like other politically active people, I would not deal with that publicly.

We can be hurt in this political process when we make a flash-in-the-pan approach to change, or when we become fickle about our involvement in the process. We must be vigilant and consistent in our approach to political change, and our long-range tribal goals must be well thought-out in advance and arrived at after much debate. There have been many short-term political solutions that have resulted in long-term drawbacks for the tribes. We have not examined the impact of some of our actions, and it has come back to hurt us.

An example is Indian gaming. Some of our leaders in the ’80s said we must be careful in our negotiations with the state and federal governments, because that involvement may have lasting impact on the sovereignty we enjoy. They said that when the camel gets its head in the tent, the body is sure to follow. And unfortunately, that seems to now be the case. We have made major concessions for short-term benefits and financial gains for the people that may result in our sovereignty being negatively affected.

The point is, as an Indian political activist, you have to be in this process for the long haul. It is not true democracy at work, and we do not truly protect our sovereignty, when we send a fleet of lobbyists, consultants, and lawyers to Washington every time our interests are being negatively affected. As tribal people, we tend do this every couple of years. We remain politically inactive until the next crisis, and then we malign the process for not making room for our interests. We really should be blaming the lobbyists, lawyers, and consultants who mislead us — and those among ourselves who do nothing to impact the political process.

Tribal sovereignty does not exist in a vacuum. Political involvement is necessary to keep tribal sovereignty alive and healthy. Engaging every interest around us on a daily basis is how we make sure that our tribes are recognized as sovereigns, and that our people’s wishes are fulfilled.

I followed up with a question about whether the integrity of pro-tribal advocacy in the political arena is compromised through political partisanship. I specifically solicited Frank’s views concerning the work of Senator Ben Nighthorse Campbell, the only American Indian member of Congress and a recent “convert” to the Republican Party. Frank replied:

Most politically involved Indian people are concerned about our interests as Indians, just as women are concerned about their interests as women, farmers as farmers, labor unions as labor unions, and so on. We represent ourselves as a unique constituency whose interests need to be addressed. We don’t jump into these matters to disagree with one another. Rarely have I disagreed with Indian Republicans, or Indian Green Party members, or Indian Libertarians, because as Indians, as tribal people, we have no disagreement.

Ron Allen, for instance, is adamant about tribal sovereignty. He’s a Republican.

....
Party politics aside, Ben Nighthorse Campbell remains a staunch defender of our sovereign nations. Many Native people malign him, but he is without a doubt our most important political operative in the system right now. I applaud his work. And there are few things, if any, that I would disagree with him on, from a Native perspective.

I'm involved in the political process mainly because of the interest I have in Indian issues. Even though I am called on to lend support to other constituencies, Indian rights remain my interest.\textsuperscript{166}

Frank elaborated further on Professor Porter's recurring contention in \textit{The Demise} that mainstream political involvement tends to dilute Indian people's tribal identity:

I don't think that could be further from the truth. Our involvement in the political process as Native individuals requires a great deal of responsibility. We must be acutely aware of our tribal interests. We must be careful when we convey our tribal interests. And we must always carefully weigh the risks and consider the outcomes.

It requires that we carry a burden — and one that I take very seriously. We must be more informed than the rest of our Indian brothers and sisters, more informed than others we encounter in the political process, if we are to responsibly carry our tribal interests. We must be more informed, have more resolve, and have an idea about the long-range impact that our work will have on our tribal people for generations to come.

A small handful of Native political activists are taking the long view concerning our Native interests. Politics is a fluid process that requires involvement and commitment on an ongoing basis. We need more people involved if we are to get our message across.\textsuperscript{167}

I asked Frank to respond to Professor Porter's observation that some Indian nations, including the nations that make up the Iroquois Confederacy, the \textit{Haudenosaunee}, have taken a strong stand against tribal members' involvement in American politics.\textsuperscript{168} Specifically, I drew Frank's attention to the following statement of a Mohawk writer, reprinted in \textit{The Demise}:

[T]rue citizens of the Haudenosaunee (Iroquois) Confederacy will not cast ballots in 1996. They will not take an active role in any campaign, nor will they contribute advice or material support to American politicians.

According to Iroquois law they are expressly prohibited from participating in the political process of an alien nation. Since the Iroquois are certainly citizens and residents of their own distinct country they consider themselves separate from the United States.\textsuperscript{169}

Frank replied:

The elders have spoken through the generations, and they have chosen a path best suited for their people. This was done to ensure the survival of the people. The influences they had to deal with were diverse, and the situations unique. Most chose to
be a sovereign among sovereigns, and to work for fairness and justice there. As we were not alive to face the questions they dealt with, questions regarding the survival of the people, far be it from us to second-guess their decisions. It is sheer vanity to do so.

There are Indian nations on this continent where other sovereigns fear to tread. Those are the nations that have been outspoken and fierce in the defense of their sovereign powers.

Who can argue with those who use all approaches at hand to ensure that their tribal nations will always be counted and recognized among the sovereigns of the world? Who can argue that leaders of nations like the Iroquois do not have the best interests of their people at heart when they engage other nations to speak of their sovereignty or to exercise their sovereign powers? I can't. By the same token, who can argue that this interaction, this expression of a resolve to stand up and be acknowledged is not itself political, the very essence of the empowerment that political activists work for?

Even the statement about the Iroquois represents an attempt by those nations to protect their sovereignty, to engage the other sovereigns around them. There are many ways to get this done. They employ one avenue; other nations employ other approaches. All of them are good.

One should not be an apologist with respect to how one protects the people. Nor can one nation be all-knowing in that regard. Everything that can bring good to the nations must be acknowledged, political involvement included. Most nations agree with me on that point.

It all has to do with education. Some nations seek to protect their sovereignty by expressing it to all who would listen. Other nations express their sovereignty in an arena where there are no guarantees, but where everyone must listen. That's the political arena. I will take chances in that arena. Many tribes take their chances in that arena.

But make no mistake: that arena, that stage, requires our full attention and all of the resolve and commitment that we can muster. Once you choose to play, you must be around for the final buzzer. You can't get into the game and call time-out. It requires defense and offense, and a strategy to win. It's as simple as that.\textsuperscript{170}

Finally, I broached a sensitive subject touched on in \textit{The Demise}: Frank's public statements in memory of his brother, Anthony LaMere, who was killed in the Vietnam War. In \textit{The Demise}, Professor Porter adverts to this subject as follows:

LaMere says that his work for the Democrats is motivated, "first and foremost," by a commitment to "our Winnebago veterans and to my own brother, who gave his life in defense of our Constitution." Perhaps as a reflection of this commitment, Senator Bob Kerrey of Nebraska says of LaMere that his most significant quality is that he "is a patriot who loves his country [the United States]."\textsuperscript{71}

With respect to this topic, Frank responded:
Indian Participation in American Politics

My forebears in the Winnebago Nation chose a path that dictated our involvement with the United States. I'll not second-guess their commitment to the people and the actions they made that would affect generations to come. I am not that knowledgeable. I only know that a tremendous debt has been accrued by the United States of America for the service and sacrifice of young men and women from many nations who have answered the United States' call in time of conflict. It is time that we start collecting on that debt, and the protection of our sovereignty is one small down payment for what my brother gave to the people of this land.

A failure to collect on that debt represents a failure on the part of our people to acknowledge the loss, and honor the sacrifice, of so many thousands of young Indian men and women in the military service. They have earned for us a place at the table, and it is disrespectful of us not to take our rightful place. All of us who talk about philosophy and argue about sovereignty stand on their shoulders, whether we like it or not. They secured for us the right to even argue the case for self-government. It's that simple.

I think “patriot” is used by Senator Kerrey to mean somebody who works within the system for positive change, for the United States as well as for our Indian nations. To him, I represent somebody committed to ideals upon which the United States was founded — ideals, incidentally, that Indian nations also hold sacred: the need to protect the old, the young, and those who have no voice to the best of our ability, and the willingness to defend them at all cost. He looks at me as a “patriot” because I've not been afraid to blaze a trail, not only with Indian people, but also with Democrats.

But I find it troubling that he would call me a “patriot,” since the only thing I’ve done is get arrested for Indian people. I think he sees patriotism in a different light than most people. If I am a “patriot,” it will be borne out by my efforts to change the political process to accommodate every sovereign tribe and every individual Indian who has no voice in the political landscape. I see myself as that kind of “patriot,” one who more times than not steps on other people’s toes.

Tony LaMere gave me that right, and I cannot forget his sacrifice. He gave me the ticket into the hall where change is discussed and the future is pondered. He gave it to others, too, but there have been few takers. If all of us enter that hall, the world would be a better place, and the future of our nations would be more secure. We should think about that.

At the end of our conversation, Frank suggested that I contact other Indian political activists, to elicit their reactions to Professor Porter’s views. Specifically, Frank objected to The Demise’s criticism of Brian Wallace, chairman of the Washoe Tribe of Nevada and California, for “managing to get 85% of its 1600 members registered as Democrats.” Frank said, “There's nobody more committed to his people than Brian Wallace, and to hint otherwise is a big mistake. He has explored all avenues for bringing about positive change, and he has arrived at an important one, that being involvement in the political process. He is very forward thinking.”
Although I did not contact any of the other Indian political figures criticized in The Demise, I have no doubt that each of them would have affirmed in no uncertain terms, as Frank LaMere did, that defending and supporting the sovereignty of Indian nations is the conscious goal of all Indian political activists. What is most troubling about Professor Porter’s article is that it constantly denies this obvious pro-tribal orientation of these activists, and through such denial, The Demise unfairly disparages the work of many of our most effective and inspiring “sovereignty warriors.”176 To anyone “concerned about the fate of our sovereignty and the survival of our future generations,”177 The Demise’s choice of combat strategies seems both dysfunctional and self-defeating.178

D. The Race Against Ignorance

Related to The Demise’s attack on Indian political activism, voting, and lobbying is its censure of Indian participation in the fight for racial justice. Evincing fascination with the construction of “appearances” once again,179 The Demise argues that by “complaining about racism directed toward Indians,” “Indians today appear to be suggesting that they should be treated in the same way as . . . racial minority groups,” i.e., as “simply a racial minority group within American society.”180 Indeed, The Demise flirts with the notion that Indians do not constitute a discrete racial minority group at all, conceding only that “Indians have long been thought to be of a different ‘race.’”181 In the final analysis, however, Professor Porter wisely refrains from committing himself to so untenable a position. Instead, The Demise throws sucker punches at the “straw men” it created for receiving such blows.182 Thus, Professor Porter pummels his “Native Americans” for making “protestations solely along racial lines”,183 for failing “to appreciate the difference between Indigenous people as a race and Indians as citizens of separate sovereign nations”,184 for “fixating on ‘race’ ”185 for “[s]ending confusing messages to American society relating to questions of Indians and race”,186 and for “transforming conceptions of separate political status to merely conceptions of race,” thereby causing “an erosion of the perception of Indigenous people as citizens of separate sovereigns.”187

Fists land on air, however, when The Demise takes on “real [Indian] people.”188 Despite a nice attempt at connecting with a one-two combination, The Demise fails to extract confusion and inconsistency from two tribal leaders’ side-by-side responses to a survey question about whether “‘Indians identify with the struggles [against discrimination] of other ethnic or racial groups.’”189 The first response is by Ray Halbritter, Representative of the Oneida Nation of New York:

Minority groups in America share a struggle with racism in one form or another.

The fundamental difference between sovereignty and equal protection under the law makes our struggle to maintain our identity unlike that of any other ethnic group. Our government, laws and cultures existed long before the United States and its laws came
into being. Our sovereign rights are recognized in repeated treaties with the federal government. Yet that same federal government continually passes laws that infringe on those sovereign rights. And state and local governments often enact legislation and pursue court actions that completely disregard Indian sovereignty. Only the American Indian in this country is engaged in this never-ending struggle to protect our pre-existing inherent sovereign rights.9

The second response is by Marge Anderson, then-incumbent chief executive of the Mille Lacs Band of Ojibwe:

There are important differences between the struggles of other racial groups in this country. The obvious one is that we did not immigrate here. We were not forced to relocate here. We were not forced to relocate here as slaves. We are the first Americans.

But in some respects, our story is similar to the stories of other racial groups. While I don’t pretend to be an expert on African-Americans or Asian-Americans or Hispanic-Americans, I do know that these people—like my People—have struggled for years to keep from being swallowed up by the dominant culture. American Indians have had to fight off deliberate attacks against our culture, as well as sincere but misguided attempts to help us assimilate. I’m sure these are struggles that sound familiar to other racial groups.191

Obviously, each of these responses embodies a “yes and no” answer — the correct answer — to the survey question. The only real difference between the two is that Representative Halbritter’s response first briefly acknowledges that there are similarities between Indians and other minority groups and then elaborates on the differences, whereas Chief Anderson’s response first touches on the differences and then elaborates on the similarities. This does not make for logical inconsistency, however; and notwithstanding Professor Porter’s insistence to the contrary, these two statements do not make it “hard” for “anyone reading [them]” to “get a clear sense of how Indians interrelate with minority groups on the basis of race.”192

In fact, both Representative Halbritter’s response and Chief Anderson’s are valid, important, and enlightening explications of how “Indians identify with the struggles of other ethnic or racial groups”193 with respect to the problem of discrimination. Halbritter explains how the unique need to protect tribal sovereignty distinguishes Indian people’s fight against prejudice and discrimination; and Anderson points out that Indians, like other minority groups, have suffered from the dominant society’s efforts to eradicate minority cultures. Professor James Anaya has labeled the type of discrimination addressed by Anderson as “cultural discrimination,” which “seeks actively to suppress the cultural bonds and expressions of nondominant or minority groups, upon the premise that the dominant culture is superior.”194 As Professor Anaya explains, cultural discrimination “has occurred even (or in many cases especially) at the same time efforts have been made
to enhance participation of minorities in the larger society." And while "Native Americans stand out as victims of pervasive patterns of cultural discrimination," other minorities in the United States, as Anderson points out, have been its victims as well.

Hence, The Demise is wrong in accusing Chief Anderson of having provided a "statement . . . that is misleading against the backdrop of what she states as the goal of racial minorities in the United States." The Demise's misreading notwithstanding, Anderson's statement does not deny or contradict "the fact that all racial and ethnic minorities in the United States . . . have always generally resisted segregation." Anderson is not "mistakenly assuming" that all racial and ethnic minority groups favor "segregation"; rather, she is correctly observing that all such groups suffer the effects of cultural discrimination.

Again, Professor Anaya's important discussion of cultural discrimination is useful for sorting through the non sequiturs littering The Demise's treatment of Indian people's struggle against racism. Professor Anaya distinguishes cultural discrimination from "exclusionary discrimination," which seeks "to exclude groups from full participation in the political and social life of the state." All racial and ethnic minority groups in the United States have suffered, to one extent or another, the oppressive effects of exclusionary discrimination, and the fight to end racial segregation and achieve integration in public accommodations has been, to date, the most important example of the campaign against this invidious form of racial injustice.

But exclusionary discrimination is not the only type of racial injustice plaguing American society; cultural discrimination also persists, and, to reiterate Professor Anaya's observation, Indian people "stand out as [its] victims." What makes Indian people's experience of cultural discrimination unique vis-à-vis that encountered by other racial and ethnic minority groups is, of course, the tribal sovereignty factor, as Representative Halbritter's statement emphasizes. Unlike other minority groups, Indian people experience cultural discrimination not only as burdens on the ability to flourish culturally, but also as burdens on the capacity to function and thrive as distinct, self-governing sovereign nations. This crucial difference does not mean, however, that Indians are not a discrete racial minority group, or that Indians are not specific targets, like other minorities, of racist treatment in American society. Indeed, this difference makes Indian people's experience of racism, as such, more pervasive, insidious, and intractable than that suffered by other minorities in the United States.

Thus, an "oxymoronic statement[ ]" does not result when Indians assert that "'the most virulent and destructive form of racism faced by Indian people today is the attack on our tribal sovereignty.'" Far from "compound[ing] the erosion of [the] distinction" "between the treatment of Indigenous people as citizens of the United States and as citizens of their own separate sovereign nations," such a statement conveys a crucial insight into the nature of the disease that festers at the core of "federal Indian
control law” and that continues to spawn outbreaks of anti-tribal decisionmaking by the United States Supreme Court today. A leading modern example of judicial racism directed against Indian tribes is the Court’s 1978 decision in Oliphant v. Suquamish Indian Tribe. Writing for the majority, then-Justice Rehnquist concluded that “Indian tribes do not have inherent jurisdiction to try and to punish non-Indians” because such jurisdiction is “‘inconsistent with their status’” The “status” cited by Rehnquist is that of racially inferior peoples, over whom European nations had deemed themselves justified in imposing dominion pursuant to the so-called doctrine of “discovery,” a principle of white colonial supremacism traceable to the rise of Roman Catholic hegemony in medieval and renaissance Europe and incorporated into American law by the Supreme Court’s 1823 decision in Johnson v. M’Intosh. Statements by Indian leaders drawing public attention to the deep-seated racism inherent in the most far-reaching legal assaults on tribal sovereignty deserve to be vigorously applauded, not denigrated, by those of us “concerned about the fate of our sovereignty and the survival of our future generations.”

The Demise’s attack on Indian people who do battle against the pernicious scourge of racism thus is unwarranted and unavailing. In fact, Professor Porter’s coy reluctance to commit to the irrational belief that Indians are not a race gives an air of dogma and cant to his insistence that others so commit by “reject[ing] . . . the ‘racism’ categorization.” While it is true that “Americans as a general matter are so ignorant about the subject [of Indians and race],” denying that Indians even are a race, or that Indians experience racism, as such, can only increase popular ignorance by foreclosing crucial opportunities for “sophistication of thought” on the matter. It defies logic to suppose that “educating an American audience about the significance of Indigenous sovereignty” can be advanced by denying the racial dimension of tribal existence and dictating a simplistic reduction of the “‘distinctive and extraordinarily complex status [of Indian people] in the United States.’” Educating others about the enduring enigma of tribalism in America requires better than this.

V. CONCLUSION: WHY ROLLING WITH THE PUNCHES IS AN ESSENTIAL INDIAN TRADITION

In an early outline for this paper, I had planned a section titled “George W. Who?: Voting and Lobbying for Survival”; but after the Great Farce of the Reagan/Bush/Rehnquist Court’s selection of a President rejected by the American people, I had to scrap that idea. As we all know, Indians had no effect on the 2000 presidential election. Nor did the voters. Nor did the Constitution.

Despite that bitter lesson in political realism, I grudgingly forged ahead with the rebuttal that Professor Porter had talked me into. I considered renaming that section “Slade Who?”; but I had to toss that idea, too, after it was rumored that the Grim Reaper himself might soon be nailing a sign above the doors of the Ninth Circuit Court of
LaVelle

Appeals that reads “Abandon All Hope, Ye Who Enter Here.” The future was looking so bleak that I fell into a trance and dreamed I was dancing behind the Pied Piper, mesmerized by an alluring melody urging me to tune in, turn on, and drop out. It was the Second Coming of the Indian Apocalypse, but I was somewhere safe, somewhere comforting, somewhere over the rainbow. I definitely was not in Kansas anymore.

But I snapped out of it, the gloves came off, and I began pounding away. It dawned on me that the main reason Indians must participate in American politics is not to “scrap for votes, lobby politicians, and make political contributions,”217 but to try — against all odds, against all hope — to awaken “the American dream” to its own unrealized conscience. To try to do that, if it can be done at all, and even if it can’t be done, means we must enter the ring, we must stand and fight, me must “kick at the darkness ’til it bleeds daylight”218 — and not run away when the darkness starts kicking back. “It requires defense and offense, and a strategy to win.”219 For those who come after, we must try to do what those who came before tried to do — and did — for us. We must, says a wise Dakota elder, step in “the footprints of our ancestors who fought wars and signed treaties so that we could live.”220

Like our ancestors, we must do battle for the rights of our tribes, for our survival as Indian nations and Indian people. Like they did, we must wage war on every front where our rights are threatened. American politics is one such battleground — a vast one, an important one, perhaps the most important one. If we retreat from that theater, can we survive the Armageddon that will then be upon us? America without conscience is Indian Apocalypse Now. Shall we throw in the towel, sit this one out, preach to the choir, rest in the belly of that Great Beast?

No way.

Notes

2. E-mail message from Rob Porter to John LaVelle, August 9, 2000. This and the other e-mail messages quoted in this essay are reprinted with Professor Porter’s permission.
3. E-mail message from John LaVelle to Rob Porter, August 25, 2000.
4. Id.
5. E-mail message from Rob Porter to John LaVelle, August 25, 2000 (first ellipsis in original).
6. 15 HARv. BLACKLETTER L.J. 107 (1999). For ease of reference in the body of this essay, Professor Porter’s article hereinafter is abbreviated “The Demise.”
7. Use of the phrase “strengthening tribal sovereignty” in the title of my essay is, strangely enough, my own independently arrived-at idea. The fact that Professor Porter has published two essays whose titles begin with the same phrase is either an amazing coincidence or evidence of the existence of the subconscious, but probably not both. Cf. Robert B. Porter, Strengthening Tribal Sovereignty Through Government Reform: What Are the Issues?, 7 KAN. J.L. & PUB. POL’Y 72
Indian Participation in American Politics


8. Cf. the wild and interesting movie Fight Club (explanatory parenthetical not included here because of the first and second rules of Fight Club). For that matter, cf. it on video, if you must.


10. Porter, supra note 6, at 107-08 & n.3.

11. Id. at 108.

12. Id. at 110. Whether publication in Harvard BlackLetter Law Journal realistically can be expected to reach “primarily an Indigenous audience” is another question, of course.

13. Id. at 108 n.4.

14. “Liberal” here, in scare-quotes, is meant to invoke the kind of menace that I suspect my colleague Professor Frank Pommersheim had in mind when he wrote of “Indian law liberalism”:

Indian law liberalism, despite its benevolent intention to “help” Indians, has often lapsed into a harmful and hurtful arrogance. The liberalism to which I refer is the kind of liberalism practiced by one who inherently “knows” what is best for others, particularly those who are situated outside mainstream, middle-class America.


15. Whatever its origins, the term “Native Americans” today appears to be favored primarily by two classes of persons: (1) well-meaning non-Indians who believe (incorrectly) that it is disrespectful to refer to Indians as “Indians”; and (2) ill-meaning non-Indians who believe (correctly) that use of the term “Native Americans” may help undermine popular recognition and acceptance of the special rights of Indians. Cf. THE CHICAGO MANUAL OF STYLE: THE ESSENTIAL GUIDE FOR WRITERS, EDITORS, AND PUBLISHERS 247 n.3 (14th ed. 1993) (“Both words [Native and American] are capitalized when referring to an American Indian; when the reference is to any native-born American, native is lowercased: native American.”). I imagine Professor Porter would be as disconcerted as I to suppose that all that separates “us” from “them” is the “shift” key.

For a provocative analysis exploring “how groups and group identity can be used and misused to achieve a particular purpose,” see Melissa L. Tatum, Group Identity: Changing the Outsider’s Perspective, 10 GEO. MASON L. REV. 357, 358 (2000). Professor Tatum writes:

Since the beginning of time, people have used groups to achieve particular purposes and have manipulated group identity to make their task easier… Manipulations of group identity are especially successful when the group in question is a marginalized, politically powerless group. Before the marginalized group can seek meaningful reform or oppose particular legislative efforts, the group must first battle against the
manipulation of its own identity.

Id. at 395.

16. As Professor Porter explains in a previous article, the Seneca term Ongwehoweh may be translated "Indian" or "First" people," Robert B. Porter, Building a New Longhouse: The Case for Government Reform Within the Six Nations of the Haudenosaunee, 46 BUFF. L. REV. 805, 945 & n.460 (1998), as well as "real people," supra text accompanying note 10.

17. Supra note 16 and accompanying text.

18. Porter, supra note 6, at 108; supra text accompanying note 10.

19. Porter, supra note 6, at 140.

20. Id. at 169.

21. Id. at 177.

22. Id. at 108, 140, 169, 177; supra text accompanying notes 10, 18-21.

23. I will avoid wandering too far into the deeper sands of The Demise's related efforts to draw a "distinction between core Indians, ethnic Indians, and Indigenous citizens," Porter, supra note 6, at 141. I cannot refrain from observing, however, that to the extent the first and second of these labels refer to different ways in which individuals choose to "self-identify," id., there are, I believe, countless avowed "New Age" reincarnations of Pocahontas who qualify as "core Indians," "ethnic Indians," or both.

24. Among those whom The Demise effectively dismisses as merely "Native Americans" and hence not "real [Indian] people" are United States Senator Ben Nighthorse Campbell; former Assistant Secretary of the Interior for Indian Affairs Ada Deer; then-incumbent Assistant Secretary of the Interior for Indian Affairs Kevin Gover; former Idaho Attorney General Larry Echohawk; Joe Byrd, former principal chief of the Cherokee Nation of Oklahoma; the late Joe De La Cruz, former chairman of the Quinault Tribe; educator Dean Chavez; Democratic Party officials Janice Chilton and Frank LaMere; Washoe Tribe chairman Brian Wallace; and Marge Anderson, chief executive of the Mille Lacs Band of Ojibwe. See id. at 147-52; 156-58; see also infra notes 147-200 and accompanying text.

25. Supra note 16 and accompanying text.

26. See supra text accompanying note 19.

27. Supra note 16 and accompanying text.

28. Porter, supra note 6, at 173.

29. Id. at 108, 169, 177; supra text accompanying notes 10, 18, 20-22.

30. Porter, supra note 6, at 173

31. Id.; see also id. at 140 ("[S]ome have come to identify so strongly with being an American that they appear to have totally relinquished their status as citizens of their own Indigenous nations.").

32. Id. at 171, 172.

33. Id. at 153.

34. See supra note 24.

35. For a discussion of the United States Supreme Court's use of the "straw man" device in repressing the rights of Indian tribes, see John P. LaVelle, Sanctioning a Tyranny: The Diminishment of Ex parte Young, Expansion of Hans Immunity, and Denial of Indian Rights in Coeur d'Alene Tribe, 31 ARIZ. STATE L.J. 787, 833-37 (1999).

36. Supra note 16 and accompanying text.

37. But for the fact that Professor Porter did not merely agree to, but aggressively incited, a bout of scholarly pugilism, I might be worried that the present essay reproduces the same tragic paradox. See supra text accompanying notes 2-8.
Indian Participation in American Politics

38. *Supra* note 16 and accompanying text.


40. *Id.* at 110.

41. *Id.*

42. *Id.* at 107; *supra* text accompanying note 6.

43. Porter, *supra* note 6, at 140.

44. *See infra* notes 96-216 and accompanying text.

45. *Supra* note 16 and accompanying text.


47. *See Porter, supra* note 6, at 108, 163 (quoting U.S. Colonel Richard Henry Pratt, *quoted in* Nabokov, *supra* note 39, at 405); *supra* text accompanying note 39; *see also* Hertzberg, *supra* note 46, at 16 (“Pratt considered Carlisle as a way-station for reservation Indians who would then become quickly assimilated as individuals into the larger society. His slogan was, ‘Kill the Indian and save the man! ’”); Francis Paul Prucha, The Great Father: The United States Government and the American Indians 696 (1984) (footnote omitted) (“[Pratt] was only half jesting when he noted that there were about 260,000 Indians in the United States and twenty-seven hundred counties and suggested that the Indians be divided up and sprinkled, nine to a county, across the nation.”).

48. Philip S. Deloria provides an illuminating perspective on Indian education based on his years of experience in preparing Indian students for law school as director of the American Indian Law Center in Albuquerque:

We should be aware of the values the educational process inculcates along with the skills, but our anguish over the destruction of Indian culture by education is a sign of a lack of confidence in the vitality of Indian cultures.

... We can no longer abide the insult that to know more is a threat to our culture and identity.


49. A prominent nineteenth century missionary among my own people, the Santee Dakota, expressed this ethnocidal purpose in 1846: “As tribes and nations the Indians must perish and live only as men! With this impression of the tendency of God’s purposes as they are being developed year after year, I would labor to prepare them to fall in with Christian civilization that is destined to cover the earth.” American Board of Commissioners for Foreign Missions Papers 18.3.7.III:223 (deposited at Houghton Library, Harvard University; notational system devised by Harvard) (letter from S.R. Riggs to D. Greene, Apr. 29, 1846), *quoted in* Robert F. Berkhofer, Jr., Salvation and the Savage: An Analysis of Protestant Missions and American Indian Response, 1787-1862 7 (1965); *see also* Berkhofer, *supra*, at 151 (footnote omitted) (“The connection between coercive power, conversion, and civilization is most dramatically demonstrated in the mass baptisms and huge reading classes conducted by the missionaries in the prison and camp of the captive [Santee Dakota] Indians after the victorious white expedition in 1862.”).
50. CHARLES ALEXANDER EASTMAN, THE SOUL OF THE INDIAN [i] (1911) (adverting to the “hydra-headed faith” of Christian missionaries); infra text accompanying note 52.

51. Andy Abeita, then-governor of Isleta Pueblo, provides a memorable illustration of the persistence of classic nineteenth century-style Christian missionary bigotry in modern Indian communities in an incident reported in STAN STEINER, THE NEW INDIANS 102 (1968). Describing pueblo leaders’ 1962 interview of a Catholic monsignor whose religious views were suspected of being less than respectful, Steiner writes:

“[The monsignor] was specifically asked by a member of the pueblo if his ultimate aim was to destroy the pueblo tradition and religion,” the governor said.

‘I will spell it out for you so that you will not misunderstand. Y-E-S,’” the monsignor told the pueblo council. “Y-E-S. It is my duty.’”

Id. (quoting Andy Abeita, governor of Isleta Pueblo).

52. EASTMAN, supra note 50, at [i], 19-20, 21-22, 23, 24.

53. STEINER, supra note 51, at 107, 110 (quoting Rev. Vine Deloria, Sr.).


56. Marie Therese Archambault, Native Americans and Evangelization, in NATIVE AND CHRISTIAN, supra note 54, at 132, 139.

57. Archambault, supra note 56, at 135 (footnote omitted) (quoting BISHOP PEDRO CASALDALIGA, IN PURSUIT OF THE KINGDOM: WRITINGS 1968-1988 2-3 (1990)). Sister Archambault’s intimation of the relevance of authentic Christian insight for Indian people who suffer extreme persecution and affliction is reminiscent of Eastman’s observation that among the Santee Dakota of Minnesota, “the pioneer missionaries . . . secured . . . scarcely any converts until after the outbreak of 1862, when subjection, starvation, and imprisonment turned our broken-hearted people to accept Christianity, which seemed to offer them the only gleam of kindness or hope.” EASTMAN, supra note 50, at 65.


60. Id. at 56-57 (footnote omitted).

61. Id. at 56; supra text accompanying note 60.

62. STEINER, supra note 51, at 102 (quoting Andy Abeita, governor of Isleta Pueblo).


64. McElwain, supra note 63, at 83.

65. Id. McElwain explains that “Seneca hymns are not translations, because the necessity of adapting the Seneca words, which are generally much longer than their English counterparts, to the strict meter of the already existing tunes, prohibits anything approaching translation.” Id. The hymns McElwain analyzes are from “a small volume entitled Seneca Hymns, which was first published by the American Tract Society in 1834 and reprinted four times since, the latest in 1978.” Id. at 84.

66. Id. at 86-87.
Interestingly, McElwain points out that with respect to Seneca paraphrases of hymns based on Bible passages, "the Seneca viewpoint might be closer to the original psychology of the text than either rabbinical or Christian tradition." Id. at 96.

See supra notes 52-58 and accompanying text.

Baldridge, supra note 58, at 85; supra text accompanying note 58.

See supra text accompanying note 75.

Porter, supra note 6, at 109; supra text accompanying note 39.

See infra notes 106-216 and accompanying text.


See 25 U.S.C. § 461 ("On and after June 18, 1934, no land of any Indian reservation, created or set apart by treaty or agreement with the Indians, Act of Congress, Executive order, purchase, or otherwise, shall be allotted in severalty to any Indian.").


Porter, supra note 6, at 183.

Id. at 122; see also FELIX S. COHEN’S HANDBOOK OF FEDERAL INDIAN LAW 138 (Rennard Strickland et al. eds., 1982 ed.) (noting the extent of the loss of Indian land holdings as a result of the allotment policy).

Judith V. Royster, The Legacy of Allotment, 27 ARIZ. ST. L.J. 1, 6 (1995). Professor Royster writes: "[T]he [Supreme] Court has chosen to diminish tribal territories and to restrict tribal sovereign control over the territory that remains. By deciding cases in accord with the assimilation policy, the Court has undercut the sovereignty and territorial integrity of the Indian nations." Id.

See Porter, supra note 6, at 122.


See LaVelle, supra note 35, at 789-93 (discussing the "striking trend of anti-tribal adjudication by the Rehnquist Court").

My thinking on the subject of the fractionated heirship lands problem has been aided by conversations I have had over the past few years with Professor Kenneth H. Bobroff of the University of New Mexico School of Law, who has been researching this problem and who specifically articulated the "one-size-fits-all" criticism of the statutory schemes invalidated in Youpee and Irving. See also infra note 94.

See supra note 89 and accompanying text.

Porter, supra note 6, at 122.

Professor Bobroff writes:

Indian societies have recognized property rights in land in the past and continue to do so today, both formally and informally. The solution to the problem of fractionated title is not transfer to tribal ownership or fee status. Rather, the solution lies in tribal governments working with allotment owners to re-create functioning property systems to govern the transfer and inheritance of allotted lands, systems that meet local needs, address questions of facilitating efficient use and inheritance, and evolve to meet future conditions.

Id. at 1622.


If Federal Indian law tells us that if land ever passes into non-Indian hands, the tribe forever loses its gate-keeping authority over the land, then perhaps we are forced to respond with measures to keep that from happening. In their collective memories, oral traditions, or maybe dusty old law books, tribal communities have some potentially meaningful solutions to real problems — problems that will remain unsolvable if our thought processes remain confined within the restrictive walls of an Anglo-American property regime. Perhaps it is time that we, once and for all, conceptually set fire to Blackacre.

Id. at 464 (endnote omitted).

See United States v. Nice, 241 U.S. 591, 598 (1916) "[United States] [c]itizenship is not incompatible with tribal existence or continued guardianship, and so may be conferred without completely emancipating the Indians, or placing them beyond the reach of congressional regulations adopted for their protection."). quoted in Porter, supra note 6, at 134; see also Porter, supra note 6, at 135 (footnote omitted) ("Congress has . . . continued to recognize Indians as citizens of separate nations. . . . Congress . . . has recognized since America's founding that Indians retain citizenship in their own Indigenous nation.").


Indeed, this technique of rummaging through the antiquated, anti-tribal opinions of obscure nineteenth century federal officials to construct an oppressive proposition concerning the rights of Indian tribes today is eerily reminiscent of the Supreme Court's similar methodology in Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978), for holding that "Indian tribes do not have inherent jurisdiction to try and to punish non-Indians" because such jurisdiction is " 'inconsistent with their [inferior] status.' " Id. at 208, 212 (quoting Oliphant v. Schlie, 544 F.2d 1007, 1009 (1976) (decision below) (emphasis added by the Supreme Court)). For criticism of this technique, see, e.g., Robert Laurence, Full Faith and Credit in Tribal Courts: An Essay on Tribal Sovereignty, Cross-Boundary Reciprocity and the Unlikely Case of Eberhard v. Eberhard, 28 N.M. L. Rev. 19, 46 (1998) (footnotes omitted) ("The majority opinion in Oliphant, written by then-Justice Rehnquist, adroitly constructed what it called an "unspoken assumption," shared by the three branches of the federal government, that tribes had no criminal jurisdiction over non-Indians.

572
Creatively mixing together a witches’ brew of unpassed legislation, withdrawn Attorney General’s opinion, dictum from an obscure case, and selective quotation from cases and treaties, the Court was able to find that the Congress, the Executive and the Judiciary had all implicitly assumed that tribal criminal jurisdiction was so limited.

99. Porter, supra note 6, at 112; supra text accompanying note 97.
100. Porter, supra note 6, at 176.
101. Id.
102. Id. at 117 (quoting Merrill E. Gates, Land and Law as Agents in Educating Indians, in SEVENTEENTH ANNUAL REPORT OF THE BOARD OF INDIAN COMMISSIONERS 17-19, 26-35 (1885), reprinted in AMERICANIZING THE AMERICAN INDIANS: WRITINGS BY THE “FRIENDS OF THE INDIAN” 1880-1900 45, 52 (Francis Paul Prucha ed., 1973)).
103. Professor Porter summarizes the benevolent aspects of his proposal as follows:

The [Choice of Citizenship Act] forces the question of whether an Indian will retain their dual citizenship status. While it might be said that this proposal poses a cruel choice — whether to retain American citizenship or indigenous citizenship — it does so in a way that brings the issue of consent back into the equation. The Indian Citizenship Act of 1924 denied the opportunity for Indigenous people to consent to the conferral of American citizenship. The proposed Choice of Citizenship Act would simply restore this element of choice.

Id. at 181.
104. See, e.g., id. at 175, 178, 182 (adverting to the need “to decolonize . . . federal Indian control law”); see also supra text accompanying note 2 (same).
105. Porter, supra note 6, at 110; see also id. at 181 (summarizing the argument that the proposed Act would restore choice); supra note 103.
106. Porter, supra note 6, at 168, 176, 179 (adverting to “the virus of Americanism” spawned by “the legacy of American colonialism”).
107. See supra text accompanying notes 27-33.
108. Porter, supra note 6, at 140 (emphasis added); supra note 31.
109. Porter, supra note 6, at 151 (first emphasis added).
110. Id. at 153 (emphasis added); supra text accompanying note 33.
111. See supra text accompanying note 34.
112. See Porter, supra note 6, at 176 (“[B]ecause of the way in which the United States colonized Indigenous peoples — by transforming both heart and mind — most Indigenous peoples, in particular the Native Americans, may not even be cognizant of the fact that they are victims of a concerted colonial effort to transform their political identity.”).
113. Id. at 170.
114. Id. (footnote omitted). In an accompanying footnote, Professor Porter appends an intriguing self-rebuttal, of sorts, to his accusation: “In important respects, this concession is not a complete one because Indian identity operates at a number of different levels, i.e., tribal, regional, and national.” Id. at 183, n.384.
115. Id. at 172; supra text accompanying note 32.
116. Porter, supra note 6, at 110; supra text accompanying note 40.
117. See supra notes 46-79 and accompanying text.
118. Porter, supra note 6, at 169-70.
119. See BOWDEN, supra note 59, at 194; supra text accompanying note 77.
120. See Porter, supra note 6, at 174.

The words “Red Power” were first used in public gatherings in the mid-1960s. Among the earliest reported uses of the term were declarations by Mel Thom and other National Indian Youth Congress [sic] members at the 1964 American Indian Capital Conference on Poverty in Washington, DC, and by Vine Deloria Jr. during the 1966 convention of the National Congress of American Indians (NCAI).

Id. at 13 (editors’ introduction to reprint of Declaration of Indian Purpose, American Indian Chicago Conference, June 13-20, 1961); see also David Wilkins, An Inquiry into Indigenous Political Participation: Implications for Tribal Sovereignty, 9 KAN. J.L. & PUB. POL’Y 732, 745 (2000) (“The term ‘Red Power’ has been attributed to Vine Deloria, Jr., then the Executive Director of the National Congress of American Indians.”).

See supra notes 13-15 and accompanying text. But see infra note 139 and accompanying text (adverting to a contemporary appropriation of the term “Red Power”).

In fairness, while The Demise refers to “AIM and the Red Power movement” as a unit, see id. (emphasis added) (stating that “it [AIM and the Red Power movement] eventually moved toward violence”), Professor Porter may have intended to maintain the distinction noted by Professor Nagel, whose comments about “Red Power” The Demise heavily relies on and extrapolates: “Although AIM and the tradition of activism it fostered remain salient forces in American Indian life, Red Power protest declined during the late 1970s and 1980s.” Nagel, supra note 126, at 176 (footnote omitted), cited in Porter, supra note 6, at 144 n.240.

Porter, supra note 6, at 145 (quoting Nagel, supra note 126, at 140).


Porter, supra note 6, at 145.

Id.; supra text accompanying note 131. For additional discussion concerning The Demise’s rejection of Indian involvement in the fight against racism, see infra notes 179-216 and accompanying text.
137. Porter, supra note 6, at 145; supra text accompanying note 131.


140. Id.

141. Id.; see also Voices from Wounded Knee, 1973: In the Words of the Participants 96 (1974) (quoting speech of Iroquois leader Oren Lyons), reprinted in Rebecca Tsosie, Sacred Obligations: Intercultural Justice and the Discourse of Treaty Rights, 47 UCLA L. Rev. 1615, 1644 (2000) (alteration in original) (“We support the Oglala Sioux Nation or any Indian nation that will fight for its sovereignty. . . . The issue here at Wounded Knee is the recognition of the treaties between the United States government and the sovereign nations that were here before.”). But see Porter, supra note 6, at 144 (“AIM and the Red Power movement . . . eventually moved toward violence, such as the siege at Wounded Knee.”).

142. Porter, supra note 6, at 145.

143. Id. at 146; supra text accompanying note 131. Of course, problems for Indian tribes have arisen, and will continue to arise, as a result of “romantic” (and hence reductionist) popular impressions and propaganda concerning the significance of Indian activism. For an important discussion of these problems, see Deloria, supra note 48, at 203-07. Deloria writes:

Indians did not discover they were Indians in the 1970s. We were not reborn; we were simply noticed. . . . [T]hose who were Indians all along can be forgiven if they feel, now that the nation’s attention has moved to other things, that the real issues of Indian cultural survival were not addressed at all. We have returned to the time when the country contemptuously appoints as our spokesmen non-Indians who wish they were Indians.

There were many good things about this surge of energy, but we failed to move beyond sheer exuberant self-affirmation to consolidate the gains made possible by several years of worldwide interest in and support for Indians. America did not end the era with a greater understanding of the complex interplay between Indian culture, Indian poverty, and the practical issues facing Indian tribal governments and federal policy. If anything, when the nation’s attention wandered, it carried with it an even more pronounced cultural stereotype of what it wanted its Indians to be. And we Indians ourselves are left manipulating code words of tribal sovereignty rather than undertaking the more disciplined and less romantic tasks of dealing realistically with the issues we face today.

Id. at 204.

144. Porter, supra note 6, at 146; supra text accompanying note 131.

145. Professor Elizabeth Cook-Lynn’s compelling critique of Edward Lazarus’s controversial book Black Hills, White Justice resonates with a similar faith:

[F]ederal Indian policy and law is an evolving process. If justice for Indians has not been attained through the courts and political processes, . . . it is appropriate for all of us who dare to plunge into the treacherous history of Black Hills, White Justice to continue to believe in justice as an American ideal, which will lead us to seek new methods for rendering justice to America’s first nations . . . .
LaVelle

Though Lazarus rejects the hope that Americans have the will for a fair settlement of [the Black Hills] case, which means the return of lands, the Sioux continue to believe in the potential for American justice and, at this moment at least, do not seem to be giving up their demands for land reform in the Black Hills. . . .

What is sadly missing from this scholarship . . . is the warrior spirit of Oyate. Also missing is the faith that America can live up to its ideals.


146. This “view” is reminiscent of the profound response of a tribal elder to the question “What can we do to Americanize the Indian?” given expression in the early 1950s by then-Commissioner-designate of Indian Affairs Dillon S. Myer, who oversaw both the federal campaign to “terminate” Indian tribes and, previously, the United States’ detention of Japanese-Americans in concentration camps during World War II, Felix S. Cohen, Americanizing the White Man, 21 The Am. Scholar 177, 177 (1952) (quoting then-Commissioner-designate of Indian Affairs Dillion S. Myer). To Myer’s paternalistic inquiry, the Indian elder replied:

You will forgive me . . . if I tell you that my people were Americans for thousands of years before your people were. The question is not how you can Americanize us but how we can Americanize you. We have been working at that for a long time. Sometimes we are discouraged at the results. But we will keep trying. And the first thing we want to teach you is that, in the American way of life, each man has respect for his brother’s vision. Because each of us respected his brother’s dream, we enjoyed freedom here in America while you people were busy killing and enslaving each other across the water. The relatives you left behind are still trying to kill each other and enslave each other because they have not learned there that freedom is built on my respect for my brother’s vision and his respect for mine. We have a hard trail ahead of us in trying to Americanize you and your white brothers. But we are not afraid of hard trails.

Id. at 177-78 (quotation marks omitted) (quoting speech of Indian elder), reprinted in Williams, The Algebra, supra note 9, at 222; cf. FRED M. HANS, THE GREAT SIOUX NATION 533 (Ross & Haines, Inc., 1964) (1907) (quoting speech of Oglala Lakota Chief Crazy Horse, Apr. 27, 1877), reprinted in John P. LaVelle, Rescuing Paha Sapa: Achieving Environmental Justice by Restoring the Great Grasslands and Returning the Sacred Black Hills to the Great Sioux Nation, 5 Great Plains Nat. Resources J. 40, 49 n.34 (2001) (“‘We do not hunt the troops, and never have, they have always hunted us on our own ground. They tell us they want to civilize us. They lie; they want to kill us, and they sneak upon us when we are asleep to do it. I only wish we had the power to civilize them. We would certainly do so; but we would do it fairly, we would not kill their women and children in their own country and in their beds. And if we gave them a home to live in and told them as long as they stayed there they would be safe, they would be safe there. We would not go there the next day and kill them all, as they do with us.’”).

147. Porter, supra note 6, at 147.
Indian Participation in American Politics


149. See id. at 147-48 (citing Mark N. Trahant, Seeking Representation: Native Electoral Strategies in the U.S., NATIVE AMERICAS, Fall 1996, at 30).


151. Id. (quoting Idaho Attorney Gen. Larry Echohawk, quoted in Stanfield, supra note 148, at 1756) (alteration in original).

152. Id. at 148 (quoting Cherokee Nation Principal Chief Joe Byrd, quoted in Chief Byrd Speaks During Democratic Convention in Chicago, CHEROKEE ADVOC., Sept. 30, 1996, at 1) (second alteration in original).

153. Id. (quoting Dean Chavers, quoted in Tribe’s Voting Clout Doesn’t Reach Full Potential, INDIAN COUNTRY TODAY, Jan. 5, 1995, at A5) (alteration in original).

154. Id. at 153; supra text accompanying note 33; supra text accompanying note 110.

155. Porter, supra note 6, at 153-54.

156. Interview with Frank LaMere, Democratic National Committee member, in Sioux City, Iowa (Oct. 9, 2000) [hereinafter LaMere Interview].

157. Id.

158. Id.

159. Cf. Porter, supra note 6, at 173 (footnote omitted) (citing Porter, Strengthening Tribal Sovereignty Through Government Reform, supra note 7, at 90) (“[I]ndigenous sovereignty is a reflection of the degree to which an Indian people believe in the right to define their own future, the degree to which they have the ability to carry out that belief, and the degree to which their collective actions are recognized by others within the tribal nation and the outside world.”).

160. LaMere Interview, supra note 156.

161. Porter, supra note 6, at 151 (emphasis added); supra text accompanying note 109.

162. LaMere Interview, supra note 156; cf. Deloria, supra note 48, at 203 (“[M]ost tribal problems are due to the fact that tribal interests are not adequately articulated at key points in a federal process that is largely oblivious to Indians.”).

163. LaMere Interview, supra note 156.

164. Cf. Porter, supra note 6, at 182 (“Indian nations should minimize the role that non-Indian lawyers play in representing their interests in Washington, and appoint citizens of their own nations as ambassadors to represent them in diplomatic negotiations with the United States and its governmental subdivisions.”).

165. LaMere Interview, supra note 156.

166. Id.

167. Id.

168. See Porter, supra note 6, at 126-28 (discussing Indian resistance to the conferral of American citizenship on Indian people); id. at 158-61 (discussing “Behavioral Evidence of Indian Rejection of American Citizenship”).


170. LaMere Interview, supra note 156.

171. Porter, supra note 6, at 151 (footnotes omitted) (alteration in original) (quoting Democratic National Committee Member Frank LaMere and U.S. Sen. Bob Kerrey, quoted in Karen Lincoln Michel, Working the System: Profile of Frank LaMere, Democratic Party Activist, NATIVE
LaVelle

AMERICAS, Fall 1998, at 18, 19, 21).

172. *Cf.* Cohen, *supra* note 146, at 179-80 (“[I]t is out of a rich Indian democratic tradition that the distinctive political ideals of American life emerged. Universal suffrage for women as well as for men, the pattern of states within a state that we call federalism, the habit of treating chiefs as servants of the people instead of as their masters, the insistence that the community must respect the diversity of men and the diversity of their dreams — all these things were part of the American way of life before Columbus landed.”).

173. LaMere Interview, *supra* note 156.


175. LaMere Interview, *supra* note 156.

176. Porter, *supra* note 1, at 13 (footnote omitted) (“To me, tribal lawyers must be sovereignty warriors if the Indian nations are to survive.”).

177. Porter, *supra* note 6, at 110.


> Every day, sounds emanate from the federal, state, and local governments that spell disaster for our nations. Budget cutbacks, attacks on gaming, resistance to self-governance programs — all of these threats signal an ever-increasing hostility from the government that supposedly has a trust responsibility for our well-being. Nonetheless, I believe that while we can clearly point to the reasons why our nations are facing these threats to our existence, it is up to us to defend ourselves against them. True sovereignty means nothing less.

> To fight these sovereignty battles, we need good, strong lawyers in the trenches — our sovereignty warriors. Thankfully, we have many capable advocates representing our interests in the halls of Congress, the courts, and the agencies.

*Id.* *But see* Porter, *supra* note 6, at 146 (footnote omitted) (“[B]y the late 1960s, the first generation of Indigenous lawyers began to graduate from American law schools . . . [T]hese new Native lawyers had been trained as part of the colonizing nation’s legal system and were thus committed to working within that system for the betterment of Indigenous peoples.”).

179. *See supra* notes 106-21 and accompanying text.

180. Porter, *supra* note 6, at 154 (emphases added).

181. *Id.* (emphasis added) (footnote omitted) (citing United States v. Rogers, 45 U.S. (4 How.) 567, 573 (1846)).

182. *See supra* note 35 and accompanying text.

183. Porter, *supra* note 6, at 154 (emphasis added).

184. *Id.* at 156.

185. *Id.*

186. *Id.* at 158.

187. *Id.* (emphasis added).

188. *Supra* note 16 and accompanying text.


Indian Participation in American Politics

193. *Id.* at 156 (quoting *Reflections on Racism*, supra note 189, at 8-9); *supra* text accompanying note 189.


195. *Id.*

196. *Id.*


198. Porter, *supra* note 6, at 158.

199. *Id.* at 157.

200. *Id.* (accusing Chief Anderson of “mistakenly assuming that Indians are like racial minorities because of a common desire to resist assimilation”).


202. *Id.* at 228; *supra* text accompanying note 196.


204. Porter, *supra* note 6, at 156.

205. *Id.* (quoting *ADVISORY BOARD TO THE PRESIDENT’S INITIATIVE ON RACE, ONE AMERICA IN THE 21ST CENTURY: FORGING A NEW FUTURE* 39 (1998) [hereinafter *ADVISORY BOARD*] (statement of undisclosed Indian witness)).

206. *Id.*


208. *Id.* at 208, 212 (quoting Oliphant v. Schlie, 544 F.2d 1007, 1009 (1976) (decision below) (emphasis added by the Supreme Court)).

209. *See* 21 U.S. (8 Wheat.) 543, 574 (1823) (relying on the European doctrine of “discovery” to deny Indian tribes the sovereign power to alienate tribal property); *see also GETCHES ET AL., supra* note 9, at 41-72 (discussing the origins and impact of the European doctrine of “discovery” within the field of federal Indian law). *See generally* ROBERT A. WILLIAMS, JR., *THE AMERICAN INDIAN IN WESTERN LEGAL THOUGHT: THE DISCOURSES OF CONQUEST* (1990).

The Supreme Court began importing the racist assumptions underlying the doctrine of “discovery” into its decisionmaking concerning the scope of tribes’ inherent civil jurisdiction in the heavily criticized case of *Montana v. United States*, 450 U.S. 544 (1981). In *Montana*, the Court relied on *Oliphant’s* embrace of the “discovery”-derived view of Indian tribes as racially inferior peoples in asserting that “the exercise of tribal power beyond what is necessary to protect tribal self-government or to control internal relations is inconsistent with the dependent status of the tribes, and so cannot survive without congressional delegation.” *Id.* at 564. Since 1981, the Rehnquist Court has wielded this racist *Oliphant/Montana* strain of “judicially made Indian law,” *Oliphant*, 435 U.S. at 206, to drastically impound tribes’ inherent sovereign powers. *See*, e.g., Nevada v. Hicks, 121 S. Ct. 2304 (2001) (holding that *Montana’s* “discovery”-derived presumption against inherent tribal sovereignty applies to Indian lands as well as non-Indian lands within reservation boundaries and operates to deprive tribes of inherent power to regulate or adjudicate the conduct of state police officers in executing on-reservation search warrants issued pursuant to allegations of off-reservation crime); Atkinson Trading Co. v. Shirley, 121 S. Ct. 1825 (2001) (extending *Montana’s* “discovery”-derived presumption against inherent tribal sovereignty in
invalidating the Navajo Nation’s hotel occupancy tax as applied to nonmembers on non-Indian fee lands within reservation boundaries); Strate v. A-I Contractors, 520 U.S. 438, 442 (1997) (extending Montana’s “discovery”-derived presumption against inherent tribal sovereignty in concluding that “tribal courts may not entertain claims against nonmembers arising out of accidents on state highways [running through a tribe’s reservations], absent a statute or treaty authorizing the tribe to govern the conduct of nonmembers on the highway in question”); South Dakota v. Bourland, 508 U.S. 697 (1993) (purporting to discern congressional intent to divest Tribe of power to regulate hunting and fishing by nonmembers in statute taking reservation lands for federal dam project but silent on tribal regulatory jurisdiction, and refusing to consider whether such jurisdiction is retained under exceptions to Montana’s “discovery”-derived presumption of the “implicit divestiture” of tribal sovereignty); Brendale v. Confederated Tribes & Bands of the Yakima Indian Nation, 492 U.S. 408, 425-26 (1989) (opinion of White, J., joined by Rehnquist, C.J., and Scalia & Kennedy, JJ.) (announcing Court’s judgment denying tribal zoning authority over portion of reservation where nonmember fee lands predominate and opining that such result follows from the Justices’ endorsement of the “discovery”-derived view, as manifested in Oliphant and Montana, inter alia, that “[a] tribe’s inherent sovereignty . . . is divested to the extent it is inconsistent with the tribe’s dependent status . . . .”).

210. Porter, supra note 6, at 110; supra text accompanying note 177.
211. See supra text accompanying notes 180-87; cf. Porter, supra note 6, at 139 (footnote omitted) (emphasis added) (“Individual Indians have challenged various discriminatory state measures and have succeeded in ensuring equal protection of the laws in a manner similar to other racial minorities.”); id. at 158 (emphasis added) (“Fundamentally, when Indian tribal leaders talk about American ‘racism’ toward reservation Indians, a large part of what they are really . . . referring to is ‘xenophobia’ — a fear of foreigners. When Indians are attacked personally by Whites . . . the discrimination is driven by a cocktail of hatred, jealousy and cultural supremacy spawned by generations of conflict over life, land and way of life. This kind of discriminatory treatment might more properly be thought of as national origin, rather than race discrimination. This might be less true with those Indians living outside of an Indigenous nation, who could argue that discriminatory treatment faced by them is most likely race discrimination.”).

212. Porter, supra note 6, at 158.
213. Id.
214. Id. (“American, as well as Indigenous ignorance of America’s colonial history makes it difficult to fully develop the sophistication of thought necessary to parse away the labeling and rhetoric about race from the substance about sovereignty.”).

215. Id.
216. Id. at 156 (quoting ADVISORY BOARD, supra note 205, at 40).
217. Id. at 171.
218. BRUCE COCKBURN, Lovers in a Dangerous Time, on WAITING FOR A MIRACLE (Gold Castle Records 1987).
219. LaMere Interview, supra note 156; supra text accompanying note 170.
220. Elizabeth Cook-Lynn, Land Reform, 14 WICAZO SA REV., No. 1, 103, 112 (Spring 1999).