

Master of Public Administration
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Treaty of Indigenous Nations Conference

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Introduction

In October 2004, the 61st Annual Conference of the National Congress of American Indians (NCAI) was held in Fort Lauderdale, Florida. At the conference a Special Committee on Indigenous Nations Relationships made a recommendation to explore the idea of creating a United League of Indigenous Nations. They proposed creating a treaty between indigenous nations of the Pacific Rim beginning with the countries of Canada, Australia and New Zealand. Toward that end, they drafted the following principles of indigenous nation treaty making:

1. Indigenous nation sovereignty is inherent.
2. Indigenous nations have a right to enter into international agreements independent of any non-indigenous government.
3. Indigenous nation treaty-making respects the principle of “non-interference” in the affairs of each participating nation.
4. Participating nations are responsible for setting “conditions for participation” and a process for establishing the credentials of participants.

The special committee also drafted possible goals and objectives for an Indigenous Nations Treaty as a starting point. Goals included (1) formulate joint strategies and initiatives on common issues and concerns; (2) develop a structure for international relationships between indigenous nations; and (3) create rules and procedures for indigenous nation diplomacy grounded in the culture and traditions of indigenous peoples.

Treaty objectives drafted included establishing a database of indigenous nation law regarding their cultural property and its primacy over any other jurisdiction -- national and international; establishing a framework for mutually beneficial and profitable trade and commerce; and sponsoring research by native scholars that responds to the needs of indigenous nations. Once these goals and objectives were established, NCAI member Alan Parker was appointed as the NCAI delegate assigned to determine level of interest and coordinate the project.

New Zealand Meeting on Treaty Proposal

The Maori of New Zealand sent an invitation to U.S. and Canadian indigenous nations to hold the first official Treaty of Indigenous Nations Conference at the Maori University of Awanuiarangi in Whakatane, New Zealand. Feedback from the Maori's was considered crucial to next steps by U.S. and Canadian indigenous nations and the offer was accepted. Evergreen students from the Masters in Public Administration Tribal Governance Program were invited to participate at the conference. Four students accepted the invitation joining faculty member Alan Parker in Whakatane, New Zealand the first week in December of 2005. Students participated by presenting to the delegation important topics for consideration in drafting an Indigenous Nations Treaty in line with the draft treaty objectives drafted by the NCAI Special Committee.

Representation at the conference included Maori, Canadian First Nations, American Indian Tribes, and Hawaiian Islanders. There was general consensus that there was interest from all surrounding the idea of creating a United League of Indigenous Nations. It is important to note that all nations represented agreed that the issues presented were shared areas of concern for all – cultural property rights, trade

and commerce, issues of sovereignty, culture and tradition. There was also agreement the development of a structure for international relationships between indigenous nations that focuses on formulating joint strategies and initiatives on common issues and concerns could be beneficial to all. Next steps were discussed and an additional meeting on this topic will be held at the next NCAI Conference in 2006.

The subject of my presentation topic at the New Zealand conference was Cultural Property Rights. Following is information I found while researching this topic starting with certain laws in the U.S. with relevance. Also, included in this report is information about the culture of the Maori people, specifically customs and traditions that the Evergreen delegation experienced while in Whakatane.

Cultural Property Rights

The cultural properties of American Indians and Alaska Natives have been under ever increasing danger of theft, expropriation and exploitation. Cultural properties are being taken without permission and used for commercial purposes. Native people possess knowledge of medicinal and nutritional uses of plants, herbs and other natural substances and resources based on their understanding and relationship to the natural world, mother earth. Private businesses around the world are seeking to exploit and sell this knowledge. Private business and individuals do this by means of copyrights, patents, trademarks and other legal mechanisms.

Cultural Resource Preservation Laws

In the United States (U.S.), cultural resource preservation laws have gradually progressed from promoting scientific research and information gathering to recognition of American Indian cultural rights. American Indian cultural rights protected today

include control over the disposition of human remains of lineal descendants, the return or repatriation of objects of cultural patrimony, religious freedom and the practice of sacred rituals, access to sacred sites on federal property, and consultation with federal agencies regarding preservation and protection of cultural resources. The most significant of these laws follows.

The Antiquities Act (1906)

The collection of American Indian personal property, including remains of deceased, were routinely collected by the federal government during the nineteenth century which then ended up in federal collections in public museums and sometimes in individual personal collections. During the twentieth century, the passage of the Antiquities Act established a permitting requirement for excavation on federal lands. While the Act protected antiquities, it did not protect cultural rights. It also did not recognize tribal laws or tribal jurisdiction over Indian lands. Finally in 1974, the Antiquities Act was declared unconstitutionally vague for failing to define the term “object of antiquity” (Canby). While this act is still used today for the regulatory purpose of declaring national monument land, the Archaeological Resources Protection Act has superseded its permitting and prosecution sections.

The Archaeological Resources Protection Act (1979)

The Archaeological Resources Protection Act (ARPA) passed in 1979, strengthened federal control over “archaeological resources found on non-Indian federal lands” (Pevar). An important aspect of ARPA is it required that Indian Tribes be notified 30 days prior to issuance of a permit if excavation might result in harm to a tribe’s religious or cultural sites. Indians, however, are not required to obtain ARPA permits to

remove resources from their own reservations, because archaeological resources on Indian lands belong to the Tribes.

The National Historic Preservation Act of 1966

The National Historic Preservation Act of 1966 (NHPA) established a program for preserving historic properties in the United States. It requires federal agencies to “consider the effect of their activities on any district, site, building, structure, or object that is included in, or eligible for inclusion in, the National Register” (Pevar). It states that federal agencies must afford the Advisory Council on Historic Preservation, an independent federal agency whose members are appointed by the President, a reasonable opportunity to comment on such undertakings. The “reasonable opportunity to comment” portion of NHPA is accomplished through consultation of the federal agency with other interested parties. Consulting parties include the State Historic Preservation Officer (SHPO); Indian tribes and Native Hawaiian organizations; representatives of local governments with jurisdiction over the area of effect among others.

In 1992, the NHPA was amended to emphasize and strengthen the role of American Indians and Indian Tribes. The revised regulations now contain specific provisions for involving Indian Tribes when actions occur on tribal lands, with enhanced consultation with Indian Tribes and Native Hawaiian organizations. It also provides for Tribal Historic Preservation Officers (THPO's).

The Native American Graves Protection and Repatriation Act (1990)

The Native American Graves Protection and Repatriation Act (NAGPRA) was passed in 1990 and is probably the most important of these Acts to date. NAGPRA

acknowledges the government-to-government relationship between the United States and Indian Tribes. It requires all federal agencies with the exception of the Smithsonian Institution, to consult with lineal descendants, Indian Tribes, and Native Hawaiian organizations prior to intentional excavations and immediately following inadvertent discoveries of cultural items on federal or tribal lands. It also requires federal agencies and museums that receive federal funds to inventory and, if requested, to repatriate Native American cultural items to lineal descendants or culturally affiliated Indian tribes and Native Hawaiian organizations. Cultural items under NAGPRA include human remains, associated and unassociated funerary objects, sacred objects, and objects of cultural patrimony.

It is interesting to note that the Smithsonian Institution was specifically exempted from NAGPRA due to the earlier passage of the National Museum of the American Indian Act of 1989 which was the first federal legislation to address disposition of American Indian cultural property. It allows the Smithsonian to establish the Museum of the American Indian and to repatriate cultural resources. However, it does not cover the process for repatriation in the way that NAGPRA does.

NAGPRA requires federal land managers to engage in prior consultation with potentially affected lineal descendants, Indian Tribes, and Native Hawaiian organizations. Consultation, in addition to immediate notification, must also take place with appropriate Indian Tribes upon inadvertent discovery of cultural items on federal lands.

The American Indian Religious Freedom Act (1978)

Most American Indians consider certain natural resources as having religious significance such as sacred sites or native plants used in ceremonies. To make certain that American Indians receive protections equal to those of the First Amendment Free Exercise clause, Congress passed the American Indian Religious Freedom Act (AIRFA) in 1978. AIRFA protects and preserves the inherent right of American Indians, Eskimos, Aleuts, and Native Hawaiians to believe, express, and exercise the traditional religions of their nations including access to sites, use and possession of sacred objects, and the freedom to worship through ceremonies and traditional rites. AIRFA is considered to be the first significant cultural resource preservation law enacted specifically for American Indians.

Additionally, in 1996, President Clinton signed Executive Order 13007, Indian Sacred Sites. This Executive Order provided that in managing federal lands, federal agencies, to the extent practicable, permitted by law shall accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and avoid adversely affecting the physical integrity of such sacred sites. The President's Order also stated that what is or is not a "sacred site" is determined only by American Indians and is not subject to interpretation by federal agency representatives (Sullivan). This was a groundbreaking legitimacy that is to be further considered later in this paper.

The Subsistence Way of Life

For many Indigenous Nations the subsistence way of life is crucial for their physical and cultural survival. For example, in Alaska many Native villages do not have access to fresh meat, fish or produce except through the subsistence harvest. As important as

Native hunting and fishing rights are to Alaska Natives' physical economic, traditional, and cultural existence, the State of Alaska has been and continues to be reluctant in recognizing or even acknowledging the importance of the subsistence way of life. The State of Alaska seems to view subsistence as nothing more than the taking of a natural resource and as something that all citizens of the state should be entitled to engage in on an equal opportunity basis (brascoupe). They do this with little distinction between commercial, sport and trophy hunting and subsistence needs. In addition, the question of whether Native villages in Alaska have nonexclusive aboriginal fishing rights remains in question as this issue plays out in the courts.

Current Issues

The cultural properties of indigenous peoples have been under ever increasing danger of theft, expropriation and exploitation. They are being taken without permission and used for commercial purposes. Private businesses around the world seek to exploit and sell this knowledge through copyrights, patents, trademarks and other legal mechanisms.

The problem for indigenous people is how to protect their cultural properties when the legal mechanisms that have been established by the world of global commerce don't work. In addition, when Indigenous people try to assert their rights to cultural property they are often denied these rights in the courts and forums established by the non-indigenous world to protect individual property rights and not the rights of Indigenous communities or an Indigenous nation's property rights.

Current Example of Abuse

In Alaska, the Gwich'in people are working to protect the Arctic National Wildlife Refuge (ANWR) from oil development. The Gwich'in, which means 'People of the Caribou', are the northernmost Indian nation living across northeast Alaska and northwest Canada. There are about 7,000 Gwich'in people who live on or near the migratory route of the Porcupine Caribou Herd (Gwich'in). For thousands of years, the Gwich'in has relied on the caribou for food, clothing and tools. The calving grounds of the Porcupine River caribou herd inside ANWR are considered sacred. The Gwich'in call it "The Sacred Place Where Life Begins." The Gwich'in will not journey into these sacred grounds for hunting, even in times of great need or food shortage (Gwich'in). Oil development in ANWR would not only harm the caribou and threaten the future of the Gwich'in people, but would also threaten more than 180 species of birds, and numerous mammals including polar bears, musk ox, wolves, wolverine, moose, Arctic and red foxes, black bears, brown bears, and the white Dall sheep.

Every year since 2001, the Gwich'in have worked with a coalition of environmental groups and organizations to stop the U.S. Senate from approving oil drilling in ANWR. The current administration has promised to continue to press for the passage of this bill and the Gwich'in will continue their efforts to stop the oil development in ANWR (Gwich'in).

Conclusion Regarding Cultural Property Rights

There are significant differences between indigenous people's views of what constitutes traditional and cultural knowledge and the western world's views. The goal of indigenous nations is usually that of preservation versus innovation in the western

view – community vs. individual view. Only the indigenous people themselves should decide how best to protect their cultural properties as they are the custodians of this traditional knowledge.

While steps have been taken over the years to ensure certain rights to cultural property, abuses by state and federal government agencies continues. Considerations for what Indigenous Nations can do to prevent these continued violations of cultural property rights might include the uniting of Indigenous nations around the world to come together to define and establish cultural property rights that are put into a structure that ensures a legal requirement that takes precedence over any law of the nation state in which these Indigenous nations are located. This has already started with the concept of the establishment of a United League of Indigenous Nations recommended by the National Congress of American Indians. The issue of cultural property rights is but one of several items being discussed for inclusion in the goal of formulating joint strategies and initiatives on common issues and concerns. While the future of Indigenous Nations cultural property rights is uncertain, what is certain is that the fight to retain inherent rights as custodians of traditional knowledge will continue.

Maori Culture and Tradition

Delegates to the Treaty Conference in Whakatane, New Zealand were invited to stay at a Marae in Whakatane. The Marae is the place of greatest mana (prestige), place of greatest spirituality, a place that heightens people's dignity and a place in which Maori customs are given ultimate expression. According the Moari, "here they are able to stand upon the Earth Mother and speak" (Tauroa). Persons wishing to enter the Marae gather together outside the marae gates by a certain time and wait for the call of

welcome. Conference delegates did this on the first day of arriving at Whakatane. Te Powhiri (The Welcome) is not “performed” for every group of manuhiri who go onto a Marae and our delegation was very privileged to have experienced it (Maori FAQ). The Powhiri serves to ward off any evil spirits that may be present, ensuring a safe passage for the visitors across the Marae space to their seats.

When the tangata whenua (people of the Marae) are ready, one of them approaches the visitors waiting outside and indicates they are ready. Those who will speak are at the front of the group. As the group begins to move forward in response to the karanga (call of welcome), they do so in a respectful way and as a body moving together as one. We entered the Marae as a group and moved to a shaded seating area in the main yard in front of the main building. As soon as the tangata whenua saw that we were ready to proceed, a woman – kai karanga (the caller) performed a karanga (call). The Karanga incorporates a welcome to the particular area, both to the manuhiri and to the spirits of the dead. Each group honored the other as speeches were made and songs were sung in the native languages of participants paying homage to those whom they represent and those who have gone before. It was a very moving experience that had a power to it that you could feel even if you did not understand the words being spoken..

Visiting the Maori University

Wero literally means “to cast a spear” and it is a challenge that is accorded to distinguished visitors (Tauroa). On our first day of visit at Awanuiarangi we experienced the Wero challenge. Originally, the purpose of the wero was to determine whether the visiting party came in peace or in war. There is significance in the way that the taiaha

(spear) is held and swung and to the way that the taki (challenge dart) – which may be a small carved dart or a twig – is placed before the manuhiri. In our case the Taki was a twig. The wero was issued by a male, who began his “intimidation” from the ranks of the tangata whenua before the karanga was issued. According to Maori Protocol, if he places the taki parallel to the manuhiri, then he believes the manuhiri have come in peace; if he places the taki with the point towards the group, he believes that they have come for war. If he throws the taki at them – then that could mean trouble. Luckily for us, the taki was placed parallel to us, meaning he believed we came in peace. When Alan Parker picked up the taki, he turned his back on the manuhiri and brought his taiaha (wooden spear) over his head with the point towards the Marae which is the signal for the manuhiri to come forward and the welcoming process began. At this point we received the signal to come forward. We were seated in a shaded seating area for the welcoming which was very similar to the welcoming we process we participated in at the Marae the day before.

I learned that the full significance of the wero stems from the traditional need of the Marae to determine the intent of their manuhiri. By accepting the wero, you take the first step signifying the beginning of an exchange between people. Next a spokesperson for the tangata whenua invited us to cross to the paepae (main speakers place) to hariru (shake hands) and hongiri (press noses) (Maori FAQ). The hongiri is associated with the hariru and we proceeded through a welcoming line where we participated in hariru and hongiri. Upon completion of the ceremonies at both the Marae and the university, we as visitors were free to move around on the Marae and the university.

I literally grazed my way through New Zealand starting with Te Whare kai (The Dining Room) at the Marae. I learned that evidence of a good marae is the size of the food storehouse (pataka). If the back functions well, the front will gain prestige and I have to say that we must have been staying at one of the most prestigious Marae's in New Zealand. The food was abundant and fantastic. Combined with singing and dancing, it was a cultural experience that I will never forget. We were treated as family with the warmth, respect and hospitality that is unsurpassed. After three very full days, I was saddened to leave. But I had another appointment on the South Island in Christchurch that I had to make to start the repatriation process for some ancestral remains of my tribe at the Canterbury Museum.

Repatriation at Canterbury Museum

To briefly describe my experience at the Canterbury Museum, it was also one I shall never forget. I spent the better part of an afternoon with Mr. Roger Fyfe, the Curator of Anthropology for the Museum. He presented me with the information about the Pawnee remains that had been sold to the museum on November 22, 1880 by a Professor H. Ward of Rochester, New York. The book containing the documented evidence of indigenous peoples remains sold to the museum during the later 1800's was overwhelming. There was documentation for more remains than I had expected. All remains were of Nubian, Peruvian, and American Indian ancestry. I was saddened and had sick feeling in the pit of my stomach for how this Professor Ward was able to obtain so many indigenous peoples remains with such clear documentation as to where they were from, when they died, and who their people were. At some point, I want to do further research on Professor Ward to learn more about him and hopefully discover how

he obtained these remains to sell to museums all over the world for less than \$10 per item.

Today, the museum and the Maori understand the importance of returning these remains to their rightful place and are treating the remains with the utmost respect. Presently, human remains are held in a “wahi tapu”, a crypt that has been blessed by Maori elders and ministers. The policy and procedures of the Museum in respect of issues involving human remains nominates the Curator of Anthropology as the first point of contact. Additional discussions are held with the Director, Anthony Wright, who consults with “Ohaki o Nga Tipuna” Committee of the Museum Board of Governance. This committee is the museum’s Maori advisory group. Mr. Fyfe, Curator of Anthropology requested permission for the Museum to commission the Maori’s to make a Maori burial box specifically for the Pawnee remains to be returned to the United States. Permission was granted as this was seen as a most respectful way in which the remains may be transported from New Zealand back home to Pawnee, Oklahoma.

I will be returning to the Museum hopefully before the end of this year after the Ohaki o Nga Tipuna approve the transfer of the remains and the burial box is completed. This was a very emotional experience from which I am still trying to understand. I have a whole new respect for my uncle Francis Morris who has responsibility for repatriation for the Pawnee Tribe. It is quite possibly one of the most difficult jobs a tribal member must perform in trying to bring remains home from various locations around the world. Learning the stories behind how Indigenous remains were acquired and sold is perhaps another paper for another time.

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