

The Abraham Lincoln Lecture Series

This series aims to reflect the principles
that Abraham Lincoln championed:
education, justice, tolerance,
and union.

GERALD VIZENOR

Fugitive Poses

Native American Indian Scenes
of Absence and Presence

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Native Transmotion

HEARSAY SOVEREIGNTY

Charles Aubid was a sworn witness in federal court that autumn more than thirty years ago; he raised his hand, heard the oath for the first time in *anishinaabemowin*, the language of the *anishinaabe*, and then waved at United States District Judge Miles Lord.

Aubid was a witness in a dispute with the federal government over the right to regulate the wild rice harvest on the Rice Lake National Wildlife Refuge near the East Lake Reservation in northern Minnesota.

The *anishinaabe* natives have harvested *manoomin*, wild rice, for more than three centuries. This nutritious native cereal, referred to as "fool's oats" by early explorers, is a trickster creation and sustenance to the *anishinaabe*; the traditional autumn harvest has been observed since the early fur trade in the territory. Today, *manoomin* is both a native tradition and a commodity.

Federal agents had assumed the authority to announce the wild rice season and regulate the harvest, a bureaucratic action that decried a native sense of transmotion, survivance, and sovereignty.

Aubid, and many other *anishinaabe* witnesses, were in federal court to convince the judge to restrain the government from regulating the *manoomin* harvest on the national refuge. A century after the area had been ceded in treaties, the refuge was established by the government. William Falvey, the federal attorney, argued that control of the refuge was legal and that the natives in court were not elected to represent the interests of the reservation. Most of the native witnesses testified in *anishinaabemowin*, and their testimony was translated by two *anishinaabe* interpreters.

Sam Yankee, then an elected member of the Minnesota Chippewa Tribal Executive Committee, a federation of reservations in the state, explained that the *anishinaabe* had been granted the right

to continue the wild rice harvest. Actually, the *anishinaabe* had neither lost the rights of a traditional harvest, nor the transmotion of native sovereignty. These rights are inherent in most treaties.

Francis Paul Prucha points out in *American Indian Treaties* that in three early treaties the *anishinaabe* "retained hunting and fishing rights." The 1837 treaty, for instance, provided that the "privilege of hunting, fishing, and gathering wild rice, upon the lands, the rivers and the lakes included in the territory ceded, is guaranteed to the Indians, during the pleasure of the President of the United States."¹

Aubid, who was eighty-six years old at the time, testified in *anishinaabemowin* that he was present as a young man when the government agents told Old John Squirrel that the *anishinaabe* would always have control of the *manoomin* harvest. Aubid told the judge that there once was a document, but the *anishinaabe* always understood their rights in stories, not hearsay. John Squirrel was there in memories, a storied presence, and he could have been heard by the court as a visual trace of a parol agreement.

Falvey, the federal attorney, objected to the testimony, as he heard it in translation, as hearsay, and therefore not admissible as evidence. The judge agreed with the objection and explained to the witness that the court cannot hear as evidence what a dead man said, only the actual experiences of the witness.

"John Squirrel is dead," said Judge Miles Lord. "And you can't say what a dead man said." The judge waited for his words to be translated and then invited the witness to continue his story.

Aubid turned brusquely in the witness chair, bothered by what the judge said about John Squirrel. English was his second language, but he told his stories in *anishinaabemowin*, the language of his visual memories and native sovenance. Aubid wore spectacles with thick lenses; he squinted, and leaned into the line of sight, closer to the judge. He pointed at legal books on the bench and then shouted that those books contained the stories of dead white men.

"Why should I believe what a white man says, when you don't believe John Squirrel?" Aubid turned twice more in the witness chair and waited for the translation.

Judge Lord was deferentially amused by the analogy of native stories to court testimony, judicial decisions, precedent, and hearsay. "You've got me there," he said, and then considered the testimony of other *anishinaabe* witnesses.

Lord was humorous, generous, perceptive, and might have encouraged native resistance, but he did not seem to understand the precise reference to the presence of a fourth person in the story, "when you don't believe John Squirrel." Aubid named the storied *anishinaabe* as a presence, not as an absence; as the virtual evidence, not as mere hearsay.²

The regulation of the wild rice harvest was not decided then and there; later, in other cases, federal courts acknowledged the inherent rights of natives to regulate natural resources on treaty reservations. Francis Paul Prucha observed that the "treaties, which reformers at the end of the nineteenth century considered an obstacle to the progress of the Indians, have turned out, in the late twentieth century, to be one of the principal bastions of protection for the lands, the political autonomy, and the hunting and fishing rights of present-day reservation Indians."³

Aubid, in his testy testimony in *anishinaabemowin*, presented at least four distinctive creases of native reason and sovereignty. The first crease was native evidence in the *anishinaabe* language; second, the mien of a chancer, the native tease of moral pieties and the procedural course of evidence; third, native sovenance, and the stories of survivance as testimony in court. The last crease of native reason was that sense of *anishinaabe* presence by resistance, storied transmotion, and assertive sovereignty.

Aubid, in his *anishinaabe* stories about that meeting with the government men, created a presence of John Squirrel. That sense of presence, as sworn testimony in court, was the obviative, the fourth person in the poses of evidence. Monotheism is hearsay, the care of creation, the concern of weak memories, and the curse of deceivers. The rules of evidence are selective, and sanction cozenage over native sovenance, boundaries over stories of sovereignty; however, evidence is never ultimatory. Squirrel was twice the tease of native evidence; the sense of his presence in stories, an actual presence in the memories of others, and an obviative presence as semantic evidence. These stories and creases of native reason are evidence, a dialogic circle. John Squirrel is a virtual criterion of evidence in native sovenance; the stories of survivance and sovereignty.

Aubid created an *anishinaabe* presence of others in his stories and testimony, and, in a sense, he was a virtual cartographer, because he mapped a visual representation, a native criterion of transmotion and sovereignty.

VIRTUAL CARTOGRAPHY

"The map is not the territory," but the territory is the map, and that chiasitic inversion, an elusive connotation of semantics, secreted but never erased virtual cartography. Alfred Korzybski was the wise mapper and the chiasitic mete of mental mappery. Surely, he would never retract natural reason, sovenance, totemic stories, and dream songs, the native transmotion that creates a sense of presence, only to carry out that mean promise of semantics and modernity.

Maps are pictures, and some native pictures are stories, visual memories, the source of directions, and a virtual sense of presence; others are simulations and not a trace of the actual territory. Maps are references, not counterfeits; the memories of the actual territory are not transposed by simulations. Mappery is virtual, the creation of base line representations.

"Silence a people's stories and you erase a culture," said Louis Owens, the novelist and essayist. "To have graphic evidence of this phenomenon, all we have to do is look at a map. Mapping is, of course, an intensely political enterprise, an essential step toward appropriation and possession. Maps write the conquerors' stories over the stories of the conquered."⁴

Native memories, stories of totemic creation, shamanic visions, burial markers, medicine pictures, the hunt, love, war, and songs, are the transmotion of virtual cartography. Tricky creation stories, totemic pictures, and mental mappery are the embodiment of native transmotion and sovereignty. Native mappers are storiers and visionaries.

The *anishinaabe* song pictures, for instance, are the cues of the virtual memories of music. The pictures animate the memories of the melody and the wavering voice of a native singer. The song pictures, incised on birch bark, are virtual cartography. These pictures are the creation of hundreds of distinctive songs and stories about dreams, love, war, animals, birds, motion, and ceremonial music of the *midewiwin*, the great society of healers, or the Grand Medicine Society.

Henry Rowe Schoolcraft, the geologist, ethnologist, moralist, and *indian* agent, observed that "pictographic scrolls and devices, rudely cut or painted on wood, rocks, or the scarified trunks of trees, and even songs recorded by this method, are well known traits of our aboriginal tribes." Moreover, the practice of "drawing

pictures on skins, trees, and various other substances, has been noticed by travelers and writers from the earliest times. Among the more northerly tribes, these figures are often observed on that common substitute for the ancient papyrus among these nations, the bark of the *betula papyracea*, or white birch: a substance possessing a smooth surface, easily impressed, very flexible, and capable of being preserved in rolls."⁵

Frances Densmore recorded, transcribed, translated, and then interpreted *anishinaabe* music on reservations at the turn of the last century. "We are particularly indebted to her for collecting the oldest songs of the tribe, thereby rescuing them from certain oblivion," notes Thomas Vennum in his introduction to *Chippewa Music*. Densmore would eschew, no doubt, the notion that her studies of *anishinaabe* music were rescue transcriptions.

Most of the songs were presented with stories and pictures. One song picture shows a human figure with a walking stick. The story of the picture is that "through the power" of the *midewiwin*, "a man lives to be so old that he leans on a staff as he walks," and the song is very old.

*those who are spirits
are making me old
where I am sitting*

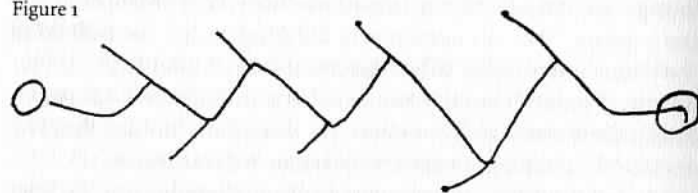
"Many of the songs are taught only to those who pay for the privilege of learning them, and all the songs are recorded in mnemonics on strips of birch bark," writes Densmore. "This record serves as a reminder of the essential idea of the song and is different in its nature from our system of printing. The Indian picture preserves the idea of the song, while our printed page preserves the words which are supposed to express the idea but which often express it very imperfectly."⁶ Song pictures are the creations and the memories of the music, a virtual cartography.

The *anishinaabe* picture of the *midewiwin* "path of life" is a representation of the transmotion of life from creation to old age. Mainans, the *midewiwin* healer, created the picture and told stories about the transmotion of the "path of life."

The tangent lines at the turn of each angle are representations of the seven temptations, a virtual cartography. Densmore pointed out that the sense of temptation in this connection "implies primarily a trial of strength and motive." The first and second

tangent lines of temptation are resistance and the chance of life; the third, a spiritual initiation of the *midewiwin*; fourth, the temptation of middle age; fifth, the temptation and reflection of old age; and sixth, a return to a spiritual presence, the temptations of the visionary. The seventh and last temptation is the endurance of old age, at a time when *maji manidoo*, or the evil spirit, comes to mind.⁷

Figure 1

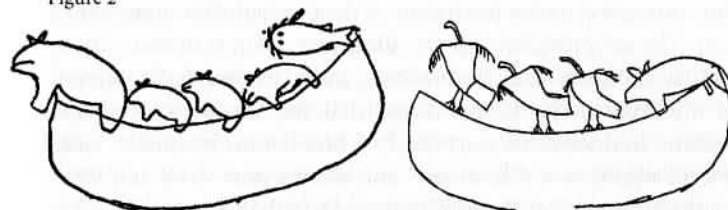


The *anishinaabe* song pictures, stories, and the *midewiwin* scrolls, or the sacred documents of the great healers, were incised on birch bark, and cedar; other pictomyths were painted on cragged rocks. The virtual cartography of the *midewiwin*, incised on birch bark, is the depiction of animals and water spirits in a ceremonial center.

"The purpose of the picture writing" in the *midewiwin* "is to assist the memory and to afford a means of record which is intelligible only to initiates of the society," observes Densmore in *Chippewa Customs*. "The principal symbol is the straight or wavy lines which proceed from figures of men or animals, usually indicating 'spirit power.' If these lines proceed from the mouth they indicate song or speech, if from the ear, they indicate sounds which are heard." The "sky, earth, lakes, and hills, as well as sounds" were pictured in *midewiwin* documents. The virtual cartography of the *anishinaabe* includes messages, casual records, and representations of action, "days, direction, and duplication of numbers."⁸

Messages were incised on cedar and birch bark and placed in obvious locations. Animals, children, and totemic histories were represented by the virtual mappers. For instance, two families were pictured in canoes. The father in one canoe is a totemic bear and the mother is of the catfish totem; their three children sit with them in the canoe. Pictured in the second canoe is a totemic eagle, a mother of the bear totem, and their children.⁹

Figure 2



Native virtual cartography is much more than the base lines and cardinal directions of territory. The pictures of totemic bears, catfish, and eagles, are creative connections of *anishinaabe* stories, totemic sovereignty, natural reason, and a tricky sense of native presence. That presence is transmotion, the tease of creation in pictures, memories, and stories; totemic names are visionary, the document is possessory.

"I am a bird who rises from the earth, and flies far up, into the skies, out of human sight; but though not visible to the eye, my voice is heard from afar, and resounds over the earth," said Keeshkumun, the *anishinaabe* orator of the crane totem, to the Englishman.¹⁰

Richard Kearney points out in *The Wake of Imagination* that one of the "greatest paradoxes of contemporary culture is that at a time when the image reigns supreme the very notion of a creative human imagination seems under mounting threat. We no longer appear to know who exactly produces or controls the images which condition our consciousness. We are at an impasse where the very rapport between imagination and reality seems not only inverted but subverted altogether."¹¹

The monotheistic dominance of creation, nature and natives, and the pious separation of animals and humans, has persisted in the diplomatic mode of treaties with natives, the *whereas* diction of *fee simple patents*, and the *metes and bounds* of tenure mappery.

Alice Beaulieu, my grandmother, was born January 3, 1886, on the White Earth Reservation in Minnesota, in the same year that the Statue of Liberty was dedicated in New York. That same year, Geronimo, the leader of the Chiricahua Apache, was exiled as a war prisoner at Fort Pickens, Florida, and later at Fort Sill, Oklahoma. He appeared at international exhibitions and attended by invitation the inauguration of President Theodore Roosevelt.

President Roosevelt signed a *fee simple patent*, in the name of my grandmother, on May 21, 1908, an issue of subdivided land on

the reservation under provisions of the General Allotment Act of 1887. The act provided "for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes."¹² Those "other purposes" were trustee warrants of dominance, and natives were so encumbered on reservations that thousands moved to urban areas.

The General Allotment Act "resulted in the reduction of the total tribal land base from 140 million acres to 50 million acres over a period of five decades," notes Charles Wilkinson in *The Eagle Bird*. "On its face the law did not provide that any land would pass from Indian hands. Instead, it dictated that each tribal member would receive a fixed amount of tribal land—80 acres of farmland or 160 acres of grazing land." Mistaken and devious, the government reasoned that "Indians would benefit from private enterprise rather than collective ownership. Allotment would make Indians into farmers."¹³

My grandmother never saw the actual area of the patent in her name; she was curious, but had no reason or the means to locate the land because, like most natives, she leased the allotment to a lumber company. Moreover, she would not have been able to understand the patent description without some general knowledge of surveys. Alice probably did not know, at the time, that the reservation and most of the nation was measured and subdivided in a systematic cadastral survey.

The United States Public Land Survey progressed westward and subdivided the nation into sections, each a square mile, and thirty-six sections comprised a township. The survey lines were "oriented predominantly in cardinal directions. This system stands in sharp contrast to the metes and bounds survey of the eastern seaboard of the United States."¹⁴

The General Land Office of the United States issued a fee simple patent, based on a cadastral survey, to "Alice Beaulieu, a White Earth Mississippi Chippewa Indian, for the east half of the southeast quarter of Section twenty-four in Township one hundred forty-two north of Range thirty-seven west of the Fifth Principal Meridian, Minnesota, containing eighty acres."¹⁵ The document is historical, enured by the trustees of dominance, and possessory. Eighty acres and a trustee is never the same as that sense of native presence in virtual cartography.

TOTEMIC MAPPAMUNDI

The Hereford Cathedral *mappamundi*, that thirteenth-century map of the world, pictures trade routes, sacred and secular histories, myths, place names, and other information. Norman Thrower noted in *Maps and Civilization* that the *mappamundi* seems to have been used as an altarpiece, as an aid to travelers, and as "inspirational pictures like the stained glass windows of the cathedrals."¹⁶

There is no commensurate *mappamundi* of the native world; however, the native stories of creation, totemic visions, and sacred documents, are comparable to the spiritual inspiration of cathedral windows. The sacred *midewiwin* documents and other native stories were active creations, not passive representations; the visions and sacred songs of the *midewiwin* were once secreted in evasive and tricky stories by native healers. To reveal the stories and visions of this great society of healers to outsiders, at a time when native communions were menaced by agents of church and state, was worrisome to elders and unanswerable, an incoherence in the traditions of the *anishinaabe*. Yet, not to bear that credence as a *midewiwin* healer, and not to nurture and tease native stories of survivance, would have been an unendurable absence to the new native storiers and visionaries. That was a testy time in native stories, since the visual and aural were transcribed as the scriptural; and the transmotion of native memories, that sense of a presence in stories, was courted in the social sciences as cultural evidence. The *anishinaabe* and other natives have endured in virtual cartography, the certain mete of native sovereignty.

Henry Rowe Schoolcraft, the author of *algic* cultures, derived from the word *algonquin*, reports in the *Archives of Aboriginal Knowledge* that eleven *anishinaabe* leaders presented a visual land claim on five birch bark scrolls to the federal government in January 1849. Martell, an adventurer, and opportunistic interpreter, was the "prime mover of the visit, and the motions of the entire party." The natives arrived with their petition and no accreditation by the local *indian* agent; clearly, the subscription of an agent was evidence of dominance. "The plan of a retrocession of territory, on which some of the natives expressed a wish to settle and adopt the modes of civilized life, appeared to want the sanction of the several states in which the lands asked for lie. No action upon it could therefore be well had, until the legislatures of these states

could be consulted." The party resorted "to the native pictorial art, which furnishes the subject of this notice."

That visual claim is an *anishinaabe* totemic narrative; there are seven creatures pictured on the foremost secular document. The totemic crane on the right of the birch bark scroll is followed on a path by three totemic martens, a totemic bear, a trickster, and on the left of the document, at the end, a totemic catfish. These seven totemic pictures are connected to the crane by direct lines, eye to eye, and heart to heart.

Oshkabawis, the *anishinaabe* leader, is represented as the totemic crane on the document and "has a line drawn from his eye forward, to denote the course of his journey, and another line drawn backward to the series of small rice lakes," notes Schoolcraft. "The entire object is thus symbolized in a manner which is very clear to the tribes, and to all who have studied the simple elements of this mode of communicating ideas." Oshkabawis, "who headed the party," was named a crane warrior by Schoolcraft. "To the eye of the bird standing for this chief, the eyes of each of the other totemic animals are directed as denoted by lines, to symbolize union of views. The heart of each animal is also connected by lines with the heart of the Crane chief, to denote unity of feeling and purpose."¹⁷ The report does not clearly indicate that the author was present at the time of the totemic petition to the government. The picture was drawn by Seth Eastman, the soldier, surveyor, and painter. The totemic crane was not the creation of a native artist. The word *oshkaabewis* means a "ceremonial attendant."¹⁸

Keeshkemun, the crane orator, was an *anishinaabe* leader at the time. Oshkabawis was a noted pipe bearer, "who officiated in all public councils, making known the wishes of his chief, and distributing amongst his fellows, the presents which the traders occasionally gave to the chief," observes William Warren in *History of the Ojibway Nation*. Keeshkemun was a leader by "hereditary descent, but he made himself truly such, through the wisdom and firmness of his conduct, both to his people and the whites. During his lifetime, he possessed an unbounded influence over the division of his tribe with whom he resided, and generally over the Lake Superior bands and villages."¹⁹

Warren does not mention the presentation of the totemic map and visual land claim to the federal government. The *anishinaabe* historian talked to many native leaders, considered both oral and written documents, and never noted the party or the claim in his

native history, completed in 1853. Schoolcraft indicated that the birch bark petition was presented to the U.S. Congress in 1849. Keeshkemun, and his pipe bearer Oshkabawis, were crane leaders in the eighteenth century. Oshkabawis was recorded in the *Atlas of Great Lakes Indian History* by Helen Tanner as a native village in 1810 and 1830, located near Lac du Flambeau.²⁰

Schoolcraft reports that the native document "commences with the totem of the chief," the leader of the crane totem named Oshkabawis, "who headed the party." Schoolcraft was either not present, at the time of the petition, and constructed a narrative of misconceptions, or he was mistaken about the characters and dates, or there were two *anishinaabe* crane leaders with the same names, or he inadvertently misrepresented the name of the totemic crane in the birch bark document as the actual leader of the petition. The pictures and visual stories in the document are common *anishinaabe* totems, and the interpretive notes are exotic and comparable, but the significance of this picture entreaty, as a native political document, is obscure and arguable.

The visual stories of the totemic cranes, and other creatures eye to eye, and heart to heart, set as a union of views, are native scenes in virtual cartography. Schoolcraft, however, subscribed the totemic creation to serve as a historical document, a literal petition that traduced a native sense of presence, and the tease of creation in the pictures. Surely, he was a conversionist and misconceived the scenes of *anishinaabe* creation. Totemic pictures are visionary and storied creases of native sovenance, not casuistic or semantic conversions in the name of archive dominance.

"Picture-writing is indeed the literature of the Indians," writes Schoolcraft. "It shows the Red Man, in all periods of our history, both as he was and as he is; for there is nothing more true than that, save and except the comparatively few instances where they have truly embraced experimental Christianity, there has not been, beyond a few customs, such as dress and other externals, any appreciable and permanent change in the Indian character since Columbus first dropped anchor at the Island of Guanahan."²¹

David Turnbull reasoned in *Maps Are Territories* that the totemic pictures on the birch bark document is a map, "but the information it conveys can only be understood within the cultural specifics of the circumstances that it portrays and cannot be generalized beyond that context." Moreover, the "power of maps lies not merely in their accuracy or their correspondence with

reality. It lies in their having incorporated a set of conventions that make them combinable in one central place, enabling the accumulation of both power and knowledge at that centre."²² Clearly, *anishinaabe* visual stories, totemic creations, and other pictures are mappery, the virtual cartography of native survivance and sovereignty.

Native sovereignty is soverance, the immanence of visions, and transmotion in artistic creations. Sovereignty, moreover, is practical, reciprocal, and theoretical, but there is no such word in the *anishinaabe* language; however, the native sense of motion and use of the land in the northern woodlands does not embrace inheritance or tenure of territory. The criteria of transmotion are in the stories of trickster creation, the birch bark documents of the *midewiwin*, song pictures, beaded patterns, winter counts, painted hides, ledger art, and other creases of motion in virtual cartography.

BLUE HORSES

Howling Wolf Honanistto was a political prisoner for three years at Fort Marion in Saint Augustine, Florida. The Southern Cheyenne warrior and artist created active native scenes in rich colors, and the style of his painting was named ledger art at the end of the nineteenth.

Ledger art is the continuance of a new warrior tradition, the memories of "personal exploits and tribal histories" that became a "representational style through generations of artists," observes Joyce Szabo in *Howling Wolf and the History of Ledger Art*.²³

"Howling Wolf emerges as a careful planner of line and color. His draughtsmanship is confident and precise whether in pen or pencil," and his "compositions stress the interplay between curving, arabesque forms and firm, straight lines." With crayons, pencils, and watercolors, he created brilliant scenes of ceremonial warriors and bright horses in rich hues. "Blue and green horses appear on the same page with brown and black ones. Costume elements and brilliant textiles were rendered in as many colors as apparently possible."

Szabo points out that the history of the ledger art style, paintings on the lined pages of ledger account books in prison, is "one of gradual abandonment of many traditionally dictated conventions,

development of new approaches to old subjects, and investigation of new images. Ledger art is above all art produced by Plains men who lived in societies that encouraged them to achieve as individuals," and that "individuality did not have to be imposed or suggested from outside forces."

The warriors and their horses are pictured in motion, the artistic transmotion of native sovereignty. The scenes and motion were of memories and consciousness, not poses and simulations. The transmotion of ledger art is a creative connection to the motion of horses depicted in winter counts and heraldic hide paintings. The hides and shields are visionary.

Native transmotion is seen in the raised hooves of horses, the voice lines, traces of arrows, the curve of feathers, footprints, and the trail of buffalo blood in a hunt. "The frenzy of the battle is conveyed through twisting, turning men and horses moving in all directions," and the pictographic representation and conventions of "flying arrows, bullets, and a variety of prints heighten the tension of the action," notes Szabo. "Figures racing across the page with action, beginning or ending at some point beyond the confines of the piece of paper, frequently ignoring the limitations of the edge of the page. Horses, humans, and objects are cut off midway thus adding to the dynamic sweep of the action, a movement of forces too monumental to be contained within the arbitrary boundaries of the page."²⁴ Native transmotion races as a horse across the page, and the action is a sense of sovereignty.

Howling Wolf, a native expressionist, created blue, red, and green horses, the transmotion of memories as a political prisoner. He painted his bright horses several years before the birth of the artist Franz Marc. The German expressionist, at the turn of the last century, painted many animals in several colors; his most notable creations are sensuous horses in rich chromatic hues of blue, the spiritual tease of blue horses. The artistic visions of these two expressionist were not the same, but their horses are comparable creations. The Cheyenne artist painted the horses of his memories as a warrior, the blue transmotion of native survivance. The German artist painted the blue horses of his mythical liberation, the presence of creation.

Franz Marc was "probably the best animal painter since the prehistoric men who painted caves," asserts art historian Frederick Hartt. "His romantic, poetic art sought liberation from the conventions of human existence in the world of animals."²⁵

Marc declared his "enthusiasm for the arts of primitive people and children," observes George Heard Hamilton in *Painting and Sculpture in Europe, 1880-1940*. Marc, a member of the Blaue Reiter circle of artists, wrote that the new expressionist "movement was 'trying to get back by another road to the mysterious and abstract images of inner life, which is governed by laws different from those science discloses in nature.'"²⁶

Vassily Kandinsky and Marc established and edited *Almanach Der Blaue Reiter*. The Blue Rider Almanac "featured contributions from a wide range of artists," and one issue pictured a "chief's collar from Alaska." Marc "intended to study theology, but changed his mind and turned to painting." He "made several trips to Paris, where he came into contact with all the latest developments in modern art."²⁷ Marc may have seen hide paintings and other native artistic creations in museums and at Wild West Shows in Europe.

The Musée de l'Homme in Paris conserves a treasure of ornamental robes that are painted by unknown native artists. These painted hides were collected in the eighteenth century for the monarchy in France. George Horse Capture, curator of the Plains Indian Museum, examined the robes and notes in *Robes of Splendor* that they "are the earliest remaining examples of painted hides."

"I carefully touched each robe four times, and their power reached out, leaving me humble and grateful," writes Horse Capture. He studied one robe with red and black horses in motion, and a circle of hooves at a battle site. One warrior, on a horse in motion, wore a ceremonial headdress.

"Several clusters of images tell of individual heroics, and the field of action is divided by a gold strip of porcupine quillwork," he observes. "I was startled to find a gallant chief, bedecked in red and black garments, astride his galloping pony. His magnificent war bonnet captivated me. It was made of a circle of long, thin diamonds divided by different colors. Instantly, I was engulfed in memories of lying on my grandmother's star quilt and wondering about its design. I realized that the answer to that mystery was at hand. The star quilt's design was nearly identical to this warrior's war bonnet; the elongated diamonds represent the feathers of the golden eagle."

Horse Capture notes that the star design on the bonnet has remained as a native style. "This discovery was very important to me, and I felt grateful to the robe, the warrior, and the artist. To

me, this joining was a sign that we would meet again and influence each other somewhere down the road."²⁸

COLONIAL INVERSIONS

"One of the marks of colonialism is that it bends traditional diplomatic structures to exploitive ends," asserts Dorothy Jones in *License for Empire: Colonialism by Treaty in Early America*. "This can happen because accountability is not built into the diplomatic system. The only check is the assumption of countervailing force. When that is absent, as it invariably is in situations of colonialism, the whole treaty system becomes a weapon in the arsenal of the stronger power."²⁹

Colonialism, nationalism, and theocentrism are variations on narratives of dominance; these political, economic, and causal powers are not obvious historical instances of natural reason, rights of motion, or entitlements of native sovereignty. At the same time, the establishment of constitutional democracies in the past two centuries has secured new and diverse narratives of governance: the diplomatic narratives of treaties, executive documents, and court decisions that acknowledge the rights and distinctive sovereignty of native communities.

"Native American claims to aboriginal land within what is now the United States is not a story of broken treaties, amended statutes, or breach of the sacred duty of guardianship," asserts Michael Kaplan in *Irredeemable America*. "Rather, it is the story of the unbridled, unabashed, and undisguised power of the conqueror over the conquered." The conqueror assumed the exclusive right to "grant title," and the "native occupant was totally devoid of any power to dispose of the soil. Hence, a grant of Indian lands by Indians could not convey a title paramount to the title granted by the United States to other parties." Kaplan argues that the "doctrine of aboriginal title in the courts" seems to provide some sense of political leverage. "Aboriginal title is a political issue, for the most part, not a legal one."³⁰

The presence of natives on this continent is obvious, a natural right of motion, or transmotion, and continuous sovereignty; in other words, natives are neither exiles nor separatists from other nations or territories. The presence of natives on this continent is an obvious narrative on sovereignty—that is, natural

reason and the sovenance of motion, and survivance. The onset is transmotion, and later, in a constitutional democracy, the legal entitlements of native sovereignty.

Regrettably, the discussions of natural reason and power, the sovereignty of native transmotion in a constitutional democracy, have been reduced to the metes of territoriality, and mere victimry, by many contemporary scholars.

Native sovereignty is the right of motion, and transmotion is personal, reciprocal, the source of survivance, but not territorial. The notions of native sovereignty are present in the earliest oral stories and presentations, in creation stories, totemic and trickster visions, in native trade languages, and they are even heard in translations; moreover, a commensurate sense of transmotion and sovereignty is patent in contemporary native autobiographies, creative literature, histories, letters, and government documents.

"Individuals were created or constructed at the same time as nations," notes David Elkins in *Beyond Sovereignty*. He argues that if "modernity created the autonomous individual, the postmodern condition will take us 'beyond individuals' as well as 'beyond nations' as units of analysis." Native sovereignty, in this sense, would have a natural ethical and historical presence in the notions and theories of transnational survivance. "Rights and the concept of the individual were parts of the same interdependent process of creating a sharper line between public and private realms," he observes. "The creation of the individual and the assumption that a private realm deserves sanctuary from public authority occurred concurrently with the building of authority on territorial lines."³¹

Sovereignty as motion and transmotion is heard and seen in oral presentations, the pleasures of native memories and stories, and understood in the values of human and spiritual motion in languages. Sovereignty is transmotion and used here in most senses of the word motion; likewise, the ideas and conditions of motion have a deferred meaning that reach, naturally, to other contexts of action, resistance, dissent, and political controversy. The sovereignty of motion means the ability and the vision to move in imagination and the substantive rights of motion in native communities.

Native transmotion is an instance of natural reason, and an aesthetic creation, to be sure, but not a literal simile of nature as a resistance to civilization; transmotion is motion and native

memories, and not mere comparatives or performative acts. The sovereignty of motion is survivance, shared power, and performative transmotion is an ethical presence of nature, native stories, and natural reason.

The sovereignty of motion is mythic, material, and visionary, not mere territoriality, in the sense of colonialism and nationalism. Native transmotion is an original natural union in the stories of emergence and migration that relate humans to an environment and to the spiritual and political significance of animals and other creations. Monotheism is dominance over nature; transmotion is natural reason, and native creation with other creatures.

Max Oelschlaeger argues that natural history is a connection of wilderness and civilization, not a separation: how could nature be so cruel and sustain humans at the same time? He deconstructs the modernist view that "prehistoric people longed to escape the wilderness condition" and presents the "natural world" as a home, not an enemy. The magna mater metaphor is a myth of hunters, a world of humans and animals. The mother earth metaphor has an agricultural connection, the earth as a mythic mother, the center of fertility and nurturance.

"Clearly, the agricultural revolution provided the material precondition for the emergence of identifiably modern civilization by necessitating permanent settlement, producing an agricultural surplus, and starting a rippling process of social and technological change; ideological restructuring was inevitable," observes Oelschlaeger in *The Idea of Wilderness*. "No absolute measure of humanization exists, but before the agricultural revolution humankind minimally altered the natural world, while afterward it became a relentless agent of ecological change. The cultivation of cereals and the domestication of animals are clearly positive accomplishments in the face of environmental crisis: the only apparent alternative was starvation."³²

Natural reason is a native tease of the seasons, the myths and metaphors of human and animal connections to the environment — shamanic visions, transmotion, and territorial reciprocity, but not monotheistic separations or colonial environmental dominance. William Cronon observes that to the colonists land became a "form of capital" and source of wealth. New England ecological practices were "inherently antithetical to earlier Indian economies." Native transmotion was connatural with the environment; natives altered the land, but their ecological practices

as hunters, and as agriculturists, were not based on economies of abundance, and the environment was not a commodity. "Indian communities had learned to exploit the seasonal diversity of their environment by practicing mobility: their communities characteristically refused to stay put," writes Cronon in *Changes in the Land*. "English fixity sought to replace Indian mobility; here was the central conflict in the ways Indians and colonists interacted with their environments." Natives moved from "habitat to habitat to find maximum abundance through minimal work, and so reduce the impact on the land." The English lived in permanent settlements and "improved" the land. "The struggle was over two ways of living and using the seasons of the year, and it expressed itself in how two peoples conceived of property, wealth, and boundaries on the landscape."³³

Native stories sustain the reason of survivance and traces of transmotion endure in contemporary native literature. N. Scott Momaday, for instance, wrote about his grandmother, who "lived out her long life in the shadow of Rainy Mountain, the immense landscape of the continental interior lay like memory in her blood." He "wanted to see in reality what she had seen more perfectly in the minds eye." His journey, several centuries later, was another story of native transmotion, a pilgrimage.

"There is a perfect freedom in the mountains, but it belongs to the eagle and the elk, the badger and the bear. The Kiowas reckoned their stature by the distance they could see, and they were bent and blind in the wilderness," he writes in *The Way to Rainy Mountain*.³⁴ "The names at first are those of animals and of birds, of objects that have one definition in the eye, another in the hand, of forms and features on the rim of the world, or of sounds that carry on the bright wind and in the void," writes N. Scott Momaday in his memoir *The Names*. "They are old and original in the mind, like the beat of rain on the river, and intrinsic in the native tongue, failing even as those who bear them turn once in the memory, go on, and are gone forever."³⁵

Sovereignty is in the visions of transformation: the humor of motion as survivance over dominance; the communal movement to traditional food sources; dreams and memories as sources of shared consciousness; the stories of reincarnation, out of body travel; the myths and metaphors of flying; communal nicknames and memories of migration; the spiritual and herbal powers to heal and locate lost souls. These are evidence of natural reason and the

personal power of creation; the native names and remembrance of motion and sovereignty.

Native North American "reincarnation is an expansion of continuity, or survival," observes Richard Slobodin in *Amerindian Rebirth*. "The great moralists do seem to share a predilection for the ethic of the closed, stable community, which is the type in which reincarnation beliefs flourish." Reincarnation, of course, is a new incarnation of native presence, and that transmotion, animalistic, avian, or human, even in secure urban communities, is survivance and the natural reason of sovereignty.³⁶

CROSSOVER SOVEREIGNTY

The Bering Strait migration theory has been established by the social sciences and embraced in popular culture as the original move of natives in the Western Hemisphere. There is no decisive evidence to show the actual direction of this mythic migration. The scientific theories are ironic evidence; migration in either direction is native transmotion and sovereignty. Other observers have documented the motion of native cultures by language groups, by the use of trade languages, and by various theories and racist notions of animism, nomadism, and savagism.

Native sovereignty as transmotion and natural reason is never the same in monotheistic civilizations; the discoveries, cues of dominance, covenants, and territorial boundaries are the means and declarations of separatism and nationalism. "Rousseau envisages men converting natural rights into civil rights and keeping sovereignty in their own hands," notes Maurice Cranston in *The Noble Savage*. "Rousseau argues that sovereignty cannot be delegated; it can only be exercised in person."³⁷ Native transmotion, then, has been converted into the provisions of inherent rights in treaties, and these conversions of transmotion are the distinctions of native sovereignty.

Native sovereignty is documented in oral histories, treaties, and other literary sources by native scholars and contemporary authors. However, many of these stories and documents have been reduced by objectivism, positivism, and the methodologies of the social sciences; collectors have stolen ceremonial material and distorted by translation and comparative interpretations the transmotion of sovereignty in ways that serve the mere commercial interests of cultural dominance and the romance of native victimry.

Rousseau "adored liberty and could endure no constraint, no discomfort and no subjugation whatever," notes Judith Shklar in *Men and Citizens*. "Moreover, all society was a form of enslavement for him, since it inevitably forced him to do something he did not feel like doing. At all times it afflicted and discomfited him." Rousseau adored his liberty in natives, and so he romanced the nature of noble savages.³⁸

"The true forms of government," observed Aristotle, "are those in which the one, or the few, or the many, govern with a view to the common interest; but governments which rule with a view to the private interest, whether of the one, or of the few, or of the many, are perversions. For the members of a state, if they are truly citizens, ought to participate in its advantages." He wrote that it is "clearly better that property should be private, but the use of it common."³⁹

Native transmotion and permanence are contingencies of governance and sovereignty. The native distinctions of public and private, in the course of names, nature, and possessions, are ceremonial, situational, and visionary. The *anishinaabe* once buried the dead with their treasures. William Warren notes that the *anishinaabe* buried their dead with "the articles needed in life for a journey. If a man, his gun, blanket, kettle, fire steel, flint and moccasins; if a woman, her moccasins, axe, portage collar, blanket, and kettle." Death is transmotion, a common "road of souls" to the west.⁴⁰

The translation of *daniwin*, an inanimate noun in the language of the *anishinaabe*, means property, riches, treasure, and wealth; that one word once cued common interests more than a private and avidious tenure. Native names, estates of nature, and the uses of land and resources were stories of survivance and reciprocity.

Jean Bodin, the sixteenth-century French political philosopher, defined political sovereignty in terms of power. The ruler and the community, he theorized, were bound by natural laws and principles of justice; sovereignty, then, was not determined by supernatural or monotheistic sanctions alone. His concepts of sovereignty became an ethical foundation, as the class separations in communities were bound to mediate conscience and reason. Sovereignty is the nature of communities, and the modernist conceit is "limited sovereignty." The limitation of sovereignty is not sovereignty.

"Bodin himself preferred the monarchical body politic which was ruled legitimately," observes F. H. Hinsley in *Sovereignty*.

The "sovereign power" that "resided in a king but in which the royal wielder of sovereignty would give proper recognition" to the common "rights of his subjects and to the customary rules and basic laws of the body politic." Royal power would be limited and "exercised through institutions." As Hinsley notes, "Although the word 'sovereignty' had gained currency by the beginning of that century, Bodin in his *Six livres de la république* of 1576 was perhaps the first man to state the theory behind the word."

The "origin and history of the concept of sovereignty are closely linked with the nature, the origin and the history of the state," writes Hinsley. He would argue, it seems, that natives have neither a state nor sovereignty. The authority in stateless societies, he asserted, "relies on psychological and moral coercion rather than on force; if it resorts to force it does so because the rules and customs of the society demand this."⁴¹

Jean Bodin "is indeed among the first to stress the indivisibility of sovereignty and its function as a mark of the individuality of a state in legal terms, as 'the most high, absolute and perpetual power over the citizens and subjects of a Commonwealth.' Sovereignty stands in a relation of mutual implication to the state; to be sovereign is to be sovereign *over* a state, and the state is dependent on a 'powerful sovereignty' as to its existence," writes Jens Bartelson in *A Genealogy of Sovereignty*.⁴²

CONSTITUTIONAL PRONOUNS

Natives or *indians* are mentioned, and otherwise a presence named in consideration of territorial sovereignty, three times in the Constitution of the United States. Article I relates to taxes and excises and empowers the Congress "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." And the two other notices refer to natives not being taxed on treaty land.

The Fourteenth Amendment provides that "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed." That exclusion, in a sense, would become a measure of native sovereignty.

Constitutional theories are the manners of state dominance, a causal enervation of natural reason and native survivance; at the

same time, however, treaties and the mention of a native presence in the nation have been the sources of conscience, ethics, and the recognition of inherent rights in later court decisions.

Native natural reason is not the same as the notion of natural laws; natural reason is transmotion, the stories of survivance and sovereignty. Native stories and the tease of creation are natural reason; the laws of nature suggest a creator, and that notion turns on monotheism and dominance.

The United States and native communities have entered into more than 380 treaties in the nineteenth century. Since then more than four thousand federal statutes have been enacted in the name of natives and their communities; these, and an uncertain number of judicial decisions, executive orders, institutive policies, and agency practices, are the intractable documents that overburden native memories, associations, and communities. At the same time, the treaties and other documents are the assurance of a native historical presence in a constitutional democracy.

The myths, ceremonies, treaties, narratives, documents, and statutes that have contributed to an obscure description of inherent sovereignty, and the concept of transmotion, are diverse and touch on the tragic wisdom of native survivance. At the same time, even the relatively mundane considerations of native stories in national histories are diminished by the practices of metes and bounds and cadastral boundaries.

The theoretical considerations of native sovereignty are derived from many sources: treaties, natural reason, international law, constitutionalism, federal jurisdiction, common law principles of intergovernmental immunities, trusts, taxation, and reservation casinos. Moreover, court evidence, testimonies, and native stories, are crucial to the understanding and meaning of transmotion as sovereignty.

"References to sovereignty are multiplying today precisely because the concept is on the whole a useful and largely positive feature of modern international life," note Michael Fowler and Julie Bunck. "A cardinal virtual of the concept is that it allocates responsibility as well as authority. The concept of sovereignty helps to create stable expectations that distinguish the business of one state from that of another."⁴³

Sovereignty as transmotion is not the same as the notions of indigenous treaty sovereignty; transmotion can be scorned and denied, but motion is never granted by a government. Motion is a

natural human right that is not bound by borders. Sovereignty as transmotion is tacit, inherent, and not the common provisions of treaties with other governments. Treaties with natives were strategic, national documents, of course, and most treaties were transacted to remove natives at the close of colonial dominance, and the new conversions of a constitutional democracy. The "treaties had certain characteristics or elements that, although appearing paradoxical or even incompatible, did not cancel each other out but existed together in an anomalous whole," notes Francis Paul Prucha. "In their actions, whites frequently enough disregarded Indian rights, but both theoretically and in practice the treaties gave the Indians a protected existence."⁴⁴

The notions of tacit sovereignty, and the political significance of treaties, are decided in courts as the contracts and documents of a constitutional democracy. The Constitution of the United States provides that the Congress shall have power to "regulate commerce with foreign nations, and among the several states, and with the Indian tribes." The President "shall have power, by and with the advice and consent of the Senate, to make treaties." Treaties, then, are not an absolute assurance of native sovereignty. For instance, the 1837 treaty stated that the *anishinaabe* would have the "privilege of hunting, fishing, and gathering the wild rice," but these provisions were "guaranteed to the Indians, during the pleasure of the President of the United States." That reserved constitutional power over the treaties with natives is a statement of treaty sovereignty. The power is over both people and territory. Sovereignty as transmotion is visionary. The motion is in natural reason, totemic stories, and other associations with humans and the earth; transmotion is survivance, not an absolute power over people or territories.

"Most Indian rights are lodged in promises made in treaties, agreements, executive orders, and federal statutes," writes Charles Wilkinson. "The Supreme Court made it clear in *Lone Wolf v. Hitchcock* in 1903 that Congress has the power unilaterally to break Indian treaties. It cannot be seriously questioned that the *Lone Wolf* rule is the law today and that it will remain the law. International treaties can be broken, and it is unlikely that Indian treaties would be placed on a higher plane."⁴⁵

The Treaty of Medicine Lodge Creek provided that the Kiowa and Comanche Reservation could not be ceded without native approval as specified in the treaty. Congress, however, sold excess

native land in violation of the treaty. Lone Wolf, a Kiowa, sued Ethan Allen Hitchcock, the Secretary of the Interior. "The Supreme Court declared that Congress had plenary authority over Indian relations and that it had power to pass laws abrogating treaty stipulations."⁴⁶ Prucha pointed out that after the "*Lone Wolf* decision the idea of requiring Indian consent for the disposition of their lands was largely discarded in regard to statutes as well as to agreements, and Congress unilaterally provided for the sale of surplus lands remaining after allotments had been completed."⁴⁷

Prucha argued that the recognition and independence of the treaties "meant more to Indian groups than did their lands, and tribes eagerly sought treaties in order to gain political recognition and not just acquire the economic benefits that came from presents and from annuities paid for land."⁴⁸ Timewise, his observations are contestable; many native governments and organizations have acted to restore treaty land and to acquire new native property. Prucha, however, has touched on the critical and theoretical distinctions of native sovereignty as political recognition and power over territory.

"Historically, the tie between sovereignty and territory is undeniable, except perhaps among nomadic peoples. Yet there was a time when sovereignty was divided, when secular sovereignty and religious sovereignty, for example, were in different hands," writes Gidon Gottlieb in *Nation against State*. He considered sovereignty as two components: "sovereignty as power over people" and "as power over territory. A new space for nations would develop the concept of sovereignty over a people. Sovereignty over territory means final authority within a given territory." He points out that the "alternative to a territorially organized world is one in which there is no final authority of a territorial character or one in which there are no clear territorial boundaries."⁴⁹

Clearly, the notions of native sovereignty must embrace more than mere reservation territory. Sovereignty as transmotion is tacit and visionary; these notions and other theories of sovereignty are critical in the consideration of native rights, and the recognition of those rights outside of reservations, and in urban area. "Mobility is built into the very essence of our nation," observes Alan Dowty. He argues that a "freer flow of people, goods, and ideas would increase pressure for changes within closed societies."⁵⁰ Moreover, these theories and practices of sovereignty, and the assertion of

human rights as more than territorial representations, are critical concerns in international politics.

David Jacobson asserts that human rights are universal. "Every human being in every society is a carrier of such rights. They do not change with geography, culture, or stage of development, and they do not distinguish between race, class, sex, religion, or national origins," he writes in *Rights across Borders*.⁵¹ Human rights are positive rights.

"The rise of collective humanitarian intervention and the shrinking of traditional conceptions of sovereignty and domestic jurisdiction are essential for the preservation of peace in the new international order," writes Fernando Tesón in *Beyond Sovereignty*. The critical connections are human rights, the "concept of exclusive domestic jurisdiction," and the "collective intervention" of the United Nations Security Council. These are suitable considerations of native human rights, treaties, and sovereignty.

Tesón points out that "if we lose the battle for democracy and human rights, we necessarily lose the battle for peace and security. The lesson is, perhaps, that the gradual dilution of state sovereignty is not just one more historic phenomenon, one more stage in the unfolding of the blind laws of history over which we lack control. It is, rather, a moral imperative."⁵²

The United States Supreme Court ruled in *Cherokee Nation v. Georgia*, 1831: "Though the Indians are acknowledged to have an unquestionable, and, heretofore, unquestioned right to the lands they occupy, until that right shall be extinguished by a voluntary cession to our government; yet it may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may, more correctly, perhaps, be denominated domestic dependent nations." This opinion is consideration of a native sovereignty that has never been surrendered by treaty or statute. Chief Justice John Marshall wrote that "the relations of the Indians to the United States is marked by peculiar and cardinal distinctions which exist no where else." Moreover, the relation of natives "to the United States resembles that of a ward to his guardian."⁵³

Most of the treaties with natives were executed by the federal government as a consequence of the resolution of the contention over state and federal sovereignty. There were serious debates over the future sovereignty of each state during the Constitutional

Convention. How would the sovereignty of the states be reserved in a confederation by form, but with no substance? "We the People of the United States," and other themes of indivisible federal sovereignty, were received in some editorials at the time as the certain end of state sovereignty.

On October 17, 1787, Noah Webster, "A Citizen of America," wrote that if the "federal constitution has collected into the federal legislature no more power than is necessary for the *common defence and interest*, it should be recognized by the states." Webster asserted that the "states have very high ideas of their separate sovereignty; altho' it is certain, that while each exists in its full latitude, we can have no *Federal Sovereignty*. However flattered each state may be by its independent sovereignty, we can have no union, no respectability, no national character, and what is more, no national justice, till the states resign to one *supreme head* the exclusive power of *legislating, judging and executing*, in all matters of a general nature."⁵⁴ His examination of the proposed constitution would, in the oblique traces of histories, embrace native sovereignty as a measure of national justice. A federation of sovereign states might not have negotiated treaties with natives. The federal treaties, in spite of treacheries, are the undeniable documents of a native presence in a constitutional democracy. At the same time, however, the federal government established a military to *control* natives on the frontiers.

Natives were the others, outside of monotheistic civilization and the national debates over state and federal sovereignty; despite the manifest of dominance, the notion of inherent native rights has continued as a sense of treaty sovereignty. This, of course, was an unintended consequence of national justice in a constitutional democracy.

"The assertion of national sovereignty by the theory of the extended republic gave a new normative status to the exercise of the powers of the federal government, freeing these powers from any state veto and making them superior to any contravention by state action," writes Samuel Beer in *To Make a Nation*. He points out that national "sovereignty also legitimated the exercise of these powers directly over individuals."⁵⁵ National sovereignty, not the care of the states, would determine the exercise of authority over natives and their treaties.

Benjamin Franklin, at the conclusion of the Constitutional Convention in Philadelphia on September 17, 1787, wrote that he

agreed to the "Constitution, with all its Faults, if they are such, because I think a General Government necessary for us, and there is no *Form* of Government but what may be a Blessing to the People if well administered; and I believe farther that this is likely to be well administered for a Course of Years, and can only end in Despotism as other Forms have done before it, when the People shall become so corrupted as to need Despotic Government, being incapable of any other."⁵⁶

Natives might have heard, twelve years earlier, the stories of his clever overtures of constitutional unanimity. The Continental Congress created three regional departments of *indian* affairs on July 12, 1775, and named several commissioners to represent the united colonies. The "commissioners were to work to preserve peace and friendship with the Indians and, in a quaint understatement, 'to prevent their taking any part in the present commotions.' The appointment of Benjamin Franklin, Patrick Henry, and James Wilson for the middle department indicates the importance attached to the matter." The commissioners held numerous councils with native nations, "tested the attitude" of natives, "picked suitable spots for meetings, called the chiefs and warriors to the councils, arranged for presents," and other duties. Franklin proposed to the confederation that "no colony could engage in offensive war against the Indians without the consent of Congress," and, "a perpetual alliance, both offensive and defensive, should be made with the Six Nations. For them, as well as for all other tribes, boundaries should be drawn, their land protected against encroachments, and no purchases of land made except by contract drawn between the great council of the Indians and the Congress." Federal agents were named to "prevent injustices in the trade." However, this "centralized control of Indian affairs did not appeal to all the states," asserts Prucha. There was native resistance, but the necessity of a federal authority prevailed.⁵⁷

James Madison, the political theorist, observed contradictions in the "regulation of commerce" with native communities, "and how the trade with Indians, though not members of a State, yet residing within its legislative jurisdiction, can be regulated by an external authority, without so far intruding on the internal rights of legislation, is absolutely incomprehensible. This is not the only case in which the articles of confederation have inconsiderately endeavored to accomplish impossibilities; to reconcile a partial sovereignty in the Union, with compleat sovereignty in the States;

to subvert a mathematical axiom, by taking away a part, and letting the whole remain."⁵⁸ Madison anticipated, in a sense, the current constitutional debates over federal, state, and native sovereignty in connection with reservation casinos and many other controversial issues of native and state jurisdiction.

The deliberations at the convention over the power to make treaties "did not mention Indian treaties specifically, but the power of states to make any treaties was repeatedly denied," notes Prucha. "As a further protection against state usurpation, the convention declared federal laws and treaties superior to those of the states."⁵⁹

Madison wrote to George Nichols that the new government "will be able to take the requisite measures for getting into our hands the Western posts which will not cease to instigate the Savages, as long as they remain in British hands. It is said that the Southern Indians are encouraged and armed by the Spaniards for like incursions on that side. A respectable Government would have equal effect in putting an end to that evil."⁶⁰

President James Madison, two decades later, named Albert Gallatin, Henry Clay, and John Quincy Adams as special peace commissioners to negotiate an end to the War of 1812. The British, as an early strategy, "made it a sine qua non that its Indian allies be parties to the peace and have their boundaries recognized. It might be best, the instructions added, to create an independent Indian state between Canada and the United States," writes Bradford Perkins in *The Cambridge History of American Foreign Relations*. The "British commissioners at Ghent elevated the buffer state proposal into a sine qua non, even led their superiors to believe the Americans might accept it. When London came to realize that the Americans would break off negotiations rather than agree, the ministry backed off." Gallatin learned that the "buffer state idea was only a proposal for discussion—which of course meant that it was no longer discussed."⁶¹ The negotiators were strategic and evermore devious in their cause of peace. The natives were never "parties to the peace" and would never realize an autonomous state; even the sense of aboriginal title to native territory was uncertain by dominance.

The Treaty of Ghent provided for the restoration of captured territories, and the United States promised to restore the same to natives. Many natives were destitute, abandoned to the maneuvers and wiles of war, peace, and territorial politics. Native resistance,

and later the negotiation over treaties, would become the stories of survivance.

Native sovereignty, the notion of transmotion, and the sense of territorial reciprocity are not powers that were delegated by the federal government or by any other agency; rather, the sovereignty of transmotion is a native presence. This tacit sovereignty has been described as a doctrine of limited sovereignty, or the "reserved rights" doctrine, and has never been surrendered or extinguished by natives in treaties.

"Indian Affairs were at first seen as a domestic problem, equal to and linked with the problems of war debts, western land claims, orderly expansion, and so on," writes Dorothy Jones in *License for Empire*. "It was only after the repeated failure of attempts to handle Indian affairs as a domestic problem that United States officials were forced to consider relations with the Indians, rather than a unilateral policy for the Indians."⁶² The basis of the relations with natives shifted from the "domestic to the diplomatic," and the treaty system became a new social order in native histories.

Indian Tribes as Sovereign Governments, a sourcebook on tribal laws and policy, notes that the "Supreme Court has found that tribal governments are 'unique aggregations possessing attributes of sovereignty over both their members and their territory.' Powers not limited by federal statute, by treaty, by restraints implicit in the protectorate relationship or by inconsistency with their status remain with tribal governments or reservation communities." Felix Cohen points out in the *Handbook of Federal Indian Law* that the powers of Indian tribes are, in general, "inherent powers of a limited sovereignty which has never been extinguished."⁶³ Certain powers over jurisdiction, however, have been limited by federal statutes, and agency policies in the past century.

This doctrine, a recognition of native sovereignty and power was first stated by Chief Justice John Marshall in *Worcester v. Georgia*, 1832. The argument was over the authority of the state to impose state laws on the Cherokee Nation.

The Indian nations had always been considered as distinct, independent political communities, retaining their original rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed. . . . The

words "treaty" and "nation" are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well understood meaning. We have applied them to Indians, as we have applied them to the other nations of the earth. They are applied to all in the same sense. . . .

The treaties and laws of the United States contemplate the Indian territory as completely separated from that of the states; and provide that all intercourse with them shall be carried on exclusively by the government of the union.⁶⁴

President Andrew Jackson held to the conception of unitary sovereignty and state authority over natives, observed Robert Burt in *The Constitution in Conflict*. "Jackson's predecessors in office had a markedly different conception of the relationship of states and Indian tribes; this conception was the basis for John Marshall's ruling in *Worcester v. Georgia*, that states had no authority to extend their jurisdiction over Indian tribes and that such measures were inconsistent with federal treaties. Jackson's avowal that he 'has not the authority to prevent' state exercise of territorial jurisdiction was thus apparently disingenuous."⁶⁵

The notions of unitary sovereignty, the practical and political powers of the states, indivisible national sovereignty, and federal authority, native sovereignty, and treaty rights have motivated the consideration of many theories on political power, and the rights of territorial dominion, but the contention over state jurisdiction and native sovereignty can never be decisively resolved in theories or court decisions.

The Eleventh Amendment to the Constitution, for instance, restricts the right to initiate suits against the states. Recently, a native government sued the state to negotiate an agreement to establish a casino in Florida. The Supreme Court ruled in *Seminole Tribe v. Florida* that a provision of the "Indian Gaming Regulatory Act was an unconstitutional incursion on state sovereignty."

Justice David Souter "attacked the majority opinion on both broad theoretical grounds and specific legal analysis," reported Linda Greenhouse in the *New York Times*. The Constitution, he said, "demonstrated that state governments were subject to a superior regime of law in a judicial system established, not by the state, but by the people through a specific delegation of their sovereign power to a national government that was paramount within its delegated sphere."⁶⁶

Jurisdictional issues and state immunities to lawsuits are continuous contentions of state and native sovereignty; in this case the issues are casino gambling on a reservation and the provisions of federal legislation. The Indian Gaming Regulatory Act recognizes that native governments have the "exclusive right to regulate gaming" on reservations if such activities are not prohibited or in violation of state or federal laws. The new law established three classes of native gaming: the first, traditional native games; the second, games such as bingo, lotto, and pulltabs; the third and most controversial of the three includes lotteries, slot machines, blackjack, and other casino games. The new regulations require that natives negotiate an agreement with the state government to present the third class of casino games. Florida refused to negotiate with the Seminoles.

The Indian Gaming Regulatory Act is an invitation to casino riches and the enervation of native sovereignty in competition with the constitutional sovereignty of the states. The Red Lake Band of Chippewa Indians in Minnesota and the Mescalero Apache Tribe in New Mexico have sued agencies of the federal government to declare the new gaming laws unconstitutional and to prohibit the appointment of the National Indian Gaming Commission. The essential issues in these suits are native rights and sovereignty.

The contention over state and native sovereignty is historical and constitutional; the case of jurisdiction is state, native, and federal. The first states, had there been a federation of unitary sovereignty, might not have sustained the cause or national diplomatic nature to negotiate treaties with natives. Treaties with natives would not have had the same political value to the states, since natives might have been removed without treaties.

Native casinos, state immunities to lawsuits, taxation, probate on reservations, and other recent court actions on federal, state, and native jurisdiction demonstrate the eternal contention over the notions, statements, courses, and practices of sovereignty, as constitutional matters; contention that must be considered and decided in the Supreme Court.

The "We" in "We, the people of the United States," is not the foremost pronoun of a native presence on this continent. The measure of that national pronoun would not cover natives as constitutional citizens for more than a century.

The Fourteenth Amendment to the Constitution provides that "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Natives in traditional communities and on reservations were not embraced by this constitutional provision for more than a century; moreover, as natives were not respected as citizens, their constitutional rights were denied by state governments.

Citizens are so at birth, and others "achieve citizenship" by naturalization. Edward Corwin points out in *The Constitution* that the category of citizens at birth "derives from the principle of *jus soli* ('the law of the soil') of the English common law." The second notion of citizens at birth, "owe their citizenship to Congressional legislation which applies the *jus sanguinis* ('the law of blood relationship') of the Roman civil law, and embraces with certain qualifications persons born outside the United States and its outlying possessions to parents one or both of whom are citizens of the United States."⁶⁷ Clearly, natives are the embodiment of the common law principle of *jus soli*, and *jus sanguinis*, as the foundational family histories of the continent. Yet, natives were not named citizens of the nation until the twentieth century.

Article IV of the Constitution provides that the "Citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." Most natives on reservations were denied this provision; federal *Indian* agents authorized natives to travel outside the reservations.

The Indian Citizenship Act of 1924 provided that "Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States."⁶⁸ Some natives had been granted citizenship earlier in connection with devious land allotments, military service, residence outside of the reservation, marriage, and by other means; however, the enactment of a distinct citizenship act reveals the previous separation and the absence of constitutional rights on reservations.

The Preamble is not constitutional, and by "itself alone it can afford no basis for a claim either of governmental power or of private right."⁶⁹ That pronoun, however, is a source of justice

and unity in a constitutional democracy. "We, the people," is a generous, common pronoun, and a mighty promise.

The promise of that plural pronoun is not passive, but an active obligation to be *the* people of this nation; the *we*, as natives of this continent, are the presence, transmotion, and stories of survivance.

We, the natives of this continent, are the storiers of presence, and we actuate the observance of natural reason and transmotion in this constitutional democracy.

- in *Discovered Lands, Invented Pasts*, by the Yale University Art Gallery (New Haven: Yale Univ. Press, 1992), 44.
22. Iskander Mydin, "Historical Images—Changing Audiences," in *Anthropology and Photography, 1860–1920*, ed. Elizabeth Edwards (New Haven: Yale Univ. Press, 1992), 74; and Christopher Pinney, "The Parallel Histories of Anthropology and Photography," in *Anthropology and Photography*, ed. Edwards, 249.
 23. Vizenor, *Manifest Manners*, 4, 5, 6, 17. "Manifest manners are the simulations of dominance; the notions and misnomers that are read as the authentic and sustained as representations of Native American Indians."
 24. Patrick Smith, *Warhol: Conversations about the Artist* (Ann Arbor: UMI Research Press, 1988), 359.
 25. Joan Halifax, *The Fruitful Darkness* (New York: HarperCollins, 1993), 26, 27.
 26. Halifax, *Fruitful Darkness*, 98, 99.
 27. Halifax, *Fruitful Darkness*, 187, 188.
 28. Pierre Bourdieu, *Photography: A Middle-brow Art* (Stanford: Stanford Univ. Press, 1990), 71, 72.
 29. Lowe, *History of Bourgeois Perception*, 39, 135.
 30. Roland Barthes, *Camera Lucida* (New York: Hill & Wang, 1981), 6, 12, 13.
 31. David Freedberg, *The Power of Images* (Chicago: Univ. of Chicago Press, 1989), 438, 439.
 32. Linda Hutcheon, *The Politics of Postmodernism* (New York: Routledge, 1989), 123.
 33. Roland Barthes, *Image—Music—Text* (New York: Hill & Wang, 1977), 17.
 34. John Tagg, *The Burden of Representation* (Amherst: Univ. of Massachusetts Press, 1988), 63, 64.
 35. Serres, "Panoptic Theory," 27, 30, 31.
 36. Gans, *Originary Thinking*, 46.
 37. Susan Sontag, *On Photography* (New York: Farrar, Straus & Giroux, 1973), 14, 15, 97.
 38. Jean-Luc Nancy, *The Birth to Presence* (Stanford: Stanford Univ. Press, 1993), 1, 2.
 39. John Berger, *About Looking* (New York: Pantheon, 1980), 50, 51.
 40. Nancy, *Birth to Presence*, 191, 192, 196.
 41. Barthes, *Camera Lucida*, 6, 87.
 42. Rennard Strickland, *The Indians of Oklahoma* (Norman: Univ. of Oklahoma Press, 1980), 46, 47.
 43. Christopher Lyman, *The Vanishing Race and Other Illusions* (New York: Pantheon, Smithsonian Institution Press, 1982), 19, 20, 21. "Just as it was difficult for Curtis to see Indians for what they were through the veil of his culture at the time, so is it difficult for us to see him and his work for what they were through the bias of our time."
 44. Mick Gidley, "Edward S. Curtis' Indian Photographs: A National

- Enterprise," in *Representing Others*, ed. Mick Gidley (Exeter UK: Univ. of Exeter Press, 1994), 103, 104.
45. Herman Viola, *The Indian Legacy of Charles Bird King* (New York: Doubleday, Smithsonian Institution Press, 1976), 13.
 46. Andrew J. Cosentino, *The Paintings of Charles Bird King* (Washington: Smithsonian Institution Press, National Collection of Fine Arts, 1977), 71, 74, 75. Cosentino points out that even "the untrained eye can see, for example, that many of King's Indian portraits have features that are markedly Caucasoid. This may largely be explained by the fact that many of the delegates he painted were of mixed blood, as well as by the artist's tendency to soften and round his forms." King rounded his *indians* too much into a homogeneous interimage ethnicity. Moreover, the *indian* delegates who posed for the artist were as unique in their countenance as any other human subject in his studio. King was painting *indian* portraits for the government, and the time given to fugitive poses in his studio was limited. The author seems to suggest that *indians* are a pure race, and the end of the pure *indian* is intermarriage. King, in fact, created the pure *indian*, the rounded homogeneous *indian* in his lazy portraits, as interimage simulations.
 47. William Cronon, "Telling Tales on Canvas," 53, 55, 56.
 48. John Napier, *Hands* (Princeton: Princeton Univ. Press, 1980; rev. ed., 1993), ed. Russell H. Tuttle, 4, 8.
 49. Robert Brilliant, *Portraiture* (Cambridge: Harvard Univ. Press, 1991), 106, 107.
 50. Sontag, *On Photography*, 64.
 51. Dorothy and Thomas Hoobler, *Photographing the Frontier* (New York: G. P. Putnam's Sons, 1980), 117.
 52. Julie Inness, *Privacy, Intimacy, and Isolation* (New York: Oxford Univ. Press, 1992), 7, 42.
 53. Bakhtin, *Art and Answerability*, 126.
 54. Bakhtin, *Speech Genres*, 146, 147.
 55. Gisèle Freund, *Photography and Society* (Boston: David R. Godine, 1980), 4, 35, 78.

CHAPTER 5. NATIVE TRANSMOTION

1. Francis Paul Prucha, *American Indian Treaties* (Berkeley: Univ. of California Press, 1994), 196, 197.
2. Gerald Vizenor, "Ojibways Seek Right to 'Regulate' Rice on Wildlife Refuge," *Minneapolis Tribune*, Sept. 13, 1968.
3. Prucha, *American Indian Treaties*, 385, 387. "The result was a series of decisions about land claims, tribal sovereignty and jurisdiction, and hunting and fishing rights that greatly benefited Indian tribes and helped

- tremendously to reestablish and revitalize Indian reservation communities. It should not be assumed, however, that all this was accomplished without controversy or that the treaty provisions were so 'clear and plain' that unanimity in the courts came as a matter of course."
4. Louis Owens, "Mapping, Naming, and the Power of Words" (paper presented at "The Art of the Wild," an environmental writing conference, Squaw Valley Community of Writers, Squaw Valley CA, July 1995).
 5. Henry R. Schoolcraft, *Archives of Aboriginal Knowledge*, (Philadelphia: J. B. Lippincott, 1860), 1:333, 334. See also Bieder, *Science Encounters the Indian*. Schoolcraft, in the early years of his service, was romantic about natives, but later, compared to other "scientific" observers of his time, he viewed natives as "children" who had lost their "native energy," and considered race as inherited and a cultural category.
 6. Frances Densmore, *Chippewa Music* (Minneapolis: Ross & Haines, 1973), iv, 4, 15, 107, 108.
 7. Densmore, *Chippewa Music*, 24.
 8. Frances Densmore, *Chippewa Customs* (Minneapolis: Ross & Haines, 1970), 174, 175.
 9. Densmore, *Chippewa Customs*, 177.
 10. Warren, *History of the Ojibway Nation*, 373.
 11. Richard Kearney, *The Wake of Imagination* (Minneapolis: Univ. of Minnesota Press, 1988), 2, 3. "The contemporary eye is no longer innocent. What we see is almost invariably informed by prefabricated images. There is, of course, a fundamental difference between the image of today and former times: now the image precedes the reality it is supposed to represent."
 12. Francis Paul Prucha, *Documents of United States Indian Policy* (Lincoln: Univ. of Nebraska Press, 1990), 171, 173.
 13. Charles F. Wilkinson, *The Eagle Bird: Mapping a New West* (New York: Pantheon, 1992), 30.
 14. Norman J. W. Thrower, *Maps and Civilization* (Chicago: Univ. of Chicago Press, 1996), 137, 138. The United States Public Land Survey "has been characterized as 'the triumph of geometry over geography.'"
 15. Vizenor, *Interior Landscapes*, 16, 54. The allotment document is recorded in the General Land Office of the United States, vol. 776, p. 240. My son, Robert Vizenor, and I located the actual land issued in a patent to Alice Beaulieu on the reservation. However, the task was not easy; first we obtained several county and township survey maps, and then by car measured the distance on rural section line roads. Finally, on foot we located the original allotment. My grandmother had never seen the actual land; she would have been amused, because the area of her patent was muskeg and therefore of no value to a lumber company. My grandmother and the company that leased the land had two things in common: an

- agreement of an annual fee to lease the allotment for the timber, and neither my grandmother nor the company ever saw the land.
16. Thrower, *Maps and Civilization*, 45.
 17. Schoolcraft, *Archives of Aboriginal Knowledge*, 415, 416, 417.
 18. Nichols and Nyholm, *A Concise Dictionary of Minnesota Ojibwe*. The word *oshkaabewis* is an animate noun; the plural is *oshkaabewisag*. Baraga, in *A Dictionary of the Ojibwe Language*, listed *oshkaabewis* as a "waiter or attendant to an Indian Chief." Seth Eastman produced illustrations for the manuscripts of Henry Rowe Schoolcraft. The connection between the totemic crane in the document and the actual *oshkaabewis* is not certain.
 19. Warren, *History of the Ojibway Nation*, 318.
 20. Helen Tanner, *Atlas of Great Lakes Indian History* (Norman: Univ. of Oklahoma Press, 1987), 98, 144. "The maps in the Atlas emphasize the location of Indian villages at significant dates in the history of the Great Lakes Region."
 21. Schoolcraft, *Archives of Aboriginal Knowledge*, 340.
 22. David Turnbull, *Maps Are Territories* (Chicago: Univ. of Chicago Press, 1989), 18, 19, 20, 26. See also Thrower, *Maps and Civilization*; Harald E. L. Prins, "Children of Gluskap: Wabanaki Indians on the Eve of the European Invasion," in *American Beginnings: Exploration, Culture, and Cartography in the Land of Norumbega*, ed. Emerson Baker et al. (Lincoln: Univ. of Nebraska Press, 1994), 95-117. For instance, "Non Chi Ning Ga's Missouri map is an American Indian map which differs from a modern map of the same area only in the details." This shows that "so-called 'primitive' maps are in fact comparable with modern Western maps in many respects."
 23. Joyce M. Szabo, *Howling Wolf and the History of Ledger Art* (Albuquerque: Univ. of New Mexico Press, 1994), 23, 119.
 24. Szabo, *Howling Wolf*, 21, 31, 32, 42, 168.
 25. Frederick Hartt, *Art: A History of Painting, Sculpture, Architecture* (New York: Harry N. Abrams, 1976), 390, 391.
 26. George Heard Hamilton, *Painting and Sculpture in Europe, 1880-1940* (New York: Penguin, 1987), 215, 216. See also Sam Hunter and John Jacobus, *Modern Art*, 3d ed. (New York: Harry N. Abrams, 1992), 120, 121.
 27. Armin Zweite, *The Blue Rider in the Lenbachhaus, Munich* (Munich: Prestel-Verlag, 1989), 38, 39, 40, 61.
 28. George Horse Capture, "From Museums to Indians: Native American Art in Context," in *Robes of Splendor: Native North American Painted Buffalo Hides*, Musée de l'Homme (New York: New Press, 1993), 45, 65, 67. Originally published as *Parures d'histoire*, Réunion des musée nationaux (Paris, 1993).
 29. Dorothy V. Jones, *License for Empire: Colonialism by Treaty in Early America* (Chicago: Univ. of Chicago Press, 1982), xii.
 30. Michael J. Kaplan, "Issues in Land Claims," in *Irredeemable America: The Indians' Estate and Land Claims*, ed. Imre Sutton (Albuquerque: Univ.

- of New Mexico Press, 1985), 71, 72, 76, 82. United States courts "have recognized that certain rights flow from occupancy and use of the land for a long time, and that they flow to the occupants. They have also acknowledged that these rights may be established either by proof of actual occupancy and use or by demonstrating that the government has, at some point in the past, conceded the requisites." That "right of occupancy," however, "can be hollow. It is a right granted by the conqueror . . . and consists mainly of a right that flows in the wrong direction," writes Kaplan. "Aboriginal title may be extinguished at will by the sovereign. Such title has been viewed as permissive, temporary, and withdrawable by the government at any time."
31. David J. Elkins, *Beyond Sovereignty: Territory and Political Economy in the Twenty-First Century* (Toronto: Univ. of Toronto Press, 1995), 101, 197, 256.
 32. Max Oelschlaeger, *The Idea of Wilderness* (New Haven: Yale Univ. Press, 1991), 30, 31, 32, 33.
 33. William Cronon, *Changes in the Land: Indians, Colonists, and the Ecology of New England* (New York: Hill & Wang, 1983), 37, 53, 169. English colonists practiced "Indian hunting and gathering as a justification for expropriating Indian land. To European eyes, Indians appeared to squander the resources that were available to them," writes Cronon. "Colonists thus rationalized their conquest of New England: by refusing to extend the rights of property to the Indians, they both trivialized the ecology of Indian life and paved the way for destroying it."
 34. N. Scott Momaday, *The Way to Rainy Mountain* (Albuquerque: Univ. of New Mexico Press, 1969), 7.
 35. Momaday, *The Names*, 3.
 36. Richard Slobodin, "The Study of Reincarnation in Indigenous American Cultures: Some Comments," in *Amerindian Rebirth: Reincarnation Belief Among North American Indians and Inuit*, ed. Antonia Mills and Richard Slobodin (Toronto: Univ. of Toronto Press, 1994), 293, 294.
 37. Maurice Cranston, *The Noble Savage: Jean-Jacques Rousseau, 1754–1762* (Chicago: Univ. of Chicago Press, 1991), 308.
 38. Judith Shklar, *Men and Citizens: A Study of Rousseau's Social Theory* (New York: Cambridge Univ. Press, 1985), 43, 168.
 39. Aristotle, *Politics*, vol. 2 of *The Complete Works of Aristotle*, ed. Jonathan Barnes (Princeton: Princeton Univ. Press, 1984), 1263a37–38, 1279a28–31.
 40. Warren, *History of the Ojibway Nation*, 72, 73.
 41. F. H. Hinsley, *Sovereignty* (New York: Cambridge Univ. Press, 1986), 2, 16, 122, 123, 124, 125.
 42. Jens Bartelson, *A Genealogy of Sovereignty* (New York: Cambridge Univ. Press, 1995), 141, 239.
 43. Michael Ross Fowler and Julie Marie Bunck, *Law, Power, and the Sovereign*

- State* (University Park: Pennsylvania State Univ. Press, 1995), 64, 70, 140, 152.
44. Prucha, *American Indian Treaties*, 2.
 45. Wilkinson, *The Eagle Bird*, 39.
 46. Prucha, *Documents of United States Indian Policy*, 202.
 47. Prucha, *American Indian Treaties*, 356, 357.
 48. Prucha, *American Indian Treaties*, 2, 197.
 49. Gidon Gottlieb, *Nation against State: A New Approach to Ethnic Conflict and the Decline of Sovereignty* (New York: Council on Foreign Relations Press, 1993), 34, 36, 37, 38.
 50. Alan Dowty, *Closed Borders* (New Haven: Yale Univ. Press, 1987), 230. "Free emigration cuts to the heart of American concerns in the world. Throughout its history, the United States has defended the rights of the individual against the claims of the state. Few issues frame this concern so well as the right of free movement."
 51. David Jacobson, *Rights across Borders: Immigration and the Decline of Citizenship* (Baltimore: Johns Hopkins Univ. Press, 1996), 76.
 52. Fernando R. Tesón, "Changing Perceptions of Domestic Jurisdiction and Intervention," in *Beyond Sovereignty*, ed. Tom Farer (Baltimore: Johns Hopkins Univ. Press, 1996), 29, 51.
 53. American Indian Lawyer Training Program, *Indian Tribes as Sovereign Governments* (Oakland CA: American Indian Resources Institute, 1988), 106.
 54. Noah Webster, "A Citizen of America," Oct. 17, 1787, in part 1 of *The Debate of the Constitution*, ed. Bernard Bailyn (New York: Library of America, 1993), 145, 146.
 55. Samuel H. Beer, *To Make a Nation: The Rediscovery of American Federalism* (Cambridge: Harvard Univ. Press, 1993), 251, 253.
 56. Benjamin Franklin, "I Agree to This Constitution with All Its Faults," Speech at the Conclusion of the Constitutional Convention, Sept. 17, 1787, in part 1 of *Debate of the Constitution*, ed. Bailyn, 3, 4.
 57. Prucha, *American Indian Treaties*, 26, 27, 37, 38.
 58. James Madison, *The Federalist XLII*, in part 2 of *Debate of the Constitution*, ed. Bailyn, 67, 68.
 59. Prucha, *American Indian Treaties*, 69.
 60. James Madison, in part 2 of *Debate of the Constitution*, ed. Bailyn, 449.
 61. Bradford Perkins, "The Creation of a Republican Empire, 1776–1865," in vol. 1 of *The Cambridge History of American Foreign Relations* (New York: Cambridge Univ. Press, 1993), 142, 143, 144, 145.
 62. Jones, *License for Empire*, 147.
 63. American Indian Lawyer Training Program, *Indian Tribes as Sovereign Governments*, 4, 35.
 64. American Indian Lawyer Training Program, *Indian Tribes as Sovereign Governments*, 109, 110.

65. Robert Burt, *The Constitution in Conflict* (Cambridge: Harvard Univ. Press, 1992), 159, 160. "Prior presidents believed that they lacked practical capacity effectively to protect Indian tribal integrity against state-sponsored incursions and overlooked the possibility that a determined invocation of federal armed force might have helped to vindicate federal treaty obligations." Burt asserts that "Jackson rejected *Worcester* on the basis of principle, not pragmatism."
66. Linda Greenhouse, "Justices Curb Federal Power to Subject States of Lawsuits," *New York Times*, March 28, 1996.
67. Edward S. Corwin, *The Constitution*, 14th ed., revised by Harold W. Chase and Craig R. Ducat (Princeton: Princeton Univ. Press, 1978), 86.
68. Prucha, *Documents of United States Indian Policy*, 218.
69. Corwin, *The Constitution*, 1.

Index

- Abduction (Mack), 45
 Abel, Annie Heloise, 83
 Abourezk, James, 101
 About Looking (Berger), 158
 The Accursed Share (Bataille), 16, 53, 142
 Adorno, Theodor, 24-25, 26
 agawaatese, defined, 24
 The Agony of Flies (Canetti), 119-20
 ajijaak, defined, 119
 Alexandrov, Vladimir, 37
 Allen, Mary, 128, 131
 All My Sins Are Relatives (Penn), 111-13
 Almanach Der Blaue Reiter (Kandinsky and Marc), 180
 America (De Bry), 149-50
 American Historical Pageantry (Glassberg), 86
 The American Indian as Slaveholder and Secessionist (Abel), 83
 American Indian Holocaust and Survival (Thornton), 80
 American Indian Treaties (Prucha), 168-69
 American Notes (Dickens), 76-77, 83-84
 Amerika (Kafka), 117-18
 Amerindian Rebirth (Slobodin), 185
 Ample Breasts, Fat Buttocks (Mo Yan), 202 n.6
 The Anatomy of Human Destructiveness (Fromm), 131
 Ancestral Voices (Momaday), 137
 The Ancient Child (Momaday), 136-37
 Anderson, Jack, 68
 Andrews, Lynn, 88
 Angulo, Jaime de, 88
 Animals and Man in Historical Perspective (Klaits), 132
 Animals in American Literature (Allen), 128
 animosh, defined, 123-24
 Anthropology and Photography (Edwards), 147
 Apess, William, 107
 The Archaeology of Knowledge (Foucault), 51, 70
 Archive Fever (Derrida), 50
 Archives of Aboriginal Knowledge (Schoolcraft), 175-76
 Aristotle, 32, 33, 133, 186
 Art and Answerability (Bakhtin), 26, 164-65
 Atlas of Great Lakes Indian History (Tanner), 177
 Aubid, Charles, 167, 169
 The Autobiography of a Winnebago Indian (Radin), 101
 Baird, W. David, 82, 83-84
 Bakhtin, Mikhail, 26-27, 54-55, 66-67, 120-21, 164-65
 Banks, Dennis, 43-44
 Baraga, Bishop, 16
 Bartelson, Jens, 187
 Barthes, Roland, 127, 146, 155, 156, 159
 Bataille, Georges, 16-17, 53, 55-56, 142
 Baudrillard, Jean, 27-28, 42, 43, 146, 147-48
 Bauman, Zygmunt, 97
 Bearheart (Vizenor), 6-8
 Beaulieu, Alice Mary, 51-54, 173-74
 Beaulieu, Theodore, 57-58
 Beautiful Joe (Saunders), 128-29