

UCLA

The Indigenous Peoples' Journal of Law, Culture & Resistance

Title

Realizing Sovereignty: Envisioning Mutual Tribal Self-Determination Through Intertribal Cooperation and Confederalism

Permalink

<https://escholarship.org/uc/item/1br0565c>

Journal

The Indigenous Peoples' Journal of Law, Culture & Resistance, 10(1)

ISSN

2575-4270

Author

Ornstein, Edward Randall

Publication Date

2026-10-30

DOI

None/uclalaw_ipj|cr.70053

Peer reviewed

REALIZING SOVEREIGNTY: ENVISIONING MUTUAL TRIBAL SELF-DETERMINATION THROUGH INTERTRIBAL COOPERATION AND CONFEDERALISM

Edward Randall Ornstein

ABSTRACT

For centuries, Federal Indian policy has diminished tribal nations' capacity to govern and weakened the ancient confederacies and alliances that once bound Indian Country together. Situated in this historical context, this Article asserts that legal sovereignty alone is not sufficient to enable the self-determination of Indigenous peoples. When the capacity of tribal nations is diminished relative to local, state, and federal power, traditions of Indigenous confederalism and coalition-building offer a solution for tribes to facilitate mutual sovereign capacity-building by reviving diplomatic networks of reciprocity and cooperation. This Article presents case studies that capture the successes of modern intertribal confederalism and coalition-building in economic, cultural, and legal or political contexts to demonstrate how tribal governments can benefit from engaging in further cooperation with neighboring tribes and those tribes with overlapping interests.

ABOUT THE AUTHOR

Edward Randall Ornstein is an enrolled member of the Southeastern Mvskoke Nation, a state-recognized tribe in Alabama. He received his J.D. from the University of Arizona with certifications in Indigenous Peoples Law and Policy and Environmental Law, Science, and Policy, where he served as a board member of the local chapter of the Native American Law Students Association and Editor-in-Chief of the Arizona Journal of Environmental Law and Policy. He later served as Co-chair of the ABA's Indigenous Law Committee, organized in the Section of Environment, Energy and Resources. He now serves as Deputy General Counsel and Tallahassee Embassy Director for the Miccosukee Tribe of Indians of Florida and as an advisor to leadership of the ABA Section of Environment, Energy, and Resources. All views expressed in this article are those of Mr. Ornstein as an individual, not in his capacity as a representative of the Miccosukee Tribe of Indians of Florida, American Bar Association, or as a member of the Southeastern Mvskoke Nation.

TABLE OF CONTENTS

I. INTRODUCTION 132

II. THE COLONIAL PROJECT: DEPRIVATION OF RESOURCES, DESTRUCTION OF ALLIANCES. 133

 A. *Deprivation of Resources*. 133

 B. *Disruption of Traditional Alliances, Coalitions, and Confederacies* 136

III. CONTEMPORARY CONTEXT 139

 A. *Economic Cooperation: Intertribal Buffalo Council (ITBC)*. 140

 B. *Cultural Cooperation: Interior Salish Languages* 141

 C. *Legal Cooperation: Intertribal Court of Southern California (ICSC)*..... 143

IV. CONCLUSION 144

I. INTRODUCTION

Tribes, like all nations of the world, have the internationally recognized right to self-determination.¹ In the United States, the discourse surrounding the rights of Native nations is still focused on legal sovereignty, or the paper rights recognized by the federal government. However, sovereignty is not sufficient for self-determination without the operational capacity necessary to exercise the rights of nationhood. In historic times, tribes did not exist in vacuums each on disparate reservations. Rather, networks of trade and diplomacy stitched together Indian Country, uniting tribes in matters of war, politics, trade, diplomacy, and cultural preservation. The intentional destruction of these networks by the United States government was a critical factor in diminishing pre-colonial Indian Country’s power structures — but those traditions of cooperation remain available as a foundation for tribal self-determination today.

While tribes can and should build their capacities as individual sovereign nations, this Article draws from the tradition of Indigenous confederalism and coalition-building to argue that intertribal cooperation and mutual support is vital to the full self-determination of Indigenous peoples. This Article conducts a historical survey of confederalism in Indian Country and its destruction through the deployment of the reservation system, and presents examples of cooperative models of tribal government that can enable capacity-building without reliance on uncertain federal funding streams. As tribes navigate fluctuating federal funding streams, collaboration becomes all the more critical to sustain the projects of each individual tribal government.

¹ See G.A. Res. 61/295, annex, Declaration on the Rights of Indigenous Peoples, art. 3 (Sept. 13, 2007).

II. THE COLONIAL PROJECT: DEPRIVATION OF RESOURCES, DESTRUCTION OF ALLIANCES

The brunt of the United States' war on the Indigenous peoples of Turtle Island was not martial, but economic and diplomatic in nature. When the fledgling United States first came into being, it did so in the image of the strong Indigenous confederacies and coalitions that surrounded it. The Articles of Confederation that predated the U.S. Constitution were modeled on structures like the Haudenosaunee (Iroquois) Great Law of Peace.²

Early treaties were deferential to tribes, which were negotiating from a position of strength and resource richness relative to the embattled thirteen colonies.³ Only once the United States had been victorious in the War of 1812, which saw the British Empire lose its foothold within the borders of the modern-day United States shortly after France had sold off its claims in the Louisiana Purchase, did the United States gain the upper hand in the Indian Wars.⁴ The colonial policy of the United States then focused on depriving tribal nations of their resources, particularly land, and dividing historic confederacies like the Haudenosaunee, Oceti Sakowin, and Creek Confederacies.

A. *Deprivation of Resources*

In 1791, President George Washington described the resource deprivation focus in an address to Congress: “[I]t seems necessary . . . [t]hat the mode of alienating their lands, the main source of discontent and war, should be so defined and regulated as to obviate imposition.”⁵ A decade later, President Thomas Jefferson wrote confidentially to future President William Henry Harrison, promising that “this letter being unofficial and private, I may with safety give you a more extensive view of our policy respecting the Indians, that you may better comprehend the parts dealt out to you in detail through the official channel.”⁶ In one of the most revealing and predictive exchanges between current and future U.S. heads of state, Jefferson explained,

[W]e shall push our trading uses, and be glad to see the good and influential individuals among them run in debt, because we observe that when these debts get beyond what the individuals can pay, they become willing to lop them off by a cession of lands. At our trading houses, too, we mean to sell so low as merely to repay us cost and charges [to outcompete] private traders . . . In this way our settlements will gradually circumscribe and approach the Indians, and they will in time either incorporate with us

² Senate Con. Res. 76, 100th Congress, 1st Sess. (Dec. 2, 1987), <https://www.govinfo.gov/content/pkg/CHRG-100shrg83712/pdf/CHRG-100shrg83712.pdf>.

³ Robert J. Miller, *History Commentary – Indian Treaties as Contracts*, 20:1 COLUMBIA MAG. 1 (Spring 2006).

⁴ *Id.*

⁵ George Washington, Third Annual Address to Congress (Oct. 25, 1791), in MESSAGES AND PAPERS OF THE PRESIDENTS 1789–1897 103, 104–05 (James D. Richardson ed., 1899).

⁶ *President Jefferson to William Henry Harrison* (Feb. 2, 1803), in A HISTORICAL NARRATIVE OF THE CIVIL AND MILITARY SERVICES OF MAJOR-GENERAL WILLIAM H. HARRISON, AND A VINDICATION OF HIS CHARACTER AND CONDUCT AS A STATESMAN, A CITIZEN, AND A SOLDIER. WITH A DETAIL OF HIS NEGOTIATIONS AND WARS WITH THE INDIANS UNTIL THE FINAL OVERTHROW OF THE CELEBRATED CHIEF TECUMSEH AND HIS BROTHER THE PROPHET 35 (ed. Moses Dawson, 1824).

as citizens of the United States or remove beyond the Mississippi. The former is certainly the termination of their history . . . but, in the whole course of this, it is essential to cultivate their love.⁷

In the ensuing century and a half, 98.9 percent of tribes' historical lands were taken, largely through treaties signed in bad faith,⁸ and the United States sponsored a number of civil wars between factions within various tribes or tribal confederacies.⁹ Once the United States took Indian land, ran tribes into debt, split ancient alliances, and made Indigenous peoples reliant on commodities from Bureau of Indian Affairs (BIA) trading houses, the federal government was perfectly happy to *accord* Indigenous peoples their legal status as “distinct, independent, political communities” with “those sovereign powers which have not been divested at the will of the conqueror.”¹⁰ Once Indigenous peoples had been deprived of their resource base and made “dependent” and isolated from other tribes on geographically disparate reservations, what sovereignty remained was constrained by insufficient resources to render it acceptable to the federal government.¹¹

Attorneys make entire careers figuring out where Indian legal sovereignty ends and federal or state sovereignty begins. But when those jurisdictional boundaries are finally clarified by a court or Congress, there is often a gap between legal sovereignty and the capacity to fully realize that sovereignty. Tribes are still constrained by the resource and capacity shortages created by centuries of defensive warfare and imperial oppression. For example, after *McGirt v. Oklahoma*,¹² Eastern Oklahoma tribes saw an “exponential surge” in filings, with the Cherokee Nation reporting filings increased by 2,800 percent.¹³ Tribal governments sought financial aid from Congress to supplement their judicial capacity to hear an increased case-load.¹⁴ The BIA estimated that

⁷ *Id.*

⁸ Lizzie Wade, *Native Tribes Have Lost 99% of Their Land in the United States*, SCIENCE (Oct. 28, 2021), (“The researchers found that Indigenous people across the contiguous United States have lost 98.9% of their historical lands, or 93.9% of the total geographic area they once occupied, they report today in Science. (The first figure is higher because the same land was sometimes occupied by multiple tribes before colonial boundaries were imposed)”); see also *Worcester v. Georgia*, 31 U.S. 515, 517–18 (1832) (many treaties were created in bad faith and so should be construed in favor of tribes).

⁹ See, e.g., *The Creek War of 1813–1814*, AMERICAN BATTLEFIELD TRUST (Oct. 26, 2021), <https://www.battlefields.org/learn/articles/creek-war-1813-1814> [https://perma.cc/39J5-3EEG].

¹⁰ FELIX S. COHEN, HANDBOOK OF FEDERAL INDIAN LAW 122–23 (reprint ed. 1988).

¹¹ See *Cherokee Nation v. Georgia*, 30 U.S. 1, 10 (1831) (C.J. Marshall, deeming Indigenous tribes “domestic dependent nations . . . occupy[ing] a territory to which we assert a title independent of their will.”).

¹² *McGirt v. Oklahoma*, 591 U.S. 894 (2020).

¹³ TULSA WORLD, *McGirt v. Oklahoma: Supreme Court Decision and Aftermath* (May 28, 2024), https://tulsaworld.com/news/local/crime-and-courts/mcgirt-v-oklahoma-supreme-court-decision-and-aftermath/collection_1a8d881c-80ff-11eb-a084-2ba1ff24554d.html#anchor_item_9 [https://perma.cc/6WPL-KG4A] (1600% number comes from Cherokee Nation reporting 1200 cases from Jan 1– July 9, 2021, an increase over a prior average of 6 cases per month. 6*7 months (July)=42. 1200/42=28.57, or a 2857% increase).

¹⁴ *Id.*

full funding for tribal courts would cost \$1.2 billion, but fiscal year (FY) 2021 total federal funding for tribal courts capped out at \$53.9 million.¹⁵ Less than five percent of the money needed to fully realize tribal judicial systems had been federally provided. This is just one recent example of centuries of federal policy focused on deprivation of tribal national capacity. This persistent gap reinforces the case for tribes to develop independent and cooperative capacity-building strategies rather than relying solely on federal appropriations. This is despite the knowledge that those resources were divested from Tribes with neither due process nor just resolution — a fact that the federal government has repeatedly acknowledged.¹⁶

There are fundamental resource shortages in Indian Country that external government agencies do not have a vested interest in solving. It is already tacitly understood that tribes need to develop the capacity to exercise their sovereign powers if they are to fully realize the opportunities for self-determination created by *McGirt* or any other legal success that expands recognition of tribal legal sovereignty. However, a discourse focused solely on legal sovereignty can distract from the essential question of national capacity, if the latter is not consistently and intentionally accounted for in the pursuit of sovereignty. Especially for Indigenous peoples without federally recognized legal sovereignty, like the Kanaka Maoli of Hawai‘i or the state-recognized tribes of the East Coast,¹⁷ this paradigm shift provides an essential alternative model for

¹⁵ NAT’L CONG. OF INDIANS, FISCAL YEAR 2022 INDIAN COUNTRY BUDGET REQUEST: RESTORING PROMISES 42 (2021).

¹⁶ Richard Nixon, *Special Message to the Congress on Indian Affairs*, 1 Pub. Papers 564, 564–67 (July 8, 1970); S.J. Res. 14, 111th Cong. (2009), enacted as *Department of Defense Appropriations Act, 2010*, Pub. L. No. 111–118 Sec. 8113, 123 Stat. 3409, 3450–51 (2009); Joint Resolution to acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, Pub. L. No. 103–150, 107 Stat. 1510 (1993); Barack Obama, *Statement on Signing the Department of Defense Appropriations Act, 2010*, 2009 Daily Comp. Pres. Doc. 1 (Dec. 19, 2009); *McGirt v. Oklahoma*, 591 U.S. ___, 140 S. Ct. 2452, 2482 (2020); *U.S. v. Sioux Nation of Indians*, 448 U.S. 371 (1980).

¹⁷ There are 63 state-recognized Tribes spread across 11 states, primarily concentrated on the East Coast. For more information, see the National Conference of State Legislatures’ Brief on State Recognition of American Indian Tribes. NAT’L CONF. OF STATE LEGISLATURES, STATE RECOGNITION OF AMERICAN INDIAN TRIBES (2016). For comparison, the Kanaka Maoli people of Hawai‘i have recognized self-governing authority under Title 1 Chapter 10H of the Hawai‘i Revised Statutes, not dissimilar from the Indian Commission structure generally used by states recognizing Tribes on the continent, like the Alabama Indian Affairs Commission created pursuant to AL Code Section 41–9-708 (1984, as amended 2019). Haw. Rev. Stat. § 1–10H (2020). Ala. Code § 41–9-708 (1984, as amended 2019). Many Tribes impacted by Indian Removal, especially those on the East Coast, cannot be recognized by the Bureau of Indian Affairs 25 C.F.R. Part 83 (c) criterion requiring consistent political influence or authority as an autonomous entity. Procedure for Federal Acknowledgement of Indian Tribes, 25 C.F.R. § 83(c) (2023). East Coast Tribes which do receive federal recognition, like the Pamunkey Indian Tribe (2015), generally begin as state-recognized entities before they can accumulate the resources and political capital necessary to facilitate recognition by Congress, rather than the BIA, exemplifying the capacity-building needs described in this article. Two other state-recognized Tribes, at the time of writing, the Lumbee Tribe of North Carolina and the MOWA Band of Choctaw of Alabama, are modern examples of this phenomenon and as of this writing have bills for recognition in Congress. S. 1364, 117th Cong. (2021); S. 3443,

conceptualizing Native nation-building that is not solely reliant on federal concurrence with tribal assertions of sovereign legal powers. Rather than relying on the support of the federal government, tribes and Indigenous communities can instead rely on one another.

B. *Disruption of Traditional Alliances, Coalitions, and Confederacies*

The very nature of traditional Indigenous government, at least among most Southeastern Indigenous peoples and many similar tribes, is based on complex interlocking networks of clans and autonomous tribal towns engaging in diplomacy and cooperative civic governance.¹⁸ Tribal towns in the historic southeast operated with all the authority of a sovereign nation,¹⁹ not unlike the city-states of the Ancient Mediterranean world. Just like those city-states, ancestors formed confederacies and coalitions to form collective economic, cultural, political or military power and resist encroachment.²⁰

Pressure placed by the U.S. government through diplomacy, economic coercion, and the reservation system often caused the division of these traditional models of government;²¹ or it led to a centralization of these traditional confederacies into increasingly federalized structures, because the U.S. government sought to deal with one spokesperson rather than more broadly with diverse confederal councils.²² As a result, many modern tribal identities, like those of the Creek or Seminole, are the product of historically sovereign tribal towns centralizing into confederacies, which then obtained federal recognition.²³

117th Cong. (2022).

¹⁸ U.N. Secretariat, Permanent Forum on Indigenous Issues, U.N. Dept. of Econ. & Soc. Affairs, Div. for Soc. Pol'y & Dev., International Expert Group Meeting on the Millennium Development Goals, Indigenous Participation and Good Governance, Contribution by Mr. Famark Hlawning, Hum. Rts. & Advoc. Comm., Asia Indigenous People Pacts (AIPP), U.N. Doc. PFII/2006/WS.3/5 (Jan. 11–13, 2006); SARAH DEER & CECILIA KNAPP, *Muscogee Constitutional Jurisprudence: Vhakv Em Pvtakv (The Carpet Under the Law)*, 49 TULSA L. REV. 125, 134–36 (2013).

¹⁹ U.N. Secretariat, Permanent Forum on Indigenous Issues, U.N. Dept. of Econ. & Soc. Affairs, Div. for Soc. Pol'y & Dev., International Expert Group Meeting on the Millennium Development Goals, Indigenous Participation and Good Governance, Contribution by Mr. Famark Hlawning, Hum. Rts. & Advoc. Comm., Asia Indigenous People Pacts (AIPP), U.N. Doc. PFII/2006/WS.3/5 (Jan. 11–13, 2006).

²⁰ U.N. Secretariat, Permanent Forum on Indigenous Issues, U.N. Dept. of Econ. & Soc. Affairs, Div. for Soc. Pol'y & Dev., International Expert Group Meeting on the Millennium Development Goals, Indigenous Participation and Good Governance, Contribution by Mr. Famark Hlawning, Hum. Rts. & Advoc. Comm., Asia Indigenous People Pacts (AIPP), U.N. Doc. PFII/2006/WS.3/5 (Jan. 11–13, 2006); James Hill, “*The Land we live in is our own*”: *Indigenous Conceptions of Space in Eighteenth-Century Florida*, 100 FLA. HIST. Q. 76, 82–84 (2021).

²¹ See President Frank Star Comes Out (Oglala Sioux Tribe), Testimony to Committee on Nat. Res. Subcommittee on Indian and Insular Aff., regarding H.R. 3371, 2–4 (June 7, 2023), <https://www.congress.gov/118/meeting/house/116040/documents/HHRG-118-II24-20230607-SD006.pdf> [<https://perma.cc/9R8H-W5TJ>].

²² CLAUDIO SAUNT, *A NEW ORDER OF THINGS: PROPERTY, POWER, AND THE TRANSFORMATION OF THE CREEK INDIANS, 1733–1816* 75 (Cambridge University Press, 1999).

²³ JOHN R. SWANTON, *EARLY HISTORY OF THE CREEK INDIANS AND THEIR NEIGHBORS* 434–41

The power of these traditional confederacies, coalitions, and alliances was substantial prior to colonization. In the Southeast, *esnesvlke*, the trader diplomats of the traditional Mvskoke peoples, carried ceremonial gifts from one town to another, binding peoples together with reciprocal networks of trade.²⁴ These networks of kinship, trade, and reciprocity laid the groundwork for the Creek Confederacy, which formed as a collective of autonomous tribal towns.²⁵

The Confederacy was at various times comprised of dozens of Mvskoke *etv/wvs*,²⁶ or tribal towns, together with many Hitchiti and Yamasee (Elaponke), Alibamu, Koasati, Natchez, Yuchi, and other tribal towns united by clan ties and religious and economic practices. The membership of the Confederacy, which might be better understood as an international coalition between autonomous tribal towns, changed fluidly from year to year.²⁷ As the Creek Confederacy's tenure over land in Alabama and Georgia began to fracture under the pressure of southward expansion by Anglo-American settlers, an inter-ethnic coalition of political dissidents moved south of the international border of Spanish and British Florida and joined with the tribal towns of North Florida to identify as Seminoles.²⁸ They too confederated together in at least 22 tribal towns and became the early Seminole Nation.²⁹

To the north, the Haudenosaunee Confederacy was made up of Mohawks, Oneidas, Onondagas, Cayugas, and Senecas, with the subsequent addition of the Tuscarora. Each nation traditionally maintained its own council and leadership, but joined together in Grand Council to discuss external issues pertaining to the entire Confederacy.³⁰ The United States and its first governing constitution, the Articles of Confederacy, were directly inspired by the collaboration of the Six Nations of the Haudenosaunee Confederacy.³¹

To the west, the Oceti Sakowin Oyate (the Seven Council Fires) united the Dakota (Mdewakanton, Wahpekute, Wahpeton, and Sisseton), Lakota (Teton), and Nakota (Yankton and Yanktonai) into a formidable powerhouse in the Great Plains.³² These tribal communities aligned to oppose the United

(Government Printing Office, 1922); Helen Hornbeck Tanner, *Pipesmoke and Muskets: Florida Indian Intrigues of the Revolutionary Era*, in *EIGHTEENTH-CENTURY FLORIDA AND ITS BORDERLANDS* 13–39 (Ed. Samuel Proctor, The University Presses of Florida, 1975).

²⁴ Lee Bloch, *Tales of Esnesv: Indigenous Oral Traditions About Trader-Diplomats in Ancient Southeastern North America*, 120 *AM. ANTHROPOLOGIST* 781, 782–83 (2018).

²⁵ Sarah Deer & Cecilia Knapp, *Muscogee Constitutional Jurisprudence: Vhakv Em Pvtakv (The Carpet Under the Law)*, 49 *TULSA L. REV.* 125, 134–36 (2013).

²⁶ JOHN R. SWANTON, *EARLY HISTORY OF THE CREEK INDIANS & THEIR NEIGHBORS* 215 (1922).

²⁷ *Id.* at 10–20.

²⁸ *Id.* at 28.

²⁹ *Id.*

³⁰ *Who We Are*, HAUDENOSAUNEE CONFEDERACY, <https://www.haudenosauneeconfederacy.com/who-we-are> [<https://perma.cc/SH8S-CVW6>] (last accessed Mar. 6, 2025).

³¹ See Jennifer Birch & John P. Hart, *Social Networks and Northern Iroquoian Confederacy Dynamics*, 83 *AM. ANTIQUITY* 13 (2017); Jennifer Davis, *The Haudenosaunee Confederacy and the Constitution*, LIBRARY OF CONGRESS BLOGS (Sept. 21, 2023), <https://blogs.loc.gov/law/2023/09/the-haudenosaunee-confederacy-and-the-constitution> [<https://perma.cc/36RW-A4XF>].

³² *Explore the Seven Council Fires*, MINNESOTA HISTORICAL SOCIETY, <https://www.mnhs.org/>

States and allied tribes including the Mandan, Hidatsa, Sahnish, and Pawnee.³³ Traditional societies which cut across the Seven Council Fires united the people culturally, much like the confederacy united the Mdewakanton, Wahpekute, Wahpeton, Sisseton, Teton, Yankton, and Yanktonai governments in shared aims.³⁴ The defeat of the Oceti Sakowin by the United States did not come as a result of military victories alone, but followed the division of the confederacy into disparate reservations which could no longer sustain traditional networks of exchange, reciprocity, and mutual defense.³⁵

The power of these confederacies at the western border of the U.S. colonies (at various points in history) formed an obstacle to Manifest Destiny imperial expansionism. As a strategic countermeasure to the power of inter-tribal cooperation, the federal government made a concerted effort to exploit divisions between Indigenous peoples to break down these cooperative systems of mutual aid.³⁶ The United States backed factions in intertribal conflicts, such as in the Creek Civil War, and deepened rifts between historic enemies. In the lead-up to the War of 1812 in Creek Country, a continental conflict composed of smaller proxy wars between U.S.- and British-backed Indigenous nations,³⁷ the Shawnee-Mvskoke revolutionary Tecumseh said, “We must be united, we must smoke the same pipe, [and] we must fight each other’s battles.”³⁸

Tecumseh’s generation remembered the success that could be experienced when tribes banded together. They were not the first to build such a geographically-diverse alliance. Less than a hundred years prior, almost every tribal nation in the Southeast confederated to retake the Colony of South Carolina, and the coalition burned almost every plantation and home in the colony until they got within three miles of Charleston and collapsed the proprietary government of South Carolina.³⁹ It was not English military expertise, but the betrayal of the Cherokee contingent and their assassination of 13 Creek headmen in January of 1716 at the behest of the English that ended the siege of Charleston.⁴⁰ In other words, it was the breakdown of the inter-tribal collabo-

sevendcouncilfires [https://perma.cc/4DN6-Q6MT] (last accessed Mar. 6, 2025).

³³ *The Battle of the Little Bighorn and the Cessation of War*, ENCYCLOPEDIA BRITANNICA (last updated Feb. 11, 2025), <https://www.britannica.com/topic/Oceti-Sakowin/The-Battle-of-the-Little-Bighorn-and-the-cessation-of-war> [https://perma.cc/73AY-7KDA].

³⁴ See Nick Estes & Lewis Grassrope, *Traditional Leadership and the Oceti Sakowin: An Interview with Lewis Grassrope*, in *STANDING WITH STANDING ROCK: VOICES FROM THE #NoDAPL MOVEMENT*, 24 (Nick Estes & Jaskiran Dhillon eds., 2019); *The Battle of the Little Bighorn and the Cessation of War*, *supra* note 33.

³⁵ *The Battle of the Little Bighorn and the Cessation of War*, *supra* note 33.

³⁶ Douglas B. Bamforth, *Intertribal Warfare*, ENCYCLOPEDIA OF THE GREAT PLAINS, <http://plainshumanities.unl.edu/encyclopedia/doc/egp.war.023> [https://perma.cc/WDK8-QGNS] (last accessed Mar. 9, 2025).

³⁷ *Indigenous Peoples: War of 1812*, NAT’L PARK SERV. (last updated May 4, 2015), <https://www.nps.gov/subjects/warof1812/indigenous-peoples.htm> [https://perma.cc/3A4E-768G].

³⁸ Tecumseh, *Speech to the Osages (Winter 1811–12)*, in *THE OPEN ANTHOLOGY OF EARLIER AMERICAN LITERATURE*, (Timothy Robbins ed.), Pressbooks, <https://pressbooks.pub/timothyrobbins/chapter/tecumsehs-speech-to-the-osages> (last visited Mar. 26, 2025).

³⁹ WILLIAM L. RAMSEY, *THE YAMASEE WAR* 121–25 (2008).

⁴⁰ *Id.* at 150–52.

ration, and not the military might of the British Empire, that led to the political fragmentation of the Southeast.

These examples all show that the colonial project in North America would have been hard-pressed to succeed but for the engineered collapse of the intertribal alliances, coalitions, and confederacies which had before created stable political conditions in Indian Country and had supported the capacity to collectively oppose Euro-American expansionism. The natural conclusion is that in order to restore the relative sovereign capacity of tribal nations—which have traditionally been smaller governmental units protected by cooperative networks of trade, reciprocity, and mutual defense—those previous networks of cooperation between sovereigns or their modern equivalents must be restored in modern Indian Country in order to support the capacity of each individual sovereign.

While individual tribes face significant challenges, there are over 600 federally and state-recognized tribes within the borders of the United States,⁴¹ representing enormous collective potential. Tribes isolated by geography or demography can create a force-multiplier for their governing capacity through collaboration. The following section will briefly expound upon this history to provide a through line to the present day and ground modern efforts to cooperatively govern in a historic precedent, before surveying effective means of collaboration which have allowed intertribal organizations to propel forward tribal initiatives which may otherwise have been limited by the resources of single tribal nations acting alone.

III. CONTEMPORARY CONTEXT

In the last century, these traditional forms of confederacy and coalition-building have been augmented by new forms of confederalism and cooperation. The National Congress of American Indians (NCAI) and various treaty councils and intertribal councils pool resources to advance Indigenous interests.⁴² Among the pueblos of New Mexico and Texas, the All Pueblo Council of Governors presents a united front that is effective at shaping New Mexican state policy.⁴³ In Southern California, where many tribes have relatively small enrollment and practical resource limitations, the Intertribal Court of Southern California functions as an appeals court for several tribes,⁴⁴ limit-

⁴¹ Martha Salazar, *State Recognition of American Indian Tribes*, 24 LEGISBRIEF 39, 39 (Oct. 2016); *Policy Issues*, Federally Recognized Indian Tribes and Resources for Native Americans, U.S. GENERAL SERVICES ADMINISTRATION, <https://www.usa.gov/tribes#:~:text=The%20federal%20government%20recognizes%20574,and%20learn%20how%20to%20enroll> (last accessed May 9, 2024).

⁴² Our Priorities, ALL PUEBLO COUNCIL OF GOVERNORS, <https://apcg.org/our-priorities> [<https://perma.cc/Q24K-2P9G>] (last accessed May 9, 2024).

⁴³ See, e.g., Levi Rickert, *The All Pueblo Council of Governors Travel to Washington to Advocate for Preservation of the Chaco Canyon Sacred Landscape*, NATIVE NEWS ONLINE (Sept. 9, 2023), <https://nativenewsonline.net/sovereignty/the-all-pueblo-council-of-governors-to-travel-to-washington-to-advocate-for-preservation-of-the-chaco-canyon-sacred-landscape> [<https://perma.cc/62BP-L7XL>].

⁴⁴ INTERTRIBAL CT. OF S. CAL., <https://www.sciljc.org> [<https://perma.cc/8YGG-E9DU>] (last

ing liability outside of tribal courts for tribal enterprises.⁴⁵ In the Northwest, the Columbia River Inter-Tribal Fish Commission exercises expansive authority with the support of multiple tribal governments.⁴⁶

For tribes seeking to expand their influence in economic, political, and cultural spheres beyond what individual action allows, traditions of cooperation and reciprocity offer self-directed means of national capacity-building that are not reliant on non-profit or federal largesse. Studies of economic, cultural, and legal or political examples illustrate the importance of intertribal and intergovernmental cooperation and coalition building. The below case studies will focus on avenues for collaboration which go beyond the conventional intertribal legislative and administrative advocacy and stitch together resources and sovereign functions to act in tandem on issues important to the Tribes concerned.

A. *Economic Cooperation: Intertribal Buffalo Council (ITBC)*

The Intertribal Buffalo Council offers an example of how tribes without sufficient resources to independently fund the fullest expressions of their sovereignty may cooperate on initiatives to expand their influence in the economic, political, and cultural spheres of society. When the colonizing United States military encountered resistance in the Great Plains, it became federal policy to exterminate the buffalo that were the staple of Plains Indian economy and culture.⁴⁷ Colonel Richard Dodge wrote in his journals while stationed in the Black Hills, “Every buffalo dead is an Indian gone.”⁴⁸ The aptly named Secretary of the Interior in 1870, Columbus Delano, reported that “[t]he rapid disappearance of game from the former hunting grounds must operate largely in favor of our efforts to confine the Indians to smaller areas and compel them to abandon their nomadic customs.”⁴⁹ The near-extinction of the buffalo came as a great blow to many tribes, which makes the recent efforts of the Intertribal Buffalo Council all the more meaningful.

The ITBC was founded in 1992 at a meeting of tribal representatives working to restore the buffalo to tribal lands.⁵⁰ The ITBC notes that some of their members “were historically enemies, but they united for a common

visited Mar. 10, 2025).

⁴⁵ TRIBAL-STATE COMPACT BETWEEN THE STATE OF CALIFORNIA AND THE VIEJAS BAND OF KUMEYAAY INDIANS, 69–70, 83, 88–89 (2016).

⁴⁶ *Mission and Vision*, COLUMBIA RIVER INTER-TRIBAL FISH COMM’N, <https://critfc.org/about-us/mission-vision> [<https://perma.cc/G2LP-ZWJ4>] (last visited Mar. 10, 2025).

⁴⁷ J. Weston Phippen, *Kill Every Buffalo You Can! Every Buffalo Dead Is an Indian Gone*, THE ATLANTIC (May 13, 2016), <https://www.theatlantic.com/national/archive/2016/05/the-buffalo-killers/482349/> [<https://perma.cc/M2CF-VQ5B>]; CAROLYN MERCHANT, AMERICAN ENVIRONMENTAL HISTORY: AN INTRODUCTION 20 (2007).

⁴⁸ MERCHANT, *supra* note 45.

⁴⁹ *The Genesis of a Name: Devils Tower National Monument*, NAT’L PARK SERVICE (last updated Dec. 30, 2019), <https://www.nps.gov/articles/devils-tower-name-genesis.htm#:~:text=Colonel%20Richard%20Irving%20Dodge%2C%20who,were%20now%20myriads%20of%20carcasses> [<https://perma.cc/RPM5-4KEV>].

⁵⁰ *History and Mission*, INTERTRIBAL BUFFALO COUNCIL, <https://itbcbuffalonation.org/history-and-mission> [<https://perma.cc/54ZL-XZC9>].

mission.”⁵¹ As of this writing, 80 federally recognized tribes across 19 states participate in the Council.⁵² Those tribes together control 32 million acres, and they have restored 20,000 buffalo to approximately one million acres of rangeland “in a manner that promotes cultural enhancement, spiritual revitalization, ecological restoration, and economic development.”⁵³ In addition to coordinating between member tribes to expand the collective herd, the ITBC members turned their attention to locking down a “permanent federal obligation to support tribes in restoring buffalo on tribal lands” by lobbying for the Indian Buffalo Management Act (H.R. 5153).⁵⁴

The Intertribal Buffalo Council, not unlike similar organizations such as the Columbia River Inter-Tribal Fish Commission, has dramatically expanded the capacity of member-governments to control their economic destiny. By coming together, tribes can avail themselves of mutual support, furthering common economic objectives where the atomistic action of individual tribes may have struggled to surmount entrenched political obstacles. This collaboration empowers Tribes to exercise economic self-determination rather than relying on external industry groups or government programs to address market conditions.

B. *Cultural Cooperation: Interior Salish Languages*

Although many of the available examples of intertribal cooperation are focused on politics or economics, there is ample opportunity for cooperative and intertribal integration of cultural programs. While the cultures of tribes separated by distance and language are distinct, many, if not almost all, modern tribes have one or more sister tribes with shared language and culture split by the colonial process.⁵⁵ Many of these tribes still have shared interests in

⁵¹ *Id.*

⁵² *Id.*

⁵³ *About ITBC*, INTERTRIBAL BUFFALO COUNCIL, <https://itbcbuffalonation.org/about-itbc> [<https://perma.cc/LAY3-KMUD>]; also accessible in Mystra M. Samuelson, et al., *Support for Existing Expertise: Community-Focused Training Initiatives to Improve the Safety and Health of Tribal Buffalo Herd Workers*, CDC NIOSH SCIENCE BLOG (Apr. 22, 2024), <https://blogs.cdc.gov/niosh-science-blog/2024/04/22/tribal-buffalo-safety/> [<https://perma.cc/H3U3-UPS8>].

⁵⁴ *History and Mission*, *supra* note 48; also accessible at Intertribal Buffalo Council (@itbc_buffalonation), INSTAGRAM, <https://www.instagram.com/p/CAFgmpJH58I/?ref=driverlayer.com%2Fweb&hl=pa> [<https://perma.cc/V7Y9-VT26>] (last accessed May 9, 2024).

⁵⁵ See, e.g., the Shoshone peoples of the Shoshone-Bannock Tribes, Shoshone-Paiute Tribes, Eastern Shoshone Tribe, Big Pine Band of Owens Valley Paiute Shoshone Indians, Paiute-Shoshone Indians of the Bishop Community, Paiute-Shoshone Indians of the Lone Pine Community, Duckwater Shoshone Tribe, Ely Shoshone Tribe, Te-Moak Tribe of Western Shoshone, Yomba Shoshone Tribe, Fort McDermitt Paiute and Shoshone Tribes; or see the Creek peoples of the Muscogee Nation, Seminole Nation of Oklahoma, Alabama-Coushatta Tribes of Texas, Poarch Band of Creek Indians, Alabama-Quassarte Tribal Town, Thlopthlocco Tribal Town, Miccosukee Tribe of Indians of Florida, Seminole Tribe of Florida, Kialegee Tribal Town, Ma-Chis Lower Creek Indian Tribe of Alabama, Southeastern Mvskoke Nation, and Lower Muskogee Creek Tribe of Georgia. *List of Federally Recognized Tribes*, BUREAU OF INDIAN AFFS. <https://www.bia.gov/service/tribal-leaders-directory/federally-recognized-tribes> [<https://perma.cc/GV3K-JE4P>] (last visited Mar. 10, 2025).

preserving a common language or culture, but do not pool resources to do so. This author has relatives whose ancestors were also part of the Creek Confederacy who are enrolled in diverse state-recognized and federally-recognized tribes across Alabama, Georgia, Texas, Louisiana, and Oklahoma.⁵⁶ Yet, due to distance and the fraught nature of the historical relationships between these nations, the majority of these tribes have engaged in minimal collaboration to spread awareness of and teach shared culture, language, or history.

In contrast, the Kalispel Tribe of Indians has partnered with all of the area tribes and all of the area immersion schools in the Inland Northwest working to revitalize Interior Salish languages.⁵⁷ The Kalispel Tribe of Indians, Spokane Tribe of Indians, Coeur d'Alene Tribe, Confederated Tribes of the Colville Reservation, and Confederated Salish and Kootenai Tribes of the Flathead Nation each have distinct language programs but “collaborate and share resources.”⁵⁸ These tribal programs are further connected to eight different Salish immersion schools organized as autonomous nonprofits in Interior Salish country.⁵⁹

Aside from the shared resources made available by cooperation, investment in the common goal of revitalizing Salish languages in the Inland Northwest bears increasing returns as the graduates of any of the cooperating

⁵⁶ The Creek Confederacy once included the ancestors of the Coushatta Tribe of Louisiana, Alabama-Coushatta Tribe of Texas, Alabama-Quassarte Tribal Town, Thlopthlocco Tribal Town, Kialegee Tribal Town, Muscogee Nation, Southeastern Mvskoke Nation, Poarch Band of Creek Indians, Machis Lower Creek Indian Tribe of Alabama, Seminole Nation of Oklahoma, and the Seminole Tribe of Florida. See *Our Story*, COUSHATTA TRIBE OF LOUISIANA (last visited May 9, 2024), <https://www.coushatta.org/our-story> [<https://perma.cc/42DX-LHH6>]; *Our History*, ALABAMA-COUSHATTA TRIBE OF TEXAS, <https://www.alabama-coushatta.com/about-us/our-history> [<https://perma.cc/X9V6-SSFR>] (last visited May 9, 2024); *Alabama-Quassarte Tribal Town*, ALABAMA-QUASSARTE TRIBAL TOWN, <http://alabama-quassarte.org> (last visited May 9, 2024); *About Us*, THLOPTHLOCCO TRIBAL TOWN, <https://tttown.org/about-us.html> [<https://perma.cc/P89Q-2KHM>] (last visited May 9, 2024); *Kialegee Tribal Town*, KIALEGEE TRIBAL TOWN, <https://kialegeetribal.yourwebsitespace.com> [<https://perma.cc/9AQ2-5BRF>] (last visited May 9, 2024); *Where it All Began: Muscogee (Creek) Nation Reflects Arrival to Indian Territory*, History of Council Oak Tree, THE MUSCOGEE NATION (Oct. 24, 2018), <https://www.muscogeenation.com/2018/10/24/reflects-arrival-to-indian-territory-history-of-council-oak-tree> [<https://perma.cc/Z9MZ-J2ZA>]; *History and Culture*, SOUTHEASTERN MVSKEKE NATION, <https://southeasternmvskokenation.org/history-and-culture> [<https://perma.cc/T89V-E454>] (last accessed May 9, 2024); *History*, POARCH BAND OF CREEK INDIANS, <https://pci-nsn.gov/about/history> [<https://perma.cc/5MFE-G827>] (last visited May 9, 2024); *About the Machis Tribe*, MA-CHIS LOWER CREEK INDIAN TRIBE OF ALABAMA, <https://www.machis tribe.net/index.php/about> (last visited May 9, 2024); *Into the West*, SEMINOLE NATION MUSEUM, <https://seminolenationmuseum.org/into-the-west> [<https://perma.cc/YQ38-5G24>] (last visited May 9, 2024); *History: Where We Came From*, SEMINOLE TRIBE OF FLORIDA, <https://www.semtribe.com/history/introduction> [<https://perma.cc/PX8Y-TCCC>] (last visited May 9, 2024); *History of the Miccosukee Tribe*, MICCOSUKEE CASINO & RESORT, <https://miccosukee.com/miccosukee-tribe-history> [<https://perma.cc/S387-2NVM>] (last visited May 9, 2024).

⁵⁷ *Our Language Friends*, KALISPEL TRIBE OF INDIANS, <https://kalispeltribe.com/our-language/our-language-friends> [<https://perma.cc/AU8G-GFUK>].

⁵⁸ *Id.*

⁵⁹ *Id.*

schools or programs add to the number of Interior Salish speakers in the area.⁶⁰ The community created by the collaboration has been further facilitated by the annual Celebrating Salish Conference, hosted by the Kalispel Tribe of Indians but bringing together their partners including speakers of Kalispel, Spokane, Colville-Okanagan, Coeur d'Alene, Wenatchee-Columbian, and Montana Salish languages.⁶¹ The conference sees over 500 attendees each year.⁶² The conference does not support only one language, but shares resources by neighboring tribes each focused on the survival of their own traditional tongue.

While many tribes manage cultural preservation and revitalization efforts in isolation from other tribal governments, there are many opportunities to collaborate with related tribes to create greater progress than would have been available to a single tribe working alone. The Interior Salish peoples present an important example of cooperative cultural capacity building and a model for cooperative language instruction which can be replicated across Indian Country.

C. *Legal Cooperation: Intertribal Court of Southern California (ICSC)*

Intertribal cooperation need not be limited to economic and cultural endeavors. Some tribes have followed the example set by centuries of Indigenous tradition and integrated elements of their governments. The Intertribal Court of Southern California (ICSC) was founded in 2002 by the Southern California Tribal Chairmen's Association with the support of a Department of Justice grant.⁶³ Within four years, the court was fully operational.⁶⁴

The ICSC serves seventeen tribes in its region.⁶⁵ Functioning as a circuit court, the ICSC's judges travel from reservation to reservation to resolve appeals based on tribal law, custom, and tradition.⁶⁶ The ICSC hears appeals related to public safety issues, tort claims, environmental law, family law, conservatorship, exclusion, and even enrollment issues.⁶⁷ Judges are appointed by a Judicial Council composed of members of each tribal council, and the judges consider cases based on the laws of the Tribe from which the case originated.⁶⁸

⁶⁰ Immersion increases the efficiency of language learning and immersion efforts benefit from access to a community of language speakers. See generally Fred Genesee, *Second Language Learning Through Immersion: A Review of U.S. Programs*, 55 REV. EDUC. RSCH. 541 (1985); Lindsay A. Morcom & Stephanie Roy, *Learning Through Language: Academic Success in an Indigenous Language Immersion Kindergarten*, 56 J. AM. INDIAN EDUC. 57 (2017); Mary Hermes, *Moving Toward the Language: Reflections on Teaching in an Indigenous-Immersion School*, 46 J. AM. INDIAN EDUC. 54 (2007).

⁶¹ *Celebrating Salish*, KALISPEL TRIBE OF INDIANS, <https://kalispeltribe.com/our-language/celebrating-salish-conference> [<https://perma.cc/NGR8-57QA>].

⁶² *Id.*

⁶³ INTERTRIBAL CT. OF S. CAL., <https://www.sciljc.org/> [<https://perma.cc/8YGG-E9DU>].

⁶⁴ *Id.*

⁶⁵ *Member Tribes*, INTERTRIBAL CT. OF S. CAL., <https://www.intertribalcourt.org/member-tribes> [<https://perma.cc/US8A-WUY8>].

⁶⁶ INTERTRIBAL CT. OF S. CAL., <https://www.sciljc.org> [<https://perma.cc/8YGG-E9DU>].

⁶⁷ *Id.*

⁶⁸ INTERTRIBAL CT. OF S. CAL. et al., *Other Intertribal Court Models (Presentation)*, <http://wellnesscourts.org/files/Other%20Intertribal%20Court%20Models.pdf>.

Constituent tribes of the ICSC receive several benefits. For example, in a legal and political context in which Indian rights activists have suggested amending the Indian Civil Rights Act to allow suits against tribal officials for disenrollment disputes, an intertribally controlled appeals court provides objectivity while preventing those appeals from leading to federal intervention in internal Tribal affairs.⁶⁹ Some of these Tribes, like the Viejas Band of Kumeyaay Indians, have altered the state standard § 12.5 provision in their gaming compacts with California to send appeals stemming from their gaming enterprise to ICSC instead of to arbitration.⁷⁰

In addition, while there is limited capacity for federal review of tribal court decisions, federal courts can review tribal court decisions where federal jurisdiction exists and all tribal remedies have been exhausted.⁷¹ Tribes without an appeals court cannot create further opportunities for remedy in tribal court after an initial decision. However, tribes participating in the ICSC can contribute fractional financial support to the court while still benefiting from an extension of their tribal judiciary that lends legitimacy and uniformity to their courts.

While other examples of intertribal political cooperation like the National Congress of American Indians, International Indian Treaty Council, and the Inuit Circumpolar Council are excellent examples of cooperation in external affairs, the Intertribal Court of Southern California is a rare example of inter-governmental integration, or confederalism, for cooperation on internal affairs. The ICSC protects sovereignty, lowers the costs of appeals court administration borne by any one tribe, and presents a model that can be replicated by tribes across the United States.

IV. CONCLUSION

The deprivation of Indigenous resource capacity and intertribal unity in the United States has been continuous and intentional. Implicit in this approach to Indian policy is the recognition by the founding fathers that the sovereignty and resource holdings of tribal nations could not be taken through force of arms alone. Rather, they understood that a critical element of their conquest needed to be the division of the historic confederacies, coalitions, and alliances which had woven together the interests of Indian Country to ensure tribes' collaboration and cooperation. Their actions to divide and sow discord between historic allies has been as effective as any invasion.

Against this historical backdrop, it is evident that expansion of individual tribes' sovereignty alone is not sufficient to restore the sovereign capacity of tribal nations in Indian Country. Rather, there is a need to rebuild the diplomatic networks which once crisscrossed the continent. Where an individual tribe's resources are lacking, intertribal cooperation and confederalism offer

⁶⁹ Gabriel S. Galanda & Ryan D. Dreveskracht, *Curing the Tribal Disenrollment Epidemic: In Search of a Remedy*, 57 ARIZ. L. REV. 383, 459–61 (2015).

⁷⁰ See, e.g., Tribal-State Compact between the State of California and the Viejas Band of Kumeyaay Indians (June 2016).

⁷¹ See, e.g., *Nat'l Farmers Union Ins. Co. v. Crow Tribe*, 471 US 845, 856 (1985).

a force-multiplier for tribal nations, enabling tribal governments to exercise self-determination on their own terms, and restoring political, economic, and cultural power to Indian country. Traditions of intertribal cooperation and confederalism promise to act as a model for a renewed era of cooperative tribal governance, the expansion of tribal governing capacity beyond the limits of an isolated nation-state, and the revival of ties of kinship and reciprocity across tribal borders.

Recent developments in federal policy have further underscored the value of traditional modes of confederalism, coalition-building, and alliance-making. As Tribes increasingly look beyond federal programs to exercise self-determination on their own terms, the importance of aligning interests and pooling resources is only more emphasized. In this environment, Tribal leaders are well-served to take the advice of Tecumseh:

“[W]e must assist each other to bear our burdens . . . The blood of many of our fathers has run like water on the ground, to satisfy the avarice of white men . . . They have destroyed many nations of red men because they were not united, because they were not friends to each other. Brothers – They wish to make us enemies that they may sweep over and desolate our hunting grounds, like devastating winds, or rushing waters . . . We must be united, we must smoke the same pipe, [and] we must fight each other’s battles.”⁷²

⁷² Tecumseh, *Speech to the Osage Nation (Winter 1811–1812)*, in THE OPEN ANTHOLOGY OF EARLIER AMERICAN LITERATURE, (Timothy Robbins ed.), Pressbooks, , <https://pressbooks.pub/timothyrobbins/chapter/tecumsehs-speech-to-the-osages/> (last visited Mar. 26, 2025).

