

# Once and Future Diplomacy: The Necessity of Treaty Relations

Joseph Bauerkemper  
University of Minnesota Duluth

*“Like the miner’s canary, the Indian marks the shifts from fresh air to poison gas in our political atmosphere; and our treatment of Indians [...] reflects the rise and fall in our democratic faith.”*

- Felix S. Cohen

## Introduction

This essay weaves together several threads in order to craft an argument on behalf of the restoration of the federal government’s authority to enter into treaty relationships with American Indian nations. It begins with a conceptual overview of treaty diplomacy, emphasizing the necessity of upholding these relations and obligations as a matter of public policy. It then briefly narrates the late nineteenth-century emergence of the ongoing congressional moratorium on treaty-making. The essay calls into question the constitutional validity of this moratorium and considers judicial pathways to its nullification while also describing some of the conceptual and practical shifts in treaty-making that should accompany restoration. After underscoring governance enhancements that contemporary treaty-making would potentially achieve, the essay briefly explores policy developments associated with tribal self-determination and self-governance and suggests that these might someday be recognized as incremental steps toward the restoration of treaty-making. In its concluding section, the essay considers some of the entrenched ideological tendencies that both disregard extant treaty relationships and serve as obstacles to restoration of the treaty-making power. Despite these difficulties, the essay maintains that the dignity of treaty relationships and the restoration of federal authority to continue forging them are necessary for the integrity and legitimacy of United States federalism.

## Origin Stories

In 1854 leaders of Lake Superior and Mississippi Ojibwe bands gathered with United States commissioners to negotiate the Treaty of La Pointe. This treaty relationship established U.S. jurisdiction within the “Arrowhead” region of northeastern Minnesota, created Indian reservations in Minnesota, Wisconsin, and Michigan, and explicitly preserved continued Indian access to natural resources throughout the ceded territory.

At the University of Minnesota Duluth, where I serve on the faculty in the Department of American Indian Studies, I teach an undergraduate course titled “American Indian Politics: Law, Sovereignty, and Treaty Rights.” During our first session together, I briefly mention the 1854 Treaty at La Pointe and show a map of the ceded territory. I then ask my students who among them has rights that derive from the treaty. After letting them consider the question for a moment, I solicit volunteers to share thoughts and insights. While students who are citizens of the signatory Native nations tend to note their treaty-reserved rights, I have not yet had any non-Indian students step up to claim their own treaty-derived rights. Indeed, I am greeted with befuddled looks when I subsequently announce that everyone in our classroom has rights either reserved through or derived from the treaty.

Treaty-created rights are by and large, I explain to my students, rights for non-Indians. Through treaty-making, American Indian nations--usually under great duress--accepted enumerated and relational obligations in order to secure their prevailing interests. Those obligations entail the creation and

acknowledgement of territorial, legal, and political rights for non-Indians. The campus of the University of Minnesota Duluth is located in the territory ceded to the United States via the 1854 Treaty of La Pointe. The entire portfolio of rights and property I enjoy as a citizen of the United States and of Minnesota and the very sovereignty of those polities in this place derive from and wholly depend upon the treaty. As Phillip M. Kannan (2008) points out, U.S.-Indian treaties are “prerequisite to the validity of land title in the United States” (813). Moreover, the validity of visas allowing non-U.S.-citizens to reside and study here likewise derives from the treaty, as do rights to due process available to undocumented residents and students. In order to enjoy in good faith these rights and in order to maintain the legitimacy of settler sovereignty in northeastern Minnesota, non-Indian citizens, denizens, and governments of this terrain must abide by our own correlating obligations to our Native treaty partners. These include recognition of and respect for reservation and off-reservation political and legal authority and the provision of treaty-pledged services and resources. Making good on these obligations is, I suggest to my students, a small price to pay for the livelihoods and lives we have on this land.

Honoring treaty relationships with Native nations is not merely a matter of goodwill; it is fundamentally necessary public policy. Just as settler governments are intensely committed to their own authorities, prerogatives, and jurisdictions, so must they continually commit to the authorities, prerogatives, and jurisdictions of Native nations. Treaties are enduring relationships, not historically isolated transactions. Rather than unilateral, adversarial, and inconsistent interpretation and application (or lack thereof), these relationships require collaborative elaboration and renewal. This is the necessary work of public policy because U.S. federalism--the division of sovereignty between federal, state, and tribal governments--is premised upon both the U.S. Constitution and treaty relationships as our supreme and foundational bodies of law. To disregard treaty relations is to disregard the only source of authority for settler presence and polities.

The federal-state relationship is given extensive attention within the Constitution, which is essentially a political charter through which the states have created a federal government and ceded select components of their sovereignty to it. Native nations, however, are not party to the constitution; their sovereignties neither derive from it nor receive direct protection within it. Indeed, there is only one substantive explicit reference to Indian nations in the constitution: the acknowledgement of inherent Native sovereignty in the commerce clause which establishes congressional power “to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes” (art. I, § 8). The commerce clause has been construed with astounding and ever-increasing breadth both within and beyond the arena of Indian law, yet it remains important to note that its plain language merely establishes federal congressional authority to regulate the approaches taken by states and the federal government in their trade relations to Native nations.<sup>1</sup> Properly understood, it neither asserts nor establishes congressional power to unilaterally dictate or intervene into the affairs of Native nations. Because Native nations are extraconstitutional, yet entrenched in U.S. federalism, treaties are vital for the integrity of that system.

---

<sup>1</sup> Due to this commerce clause authority, states are preempted from engaging in Indian affairs unless explicitly authorized to do so by Congress. A restoration of treaty-making would not extend treaty-making to the states. Rather, it would reaffirm the nation-to-nation relationship shared by tribes and the federal government.

Even while it does not mention Native nations, the Constitution's treaty clause--which ensures that the President "shall have Power, by and with the Advice and Consent of the Senate, to make Treaties" (art. II, § 2)--served for the first century of U.S. history as the primary provision through which federal Indian policy operated. In 1871 tensions regarding treaty-making with Indians began to boil up between the House of Representatives and the Senate. Members of the House were fed-up with having to authorize appropriations required by treaties that they had no role in approving (Deloria and DeMallie 1999, 233-248). They successfully attached a rider to the Indian Appropriation Act declaring "That hereafter no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty" (25 U.S.C. § 71). Importantly, this rider does not directly limit tribal power and it does not undermine previously established treaty relationships. It only claims to diminish the power of the President and Senate to recognize and forge new treaty relationships with tribes. In doing so, however, it rubs directly up against the Constitution's treaty clause.

Ulysses Grant nevertheless signed the bill with the rider intact and we have yet to have a President challenge its validity. This is perhaps due to excessive executive fealty to the congressional empowerment articulated within the commerce clause, and perhaps also because the rider would actually take five decades to come into practical force. Despite the apparent prohibition of new Indian treaties, the executive branch continued negotiating agreements with Native nations and sending them to Congress for ratification. The difference being that both chambers would consider the agreements. Due to the Constitution's supremacy clause, congressionally-approved agreements have the same force as treaties.

Congress, however, shifted away from facilitating negotiated agreements and by asserting an aggressively liberal interpretation of the commerce clause presumed to wield an ostensibly absolutist plenary power of Indian affairs and the affairs of Indians. This move from diplomatic relations to unilateral domination was affirmed by the U.S. Supreme Court in United States v. Kagama (118 U.S. 375, 1886), further entrenched with the Court's decision in Lone Wolf v. Hitchcock (187 U.S. 553, 1903), and symbolically completed with the Indian Citizenship Act of 1924. When it comes down to it, the federal government lost interest in treaty-making when it appeared that there was no longer significant Indian land to acquire, when power imbalances between the federal government and tribes facilitated unilateral policy imposition, and when all Indians were legislated into the status of citizen subjects of domestic law.

## Constitutional Suspicions

Despite the consistent acquiescence of U.S. presidents to the 1871 rider, it remains unacceptable for the Congress and the executive to alter their constitutionally organized power relations, consensually or otherwise. In 2004 Clarence Thomas explicitly called the 1871 rider into question, referring to it as "constitutionally suspect" in his concurrence to the majority opinion in United States v. Lara (541 U.S. 193). Frank Pommersheim (2009, 65), N. Bruce Duthu (2013, 21), and the Harvard Civil Rights-Civil Liberties Law Review (Kronowitz, et al. 1987, 526n91) have likewise questioned the constitutionality of the rider. Phillip Kannan (2008) has considered where congressional power over the executive would end if the 1871 rider were actually constitutional. Could Congress push through another rider ending all treaty-making? Could the President be legislatively prohibited from nominating cabinet members, judges, and ambassadors? (834).

As Kannan explains, to restore the treaty-making authority the 1871 rider must either be legislatively repealed or judicially voided. A potential first step toward judicial review of the rider would involve the President negotiating a new treaty with an Indian nation and sending it to the Senate for ratification. If the Senate refused to consider the treaty, the President and perhaps even the Native nation involved might have standing bring suit. If the Senate ratified the treaty, perhaps members of the House would bring suit. If the treaty were ratified by the Senate and the House shrugged its collective shoulders, the executive branch might then (intentionally) fail to adhere to the treaty. This would allow the Native nation involved to bring suit in attempt to establish the treaty's validity (836-837). Any of these pathways toward judicial review could conceivably lead to the nullification of the 1871 rider.

The restoration of executive authority to cultivate new treaty relations with Indian nations is not a novel idea. The "Twenty-Point Position Paper" put forth as part of the 1972 "Trail of Broken Treaties" calls for the "restoration of constitutional treaty-making authority," the "establishment of a treaty commission to make new treaties," and the establishment of an "Office of Federal Indian Relations." Upon the federal government's dismissive reply to the position paper, Vine Deloria Jr. crafted a still unpublished essay titled "On the Restoration of Constitutional Treaty-making Authority." The piece sets out "to demonstrate to the people in Congress and the present administration that the proposal to reopen the treaty-making procedure is far from a stupid or ill-considered proposal but rather one which would place the United States in the forefront of civilized nations in its treatment of the aboriginal peoples of the continent" (4). In collaboration with David Wilkins, Deloria (1999) continues this tack within Tribes, Treaties & Constitutional Tribulations: "Unlike other areas of jurisprudence, federal Indian law has little logical consistency in its substance. [...] Indians in their tribal relations and Indian tribes in their relation to the federal government hang suspended in a legal no-man's-land. The solution to this problem--the means to bring a sense of coherent, logical consistency and historical accuracy and precedent to this subject--would be to return tribes to their political status as it existed prior to the prohibition against treaty making in 1871" (158-159).

Of course, any restoration of treaty-making must also be a reconfiguration. Rather than the nineteenth century pattern in which treaties primarily entail the transfer of rights and resources from Indian nations to the U.S., a restored treaty-making process would necessarily emphasize clarifying, enhancing, and maintaining consensual and mutualistic intergovernmental relations. A vast constellation of extant treaties, principles of international law, legislative statutes, executive actions, and court rulings make abundantly clear that the relationships between Native nations and the U.S. are bound by the obligations of trusteeship. The classic legislative articulation of trust appears in the 1787 Northwest Ordinance: "The utmost good faith shall always be observed toward the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity, from time to time shall be made for preventing wrongs being done to them, and for preserving peace and friendship with them" (art. III). Along side general proclamations of trust relations, hundreds of treaties establish specific obligations and expectations. In the 1942 case Seminole Nation v. United States (316 U.S. 286), the U.S. Supreme Court affirmed the legal resonance of both general statutory and specific diplomatic invocations of trust: "In carrying out its treaty obligations with the Indian tribes the Government is something more than a mere contracting party. Under a humane and self imposed policy which has found expression in many acts of Congress and numerous decisions of this Court, it has charged itself with moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealings with the Indians, should therefore be judged by the most exacting fiduciary standards." Barack Obama's

2011 executive order aimed at “Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities” similarly opens by noting that “The United States has a unique political and legal relationship with the federally recognized American Indian and Alaska Native tribes across the country, as set forth in the Constitution of the United States, treaties, Executive Orders, and court decisions. For centuries, the Federal Government’s relationship with these tribes has been guided by a trust responsibility--a long standing commitment on the part of our Government to protect the unique rights and ensure the well-being of our Nation’s tribes, while respecting their tribal sovereignty” (Executive Order 13592). Yet despite the plethora of legal sources and the extensive scholarly and practical consideration given to U.S.-Indian trust relations, a coherent and consistent account of this relationship remains illusive. As the Harvard Law Review (1984) has noted: “No existing legal theory adequately rationalizes the trust principle at work in federal Indian law” (“Rethinking” 429). The trustee-beneficiary relationship shared between the U.S. federal government and Native nations continues to be seen from various sometimes overlapping and often contradictory vantages: as a merely moral (and therefore not legally binding) endeavor rooted in ancient international custom, as paternalistic guardianship, as a disperse set of specific bureaucratic arrangements, and--too infrequently--as a framework and mandate for dynamic, mutualistic, and consensual configurations (see Wilkins and Lomawaima 2001, 64-97).

## Diplomatic Pathways

The rejuvenation of U.S.-Indian treaty-making would provide a crucial tool for the clarification and enhancement of intergovernmental trust relations. Yet one look at the current federal political climate is more than enough to underscore that such an achievement remains beyond our immediate future.<sup>2</sup> Even so, we can readily see significant and substantial instances of expanding settler-Indian intergovernmental relations already at work. These are incredibly important in and of themselves, and they also might someday come to be recognized as path markers toward the full restoration of treaty diplomacy. The most prominent policy-oriented examples of this trajectory are the intimately related establishment of self-determination contracts and self-governance compacts. Through the creation of self-determination contracts authorized under the 1975 American Indian Self-Determination and Educational Assistance Act, tribal governments began implementing specific components of federal policy. While this framework fully retained the paternalistic character of federal Indian policy, it nevertheless provided terrain for the subsequent development of broader diplomatically-generated self-governance compacts through which Native nations voluntarily assume design, implementation, and operational control over programs formerly administered by the Department of the Interior and the Indian Health Service. This transition emerged through a pilot demonstration project initiated in 1988 which was expanded and made permanent over the subsequent decade, most notably through the 1994 amendments to the Self-Determination Act commonly referred to as the Tribal Self Governance Act.

As Richard C. Witmer (2014) explains, “The end result of this twenty-five year policy process was the incremental transition from federal control of policy creation and tribal implementation of policy for

---

<sup>2</sup> In the arena of international relations, the Vienna Convention on the Law of Treaties might also appear--due to its state-centric orientation--to arise as an obstacle to the restoration of federal-tribal treaty-making. Yet the Convention has not disrupted active contemporary indigenous-state diplomacies outside of the United States. See Miller.

contracting tribes, to tribal control of both policy-making and implementation for compacting tribes.” Importantly, throughout this shift and in its aftermath trust obligations have been retained. In their article “Self-Governance for Indian Tribes: From Paternalism to Empowerment,” Tadd M. Johnson and James Hamilton (1995) refer to this transition as a “tribalization” of Indian affairs: “the process by which resources dedicated to administering and implementing Indian programs are removed from Bureau of Indian Affairs personnel and placed directly into the hands of tribal governments. The tribal governments then have authority to perform tasks formerly reserved for the Federal trustee. Despite the movement of resources to the tribal level, the federal government retains the trust obligations stemming from treaties, statutes, and course of dealing with Indian tribal governments” (1252). Johnson and Hamilton further explain, “the Secretary [of the Interior] is prohibited from waiving, modifying, or diminishing the trust responsibility to Indian tribes and individual Indians. Hence, the obligations which flow to Indian tribes from treaties, statutes, and the course of dealings will not be changed as a result of the Act; rather the existing relationship is retained” (1273). Because it sustains the trust relationship while simultaneously diminishing the paternalism of federal policy, the provisions of self-governance stand as both an important breakthrough and, we might hope, a pathway toward ever more robust diplomacies. Johnson and Hamilton envision precisely this: “Perhaps eventually, the solution is that all Indian services will be provided in a single block grant to each tribe. [...] [A] single block grant would seem to be a worthwhile long-range goal, and could be viewed as the closest kin to a treaty, which is the ultimate manifestation of Self-Governance as originally conceived” (1279).

The late Marge Anderson who served as Chief Executive for the Mille Lacs Band of Ojibwe joined Johnson and Hamilton in advocating for block grants that transcend the divisions of federal departments and agencies. “It is time,” Anderson (2011) asserted, “that the United States negotiate a new round of nation-to-nation agreements with each tribe choosing to go down [such a] path. I believe this is the way to restore meaning to the government-to-government relationship between tribal governments and the federal government. In order to do this right, each tribe will need one collective self-governance compact with the United States that covers every federal agency. After all, the federal trust responsibility is a government-wide responsibility.” Even while acknowledging that such an approach would likely precipitate agency turf wars and tensions regarding the overlapping jurisdictions of congressional committees, Anderson has emphasized that a new era of omnibus-style treaty-making would facilitate the clarification and beneficial realization of trust relations. Indeed, any increase in diplomatic activity--whether labeled as compacting, negotiation of bi-lateral agreements, or treaty-making--must maintain and clarify, rather than weaken, federal trust obligations. The trust relationship was largely born of treaties, and the intimate linkage between treaty-making and trust remains.

## **Illiberal Virtue**

As the enduring efforts of Native nations toward empowered governance manifest in increasingly sophisticated and innovative diplomatic arrangements and initiatives, perhaps we are currently witnessing what we will later come to recognize as the past that provided for the future restoration of treaty-making. We must also recognize, however, that resistance to that speculative history will be tenacious. Even while the very legitimacy of the U.S. relies upon treaty relations and obligations, this underappreciated component of our federal structure engenders a great deal of non-Indian angst. These treaty relations are, after all, fundamentally illiberal. The overwhelmingly prevalent political philosophy of liberalism posits that liberty is normative and that any restriction or infringement must therefore be justified. Liberties need no justification; they fundamentally entail the neutral absence of prohibition or coercion. One person’s liberty may only be limited by the liberty of other persons, and no

person's liberty may be prioritized over the liberty of other persons. That is to say: I can do whatever I want as long as I don't prevent anyone else from doing whatever they want. When what I want to do conflicts with what someone else wants to do, equality is the standard by which right is established.

If we stumble upon a 'clean slate' or an 'even playing field' or an 'original position' or whatever metaphor you like, the equality of liberalism might prove functional. Yet in life and law, things tend to be rather messy. Consider, for example, an organization known as the Citizens Equal Rights Alliance (CERA). In its mission statement, this alliance points out (reasonably enough) that "Federal Indian Policy is unaccountable, destructive, racist and unconstitutional." The mission statement continues, "It is therefore CERA's mission to ensure the equal protection of the law as guaranteed to all citizens by the Constitution of the United States of America." This ambition clearly reflects the soaring statutory rhetoric of 1950s termination era policy which sought "to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens" and which averred that Indian nations "should be freed from Federal supervision and from all disabilities and limitations specially applicable to Indians" (House Concurrent Resolution 108). Through arguments that tend to be both clever and willfully misinformed, this alliance claims--among other things--that American Indian tribes subjugate their members while serving as mechanisms for the unjust institutionalization of inequality. As articulated its motto, the alliance argues on behalf of "Many Cultures, One People, One Law." Its central political efforts focus on the elimination of Native governments and the termination of federal trust obligations to Indian nations.

Note that even while the alliance has taken on a rather euphemistic name, it is nevertheless an accurate one. This network of anti-Indian sovereignty activists can successfully associate itself with liberalism and equality. Its claim that differential legal systems exist within the United States is actually accurate. Under treaty relations, not all of us have the same rights. Equality is not the arbiter. In simple terms, the Citizens Equal Rights Alliance is correct. Indians and non-Indians often have divergent, unequal rights. In some circumstances, non-Indians don't have the same access to natural resources, governmental benefits and services, employment, and tax-exemption. Yet when brought under earnest legal and intellectual scrutiny, the unequal rights enjoyed by some citizens of some Indian nations are actually *sine qua non* of justice in our settler-oriented society. Treaties are the insufficiently recognized, deeply fractured, and woefully fragile bedrock of political legitimacy in the United States. Our federalism is wholly based on these diplomatic relations that differentially create non-Indian rights and reserve Indian rights. The emergence of the original thirteen states of the union traces back to colonies established through Indian treaties, and only through those states was the federal government constituted. Tribes are the senior sovereigns upon which U.S. federalism relies.

If, like the Citizens Equal Rights Alliance, one wants to trumpet equality and reject the differential rights of U.S.-Indian treaties, one must also be entirely willing to set aside the states, the union, and the Constitution. The U.S. has no legitimacy without the treaties, and the treaties have no validity without the maintenance of the Native rights they reserve. These factors fruitfully call into question the often rhetorical and increasingly cynical embrace of equality so prevalent in political discourse. They thereby compel us and help us to think in ever more sophisticated ways about justice in our settler-colonial contexts, and to act accordingly.

This process is currently being borne out as Native and non-Native activists elaborate treaty-oriented strategies for addressing major ecological concerns. Robert DesJarlait of the Minnesota wild-rice advocacy group Protect Our Manoomin underscores the exceptional ways in which Indian nations are

positioned--due to their treaty rights--to protect land and water for the benefit all living on this continent. "Anishinaabe Nations," DesJarlait (2013) writes, "are the last best hope that Minnesotans have of protecting lands for foods and clean water for the future--not just for our people, but for Minnesotans as well." Encouraging what Charles Wilkinson (2006) has referred to as the "enlightened self-interest" of non-Indians who recognize and support Native rights (7), the Cowboys and Indians Alliance initiated by Dakota elder Faith Spotted Eagle likewise advocates against the Keystone XL Pipeline Project by coordinating collaborative Native and non-Indian organization, negotiation, and direct action. These efforts have boosted the influence of both groups and enhanced their understandings of and respect for one another.

Whether prompted by altruism, enlightened self-interest, or some combination of both, the fulfillment of extant treaty obligations and the cultivation of new and enhanced treaty relations make for good and necessary policy. By pursuing such a path, the interests of Native nations are served, the integrity of U.S. federalism subsists, and effective approaches to emerging and enduring challenges and opportunities are made possible.



## References

- Anderson, Marge. "Let's Begin a New Era in Federal-Tribal Agreements." *Indian Country Today*, 3 July 2011. <<http://indiancountrytodaymedianetwork.com/2011/07/03/lets-begin-new-era-federal-tribal-agreements>>.
- Citizens Equal Rights Alliance <<http://www.citizensalliance.org>>.
- Cohen, Felix. "The Erosion of Indian Rights, 1950-1953: A Case Study in Bureaucracy." *Yale Law Journal* 62 (1953): 348-390.
- Deloria, Vine Jr. "On the Restoration of Constitutional Treaty Making Authority." Unpublished manuscript. Frederick T. Haley Papers - box 81, folder 4. [This document is archived within the Collected Papers of Henry (Hank) Adams, a subset of the Haley Papers. While the document is neither attributed nor dated, it makes reference to events of 1973 and material from it would be published by Deloria in his 1974 book *Behind the Trail of Broken Treaties*. Indeed, Adams confirmed via email that the document was authored by Deloria.]
- Deloria, Vine Jr. and David E. Wilkins. *Tribes, Treaties, and Constitutional Tribulations*. Austin: University of Texas Press, 1999.
- Deloria, Vine Jr. and Raymond J. DeMallie. *Documents of American Indian Diplomacy: Treaties, Agreements, and Conventions, 1775-1979*. Norman: University of Oklahoma Press, 1999.
- DesJarlait, Robert. "Idle No More and the Implications on Anishinaabe Treaty Lands in Minnesota." *Intercontinental Cry Magazine* 6 January 2013 <<http://intercontinentalcry.org/idle-no-more-and-the-implications-on-anishinaabe-treaty-lands-in-minnesota/>>.
- Duthu, N. Bruce. *Shadow Nations: Tribal Sovereignty and the Limits of Legal Pluralism*. New York: Oxford University Press, 2013.
- Johnson, Tadd M. and James Hamilton. "Self-Governance for Indian Tribes: From Paternalism to Empowerment." *Connecticut Law Review* 27 (1995): 1251-1279.
- Kannan, Phillip M. "Reinstating Treaty-Making with Native American Tribes." *William & Mary Bill of Rights Journal* 16.3 (2008): 809-837.
- Kronowitz, Rachel San, Joanne Lichtman, Steven Paul McSloy, and Matthew G. Olsen. "Toward Consent and Cooperation: Reconsidering the Political Status of Indian Nations." *Harvard Civil Rights-Civil Liberties Law Review* 22.2 (1987): 507-622.
- Miller, J.R. *Compact, Contract, Covenant: Aboriginal Treaty-Making in Canada*. Toronto: University of Toronto Press, 2009.
- Pommersheim, Frank. *Broken Landscape: Indians, Indian Tribes, and the Constitution*. New York: Oxford University Press, 2009.
- "Rethinking the Trust Doctrine in Federal Indian Law." *Harvard Law Review* 98.2 (1984): 422-440.
- "Trail of Broken Treaties: Twenty-Point Position Paper." Minneapolis, MN: 1972. <<http://www.aimovement.org/archives/index.html>>
- Wilkins, David E. and K. Tsianina Lomawaima. *Uneven Ground: American Indian Sovereignty and Federal Law*. Normal: University of Oklahoma Press, 2001.

Wilkinson, Charles. *Messages from Frank's Landing: A Story of Salmon, Treaties, and the Indian Way*. Seattle: University of Washington Press. 2006.

Witmer, Richard C. "Culture, Capacity and Self-Determination: American Indian IHS Compacts." Midwest Political Science Association Conference, April 2-6, 2014.