

**THE UNITED STATES COUNTRY REPORT OF SPECIAL
RAPPORTEUR S. JAMES ANAYA: REFLECTIONS AND
ASPIRATIONS^α**

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I. INTRODUCTION

This event honoring the work of Professor S. James Anaya, the former Special Rapporteur on Indigenous Peoples to the United Nations Human Rights Council (HRC), closely follows a Nobel Peace Prize nomination for his globally recognized work as a scholar, advocate, and human rights activist.¹ In his career, he has been so pivotal in shaping indigenous rights around the globe that many consider him the founder of the field. He did, after all, literally write the book on the subject.²

Before his time as Special Rapporteur, he argued and won the case of the Awas Tingni peoples of Nicaragua, which has since spawned what has been called “the Awas Tingni effect,”³ a domino of cases recognizing indigenous land rights in

^α This Essay is based on a talk delivered at University of Arizona, James E. Rogers College of Law on Friday, January 23, 2015.

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¹ The Human Rights Council appoints “independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective” to serve as Special Rapporteurs. *Special Procedures of the Human Rights Council*, U.N. OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, www.ohchr.org/EN/HRBodies/SP/Pages/Introduction.aspx (last visited Dec. 9, 2014). The Rapporteurs report to the HRC on a yearly basis, and often to the General Assembly as well. *Id.*

² S. JAMES ANAYA, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW* (2004).

³ Luis Rodríguez-Piñero, *The Inter-American System and the UN Declaration on the Rights of Indigenous Peoples: Mutual Reinforcement*, in *REFLECTIONS ON THE UN*

the Inter-American system based on indigenous peoples' own customary law.⁴ With this and numerous other successes, Professor Anaya's work in the field has changed the direction of indigenous peoples' rights globally. No one individual works alone, of course, and he will be the first to admit he has been part of a sea of people mobilizing at local, national, and international levels to support and positively impact indigenous rights under international law, with the ultimate goal of realizing domestic implementation. But occasionally a person comes along with such vision, commitment, and insight, it is fair to say they themselves have had an enormous impact on the world—and for the better. Jim is one of those people.

After being nominated for the Nobel Peace Prize, Professor Anaya mentioned in a radio interview that, during his country visit to the United States, he had been adopted into a Lakota family from Rosebud and given the name "Eagle-Who-Watches-Over-People-Man."⁵ Always humble, Professor Anaya noted that even that honor impressed upon him, above all, the incredible importance of the work he is doing and all that remains to be done for indigenous peoples around the world.

During his remarkable tenure as the Special Rapporteur, Professor Anaya investigated the state of human rights for indigenous peoples across the globe.⁶ As part of his mandate, Professor Anaya acted as an independent expert, producing country-specific reports to the HRC based on site visits with indigenous governments and communities, their citizens, and state officials.⁷

DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (Stephen Allen & Alexandra Xanthaki eds., 2011) 457, 459-65.

⁴ *Mayagna (Sumo) Awas Tingni Cmty. v. Nicaragua*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 79 (Aug. 31, 2001).

⁵ Jenni Monet, *The U.N.'s Man in Lakota Country*, INDIAN COUNTRY TODAY (Aug. 6, 2012), <http://indiancountrytodaymedianetwork.com/2012/08/06/uns-man-lakota-country-127486>.

⁶ Beyond his tenure as the Special Rapporteur, James Anaya is one of the foremost scholars and litigators on indigenous human rights issues and international law. He has written extensively on these issues, and has represented indigenous peoples in both U.S. and international tribunals. In addition to his work for the United Nations, he serves as the Regents' and James J. Lenoir Professor of Human Rights Law and Policy at the University of Arizona James E. Rogers College of Law. *Faculty Profile: James Anaya*, UNIV. OF ARIZ. JAMES E. ROGERS C. OF L., www.law.arizona.edu/faculty/facultyprofile.cfm?facultyid=31 (last visited Dec. 10, 2014). Notably, Professor Anaya successfully litigated the case of *Awás Tingni v. Nicaragua* before the Inter-American Court of Human Rights, the first time the court had used international law as a justification for protecting indigenous land rights. *Biographical Information*, JAMES ANAYA, unsr.jamesanaya.org/sja/biographical-information (last visited Dec. 10, 2014). In 2014, Professor Anaya was nominated to receive the Nobel Peace Prize. Vincent Schilling, *ICTMN Exclusive: A Conversation with 2014 Nobel Peace Prize Nominee James Anaya*, INDIAN COUNTRY TODAY (Feb. 13, 2014), indiancountrytodaymedianetwork.com/2014/02/13/ictmn-exclusive-conversation-2014-nobel-peace-prize-nominee-james-anaya-153543.

⁷ All the Special Rapporteur's country-specific reports are available online. See *Country Reports*, U.N. OFFICE OF THE HIGH COMM'R FOR HUMAN RIGHTS,

Although the position of Special Rapporteur on Indigenous Peoples was created in 2001, no assessment had ever been done of the United States pursuant to the HRC's mandate. Thus, the Special Rapporteur's 2012 visit to the United States marked the first comprehensive assessment of its kind of the human rights situation of Native Americans under modern international law standards.⁸ In concise form, the Special Rapporteur's report, *The Situation of Indigenous Peoples in the United States*, contains startling conclusions about the state of indigenous peoples in one of the richest countries in the world. The report itself is remarkable on several grounds, emanating both from procedure—the change of the United States' position on the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and its concomitant willingness to actively participate in the country visit—and substance, as the Special Rapporteur reported his findings on the state of the indigenous peoples of the United States to the U.N. General Assembly, and to the world.

This Essay focuses on four key points emphasized in the report: as previously mentioned, it is notable that, for the first time under the HRC's mandate, the Special Rapporteur reviewed the United States' treatment of indigenous peoples under international law; despite incredible resilience and dynamism, across almost every metric, indigenous peoples have lower indicators of education, health, income, and success of any group in the United States; the UNDRIP, as part of a series of broader developments, serves as the normative frame for indigenous rights in the world today, including for the United States; and all of international law is moving towards a greater focus on human rights across the board, with an expanded understanding of particularized treatment for indigenous peoples.

II. METHODOLOGY AND FINDINGS

Over the course of his twelve-day visit, Professor Anaya held meetings in six states and Washington, D.C., both in Indian country and urban areas, drawing on numerous consultation sessions to produce his final report, which included both observations and a set of recommendations directed at the U.S. government and native nations. Throughout the information-gathering process, the Special Rapporteur sought input from hundreds of indigenous individuals, as well as from tribal, state, and federal governmental authorities in the form of both individual stories and case studies. These served a critical role in providing the historical frame, intellectual content, and personal narratives that highlight indigenous rights concerns in the United States today.

www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/CountryReports.aspx (last visited Mar. 17, 2015).

⁸ Other Special Rapporteurs have produced topic-specific reports that touched on single-issue areas of concern for native peoples in the United States. See, e.g., Special Rapporteur on Violence Against Women, Its Causes and Consequences, *Mission to the United States of America*, U.N. Doc. A/HRC/17/26/Add.5 (June 6, 2011) (by Rashida Manjoo).

At the same time, the report emphasizes the dynamism, incredible facility, and resiliency of native nations, which have survived hundreds of years of colonization embattled but intact. As the report points out, the United States, like many other countries in the world, has actively drawn from the resources of indigenous peoples to gain material benefits for the economic foundations of the nation. Despite these remarkable contributions, native nations continue to be unduly excluded from decisions regarding their own futures and denied their rights to self-determination, including efforts to protect their religions, cultures, lands, and families.

The Special Rapporteur's report contains troubling conclusions about the state of indigenous peoples in the United States:

- Native Americans, particularly those in reservation communities, have exceedingly high poverty rates, in some cases hitting double the national average;
- Native Americans suffer high rates of disease, illness, and alcoholism, all of which contribute to low life expectancy and high suicide rates;
- Only seventy-seven percent of Native Americans over age twenty-five hold a high school diploma or its equivalent, as compared with eighty-six percent of the general population;
- Only thirteen percent of Native Americans hold a basic university degree, as compared to twenty-eight percent of the general population; and
- Incarceration rates and violent crime rates exceed those of any other racial group at double the national average.⁹

A particular focus of the report, providing perhaps the most shocking statistics, concerns crime against native women. In the United States today, approximately one in three American Indian and Alaskan Native women will be raped in their lifetimes. A recent Amnesty International report, *Maze of Injustice*, details the barriers Indian women face in accessing adequate justice systems when they are the victims of violent crime.¹⁰ Additional research studies indicate that certain crimes—such as the rape of Indian women, for example—are most

⁹ Special Rapporteur on the Rights of Indigenous Peoples, *The Situation of Indigenous Peoples in the United States of America*, ¶ 34, U.N. Doc. A/HRC/21/47/Add.1 (Aug. 30, 2012) (by S. James Anaya) [hereinafter *Indigenous Peoples in the United States Report*].

¹⁰ AMNESTY INT'L, MAZE OF INJUSTICE: THE FAILURE TO PROTECT INDIGENOUS WOMEN FROM SEXUAL VIOLENCE IN THE USA 61-73 (2007), available at <http://www.amnestyusa.org/pdfs/MazeOfInjustice.pdf>.

commonly perpetrated by non-Indian men.¹¹ And all American Indians experience victimization from violent crimes at rates more than twice the national average.¹²

In explaining what accounts for this bleak picture regarding the situation of indigenous peoples within the United States, the Special Rapporteur draws on historical and legal sources, as well as indigenous peoples' contemporary experiences. The report concludes that indigenous peoples in the United States "face significant challenges that are related to widespread historical wrongs, including broken treaties and acts of oppression, and misguided government policies, that today manifest themselves in various indicators of disadvantage and impediments to the exercise of their individual and collective rights."¹³ Throughout the report, Professor Anaya draws on the particularized history that shaped the formation of the United States to elucidate the situation of contemporary Native Americans and the laws that impact them.

Immense land dispossession, combined with the mass, forced removal of Indian children into Indian boarding schools furthered the stated American mission to "kill the Indian, save the man."¹⁴ Through these and other assimilative efforts, collective, tribal lands were broken up. Indian children were taken from their families, deprived of their languages, their religions, and their cultures, while being brutally retrained for the domestic services to become workers for whites. Building on this devastating history, the report adeptly reveals the ways in which these unjust historical events and legal regimes resulted in intergenerational trauma, which continue to negatively impact peoples' lives.¹⁵

The Rapporteur's report on the United States presses us—as Americans in general and as indigenous rights scholars and activists, in particular—to more deeply interrogate the connections between Indian property, sovereignty, identity, and human rights in the so-called post-colonial age. The report demonstrates how contemporary realities link directly to historical events that have set the stage for everything from the *lawful* (using the term advisedly) diminishment of tribal sovereignty and the decimation of sacred sites to the appropriation of native culture and even violence against native women.

¹¹ *Indigenous Peoples in the United States Report*, *supra* note 9, ¶ 36.

¹² *Id.* ¶ 34 (citing STEVEN W. PERRY, U.S. DEP'T OF JUSTICE, AMERICAN INDIANS AND CRIME: A BJS STATISTICAL PROFILE (2004)).

¹³ *Id.* ¶ 85.

¹⁴ K. TSIANINA LOMAWAIMA, THEY CALLED IT PRAIRIE LIGHT: THE STORY OF CHILOCCO INDIAN SCHOOL 145 (1994).

¹⁵ See generally Rebecca Tsosie, *Indigenous Women and International Human Rights Law: The Challenges of Colonialism, Cultural Survival, and Self-Determination*, 15 UCLA J. INT'L L. & FOREIGN AFF. 187, 233 (2010) (explaining that both mass and individual trauma lead to poor health outcomes later in life).

III. LOOKING TOWARDS INTERNATIONAL HUMAN RIGHTS LAW

The Special Rapporteur's report reviews federal governmental policy towards indigenous peoples in the United States with a highly critical eye, offering valuable context for contemporary human rights concerns. This is an important move. The report challenges the dominant American narrative of colonization and progress and builds on other seminal work in the field to provide a critical legal history of U.S. law and policy on indigenous rights.¹⁶ This critique is most evident in discussing the principles of federal Indian law, the body of law governing the United States government's relationship with native peoples and Indian tribes.¹⁷ While the report acknowledges "the positive characteristics of the rights-affirming strain" of Indian law's federal trust doctrine, the Special Rapporteur goes on to say that:

the rights limiting strain of this doctrine is out of step with contemporary human rights values. As demonstrated by a significant body of scholarly work, the use of notions of discovery and conquest to find Indians rights diminished and subordinated to plenary congressional power is linked to colonial era attitudes towards indigenous peoples that can only be described as racist. Early Supreme Court decisions themselves reveal perceptions of Indians as backward, conquered peoples, with descriptions of them as savages and an inferior race.¹⁸

This conclusion is directly relevant to indigenous peoples' status in the United States today. As the report points out, the doctrines of discovery and plenary power, deeply embedded in the colonial frame, remain the law in the United States, serving as foundational principles for the modern body of federal Indian jurisprudence, and the bases for on-going congressional and judicial decisions that negatively impact native peoples and reservation communities. The Rapporteur notes: "The open wounds left by historical events are plentiful, alive in

¹⁶ See, e.g., Robert B. Porter, *A Proposal to the Hanodaganyas to Decolonize Federal Indian Control Law*, 31 U. Mich. J.L. Reform 899, 904 (1998); Robert B. Porter, *Building a New Longhouse: The Case For Government Reform Within the Six Nations of the Haudenosaunee*, 46 BUFF. L. REV. 805, 934 (1998) (advocating decolonization of native nations); Robert A. Williams, Jr., *The Algebra of Federal Indian Law: The Hard Trail of Decolonizing and Americanizing the White Man's Indian Jurisprudence*, 1986 WIS. L. REV. 219, 220-26 (1986) (discussing federal Indian law as colonial and a vision for reformation); see also MISHUANA GOEMAN, MARK MY WORDS: NATIVE WOMEN MAPPING OUR NATIONS 32-39 (2013) (describing the process of colonization as "ongoing"); Daniel Heath Justice, "Go Away, Water!": Kinship Criticism and the Decolonization Imperative, in REASONING TOGETHER: THE NATIVE CRITICS COLLECTIVE 147 (Craig S. Womack et al. eds., 2008) (discussing Native American Studies literature on decolonization).

¹⁷ See generally ROBERT WILLIAMS, JR., THE AMERICAN INDIAN IN WESTERN LEGAL THOUGHT (1990).

¹⁸ *Indigenous Peoples in the United States Report*, supra note 9, ¶ 16.

intergenerational memory if not experience,” describing testimony he heard from native people and on-going trauma over “emblematic” historical events, such as the taking of the Black Hills, the removal of tribes from the Southeast on the Trail of Tears, the Sand Creek Massacre, and the mass removal of Indian children and their subsequent placement into boarding schools far from reservation lands and families, among others.¹⁹

By connecting modern experiences of discrimination and disadvantage with federal policy and colonial practices, the Special Rapporteur brings historical narratives that have traditionally been subordinated in the United States’ dominant legal framework before a wider, global audience. This allows Professor Anaya to continue building on an intellectual thread—one he first articulated decades ago—that ties indigenous rights to international human rights law, instruments, and institutions. The report thus calls into question the legitimacy of the contemporary federal Indian law framework, opening space for the articulation of international human rights law as an alternative source of indigenous rights. This is perhaps Professor Anaya’s greatest contribution both as Special Rapporteur and also to the field over the course of his distinguished career.

In promoting an alternative model for thinking about indigenous rights, the report relies heavily on the UNDRIP²⁰ as a key reference point, asserting that it embodies the United States’ avowed commitment to the rights of native peoples, particularly since the United States became the last global signatory to the document in 2010.²¹ The Special Rapporteur cites the UNDRIP as a seminal guide for restorative justice and reconciliation efforts, as well as an articulation of indigenous rights. While acknowledging that the declaration is not legally binding, he contends that it is “an extension of the commitment assumed by [the United States] to promote and respect human rights under the United Nations Charter, customary international law, and multiple human rights treaties to which the United States is a Party.”²² Thus, the United States’ endorsement of UNDRIP represents its

¹⁹ *Id.* ¶¶ 39, 40, 45, 48.

²⁰ U.N. Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 (Sept. 13, 2007) [hereinafter UNDRIP], available at www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf. The Declaration is nonbinding. U.S. Courts may utilize it as customary international law. Notably, the United States was one of only four nations who originally refused to sign the UNDRIP. All four eventually signed the document, but the United States was the last.

²¹ *Indigenous Peoples in the United States Report*, *supra* note 9, ¶¶ 83-84. See also WALTER R. ECHO-HAWK, IN THE LIGHT OF JUSTICE: THE RISE OF HUMAN RIGHTS IN NATIVE AMERICA AND THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES 3 (2013) (describing the UNDRIP as “a landmark event that promises to shape humanity in the post-colonial age”); Press Release, U.S. Dep’t of State, Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples I (Dec. 16, 2010), available at <http://www.state.gov/documents/organization/184099.pdf> (emphasizing that “the United States is committed to serving as a model in the international community in promoting and protecting the collective rights of indigenous peoples as well as the human rights of all individuals”).

²² *Indigenous Peoples in the United States Report*, *supra* note 9, ¶ 81.

commitment to comply with the emerging human rights standards under international law.

In many respects, Professor Anaya's report reflects a broader, marked shift in international law, which has been characterized in part by international lawmaking bodies increasingly recognizing the distinctive rights of indigenous groups and encouraging nation-states to adopt human rights norms that are influenced by indigenous legal frameworks and concepts.²³ Motivated by greater indigenous participation within the advocacy realm—at least in some critical moments—it is apparent that international law is moving from its colonial roots towards incorporating a more progressive human rights ethos, particularly in regards to indigenous rights.²⁴ The report documents the shift in U.N. policy towards encouraging individual nation-states to reject colonial models and afford greater recognition to the unique and particularized rights of indigenous peoples within a twenty-first century human rights system.²⁵

IV. RECOMMENDATIONS AND ASPIRATIONS

In a period of “self-determination” in American Indian policy, the report recognizes that a great deal of federal legislation and numerous federal programs advance “indigenous self-determination and development with respect for cultural identity.”²⁶ Many of these policies and programs have been undertaken in the last several years, some proceeding parallel to the work of the Special Rapporteur, and some perhaps motivated by it.

Two years prior to Anaya's United States country visit, Congress passed the Tribal Law and Order Act (TLOA), which increased the criminal sentencing authority of Indian tribes for crimes committed by Indians if certain procedural requirements were met. In addition, the TLOA mandated the creation of the Indian Law and Order Commission.²⁷ The President and the majority and minority leadership of Congress appointed the nine commissioners, all of whom served as volunteers traveling around the country to produce a report on the state of criminal justice in Indian country. The ILOC's comprehensive assessment, *A Roadmap for Making Native America Safer: Report to the President and Congress of the United States*, provides a critical accounting of safety and access to justice in Indian country.²⁸ Its key feature is that it centers on detailed recommendations that

²³ See Kristen A. Carpenter & Angela R. Riley, *Indigenous Peoples and the Jurisgenerative Moment in Human Rights*, 102 CAL. L. REV. 173, 177-80 (2014).

²⁴ *Id.*

²⁵ *Indigenous Peoples in the United States Report*, *supra* note 9, ¶¶ 82-83.

²⁶ *Id.* ¶ 71.

²⁷ Congress extended that mandate earlier in 2013. Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, sec. 909(a), 127 Stat. 54, 126.

²⁸ See INDIAN L. & ORDER COMM'N, A ROADMAP FOR MAKING NATIVE AMERICA SAFER: REPORT TO THE PRESIDENT & CONGRESS OF THE UNITED STATES (2013), available at <http://www.aisc.ucla.edu/iloc/report/index.html>.

strongly support increasing tribal control over criminal justice on tribal territory and reforming current federal policies.²⁹ Since the release of the report, Congress has taken steps towards modifying its policy regarding criminal justice and safety in Indian country, addressing the high levels of violence and jurisdictional limitations faced by indigenous peoples.

In addition to the TLOA, in 2013 Congress passed the reauthorization of the Violence Against Women Act (VAWA). VAWA removes federally imposed limits on native nations' criminal jurisdiction over non-Indians who commit certain acts of domestic violence against tribal members in Indian country, recognizing their inherent tribal sovereignty to prosecute.³⁰ Three tribes were selected to begin implementing the pilot project.³¹ In March 2015, the Act was extended to all tribes, and numerous tribes have indicated their desire to opt in. And, just recently, the Secretary of Indian Affairs announced new policies regarding the ability of the Secretary of the Interior to take land into trust for Native Alaskans, potentially changing the jurisdictional schemes in Alaska that have worked to deprive so many Native Alaskans access to justice systems.³²

Despite progress, Professor Anaya notes that federal law does not go far enough to protect indigenous rights and self-determination, and, in some important instances, is actually out of step with international human rights norms. The report's normative recommendations urge the United States to adopt modern human rights standards in regards to indigenous rights and to recognize remedies for continuing and past violations of indigenous rights. The Special Rapporteur's recommendations for reconciliation and redress constitute comprehensive steps towards implementing these standards and healing wounds caused by colonial policies. Key to these processes is ensuring the full engagement of indigenous peoples in decisions that impact their lives, as is articulated in the UNDRIP as the right to "free, prior, and informed consent."³³ Specifically, Professor Anaya recommends that the United States adopt measures to address treaty violations and non-consensual takings of lands, restore rights to sacred or significant sites, engage in actions of reconciliation and healing, and advance self-governance around land management, culture, language, and recognition.³⁴

²⁹ *Id.* at vii-xi.

³⁰ *See* 25 U.S.C § 1304 (2013).

³¹ Press Release, U.S. Dep't of Justice, Justice Department Announces Three Tribes to Implement Special Domestic Violence Criminal Jurisdiction Under VAWA 2013 (Feb 26, 2014), *available at* <http://www.justice.gov/opa/pr/justice-department-announces-three-tribes-implement-special-domestic-violence-criminal> (recognizing the Pascua Yaqui Tribe of Arizona, the Tulalip Tribes of Washington, and the Confederated Tribes of the Umatilla Reservation in Oregon as the tribes selected to implement the project).

³² *See* Land Acquisitions in the State of Alaska, 79 Fed. Reg. 24648 (May 1, 2014). The final rule removing the Alaska exception was signed by the Assistant Secretary on December 18, 2014.

³³ UNDRIP, *supra* note 20, art. 19.

³⁴ *Indigenous Peoples in the United States Report*, *supra* note 9, ¶¶ 90-92.

V. CONCLUSION

Despite a history of egregious treatment of the indigenous peoples of the United States and contemporary shortcomings on the part of the federal government, thirty years into the tribal self-determination era many of the 566 federally recognized tribes and Alaska Native villages are already engaged in unprecedented acts of nation-building.³⁵ From investing in economic development, education, cultural revitalization, institution-building, and resource management, tribes are actively engaged on the ground in living their own political and cultural sovereignty.³⁶ This is the heart of self-determination.

Moreover, a number of tribes and tribal organizations are also already deeply engaged in the international human rights movement as well. Many worked at the grassroots level to facilitate adoption of UNDRIP by the U.N. General Assembly in 2007 and then by the United States in 2010. Some tribes, like the Navajo Nation, developed human rights commissions even prior to UNDRIP's passage to address some of the pressing human rights concerns on and surrounding the reservation. And others, like the Eastern Band of Cherokee, have engaged international human rights actors to address issues like domestic violence against native women.³⁷

Obstacles notwithstanding, indigenous peoples continue to press—at tribal, national, and international levels—for their rights to self-determination and continued cultural and political existence. A recent report of the International Law Association Committee suggested that state and international practices supportive of indigenous rights have “progressively increase[ed] over the last few decades ‘like a flooding river under an unstoppable rain.’”³⁸ Though it has taken thousands of lives to push incremental change, the work of heroes like James Anaya has made a profound mark on seeking justice and equality for the indigenous peoples of the world. His report, like his entire body of work, is ultimately filled with optimism and hope for the future.

³⁵ See STEPHEN CORNELL & JOSEPH P. KALT, TWO APPROACHES TO ECONOMIC DEVELOPMENT ON AMERICAN INDIAN RESERVATIONS: ONE WORKS, THE OTHER DOESN'T 7, 12, 16 (Joint Occasional Papers on Native Affairs, Paper No. 2005-02, 2006), available at http://www.nni.arizona.edu/resources/inpp/2005-02_jopna_Two_Approaches.pdf.

³⁶ See generally Wallace Coffey & Rebecca Tsosie, *Rethinking the Tribal Sovereignty Doctrine: Cultural Sovereignty and the Collective Future of Indian Nations*, 12 STAN. L. & POL'Y REV. 191 (2001).

³⁷ Carpenter & Riley, *supra* note 23, at 226-27.

³⁸ RHIANNON MORGAN, TRANSFORMING LAW AND INSTITUTION: INDIGENOUS PEOPLES, THE UNITED NATIONS AND HUMAN RIGHTS 149 (2011) (quoting INT'L LAW ASSOC., COMMITTEE ON THE RIGHTS OF INDIGENOUS PEOPLES INTERIM REPORT 44 (2010)).



