

# Human Rights & Human Welfare

---

Volume 5 | Issue 1

Article 6

---

3-2005

## Aaron Peron Ogletree on Indigenous Peoples In International Law (Second Edition) by S. James Anaya. Oxford: Oxford University Press, 2004. 396pp.

Aaron Peron Ogletree

*The Journal of Buddhist Ethics and the Kui Xing Journal*

Follow this and additional works at: <https://digitalcommons.du.edu/hrhw>



Part of the [Human Rights Law Commons](#), [Indigenous, Indian, and Aboriginal Law Commons](#), [International Humanitarian Law Commons](#), [International Law Commons](#), and the [International Relations Commons](#)

---

### Recommended Citation

Ogletree, Aaron Peron (2005) "Aaron Peron Ogletree on Indigenous Peoples In International Law (Second Edition) by S. James Anaya. Oxford: Oxford University Press, 2004. 396pp.," *Human Rights & Human Welfare*: Vol. 5 : Iss. 1 , Article 6.

Available at: <https://digitalcommons.du.edu/hrhw/vol5/iss1/6>

This Book Notes is brought to you for free and open access by the Josef Korbel School of International Studies at Digital Commons @ DU. It has been accepted for inclusion in Human Rights & Human Welfare by an authorized editor of Digital Commons @ DU. For more information, please contact [jennifer.cox@du.edu](mailto:jennifer.cox@du.edu), [digitalcommons@du.edu](mailto:digitalcommons@du.edu).

**Indigenous Peoples In International Law (Second Edition) by S. James Anaya. Oxford: Oxford University Press, 2004. 396pp.**

International law, while continuing to make strides in the protection of the rights of individuals and marginalized groups, has also been used as an instrument to facilitate colonization. While this conception of international law is popularly believed to be an artifact of the nineteenth-century—essentially ending along with colonialism in the 1960s—it has been used more recently to promote a new colonial agenda referred to as neocolonialism. In the second edition of his 1996 Indigenous People in International Law, Professor S. James Anaya recounts these developments, which reveal “the nature of international law itself and its capacity to change, and to be an agent of change,” while also recognizing several shortcomings of international law, due to “the configurations of power and doctrine that are weighted in history” (9).

This book is composed of three parts, divided into seven chapters, each containing valuable information regarding the framework of international law as applied to indigenous peoples. These chapters are well-researched—compiled from the previous edition and new scholarship—and rely on many disciplines including social and political theory, international law, international relations, and history. There is also a detailed bibliography and appendix of major references for further study, and a guide to the major international legal instruments used to address the grievances of indigenous peoples (9).

Anaya provides an account of the evolution of international law as it has addressed the grievances of indigenous peoples. He then proceeds to examine this evolution within a normative framework. Part I focuses on the development of norms and activities strengthening human rights in support of indigenous peoples’ grievances, focusing in particular on the shift from the state-centered basis of international law, wherein states were more likely to use their sovereignty to trump human rights rather than as a tool to protect them. In Part II the focus changes to the framework of contemporary international norms, especially the principle of self-determination and other human rights standards that further the cause of self-determination, such as the U.N. Charter and International Labour Organization Convention No. 169, on Indigenous and Tribal Peoples. Part III focuses on the enforcement mechanisms available to indigenous peoples for holding states accountable to their duties in implementing established human rights norms.

Despite the existence of these mechanisms and procedures, Anaya believes they are inadequate to address the grievances of indigenous people, and that they were not, historically, intended to address them specifically. State consent is necessary for even the adoption of these procedures and many states have refused to give their consent, though, this makes them subject to international scrutiny. Despite these shortcomings, Anaya concludes that international law is beneficial to indigenous peoples and has already benefited many, albeit to a limited extent, by promoting “remedies for violations of their rights in accordance with contemporary norms” (290). She claims that while existing international procedures provide limited means by which international concern for indigenous peoples can be addressed, these procedures have in fact worked, in many instances, to promote compliance with human right norms. In addition, proposed international bodies, such as the U.N. Permanent Forum on Indigenous Issues, could further facilitate the development of these norms.

Anaya effectively demonstrates the distinction between the theory and practice of rights under international law by citing numerous legal cases and examples of commissioned reports, such as the U.N. Economic and Social Council report that documents numerous problems of noncompliance with interstate treaties and agreements dealing with those indigenous groups who are recognized by international law. Unfortunately, Anaya's focus does not permit him to discuss how to change theory into practice since it is about a narrowly tailored narrative of international law that documents its evolution and resultant shortcomings. Topics are explained in an understandable way and the complexities of international law are simplified without distortion. The book also features an accurate representation of the history of indigenous peoples and their attempts to challenge their oppression—an account missing from other books on history and international law, which typically promote the colonizers' nostalgic view. This book is particularly important for the readers who want a deeper understanding of how and why indigenous peoples are in their current condition “relative to others in humanity” (4).

*Aaron Peron Ogletree, J.D., The Journal of Buddhist Ethics and the Kui Xing Journal  
March 2005*