Indigenous Sovereignty in State-Native Conflicts: A Comparative Study of Process and Outcomes

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INDIGENOUS SOVEREIGNTY IN STATE-NATIVE CONFLICTS
A COMPARATIVE STUDY OF PROCESS AND OUTCOMES

A Thesis
Presented to

the Faculty of the University of Denver
and
the Faculty of Social Sciences

In Partial Fulfillment
of the Requirements for the Degrees
Master of Arts in Anthropology
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by
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ABSTRACT

Using the United Nations Declaration on the Rights of Indigenous Peoples, this study was designed to understand how indigenous groups assert their sovereign rights in conflict situations, and how they can be most successful in doing so.

Two instances of indigenous-state conflict were analyzed and compared both to each other and to a baseline of what sovereignty in conflict is, based on the United Nations Declaration. Data to be analyzed and compared was gathered through extensive archival research and interviews with tribal members and other interested parties.

The results documented the interaction between indigenous groups and state/provincial and federal governments in conflict, and suggested that indigenous groups should assert their sovereignty both in the courts, for long-term success, and using other methods to build a power base that will contribute to short-term success. The data also suggests that key components necessary for indigenous groups in general to assert sovereignty in conflict situations include a united front with strong leadership and no corruption; having enough strength to gain attention and assert sovereignty; a continuous assertion of sovereignty through action; and an ability to see beyond the legal paradigm in using other methods either alone or in conjunction with appealing to the courts. These conclusions lead to suggestions for ways that indigenous groups can improve their assertion of sovereignty in conflict situations. The study itself also gives a guide to those engaged in similar situations as to how sovereignty can be better respected in resolution processes and outcomes.
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CHAPTER 1: INTRODUCTION

In an effort to understand the question of indigenous sovereignty on both the American and Canadian sides of the border, this thesis compares two different native communities in a variant of a most different comparative design focusing on a similar event. While differing in history, tribe, environment, economic and political structures, to name a few, these two tribes confronted similar situations when their respective governments proposed to build dams very near their reservations. These dams would have substantially changed the ecosystems, causing flooding and severely affecting and changing tribal ways of life. These lifeways will be discussed in Chapter 4 in the case studies. The American tribe, the Fort McDowell Yavapai Nation, fought for ten years against the Arizona government and eventually succeeded in causing the government to give up its plans to build the dam. The Canadian tribe, on the other hand, the Piikani Blackfeet, referred to at the time as the Peigan, was unsuccessful and the Alberta government did build the dam over their protests.

I was drawn to this topic because having grown up in Ontario, Canada and watched coverage of the Six Nations standoff over land claims in Caledonia, Ontario in 2006, I am very aware of the difficulties that both Native and White Americans and Canadians face when in dispute. I have heard racist comments delivered unthinkingly, and have also had the opportunity to hear of Native frustrations about dealing with White people who do not understand indigenous values. In studying conflict resolution and anthropology, the question of how to improve the nature of conflict interactions between Native and White individuals, groups and governments has interested me deeply.

I first heard about the Orme Dam conflict in Arizona in 2007, when beginning to develop a research project that could address the above question. I was amazed by the fact that a very small reserve was able to mobilize to protect itself and eventually succeed in having a dam that
had been authorized by Congress cancelled. I was fascinated by what they had done, and wanted to study how they had done it and what did they do that was so effective. In order to do so, I began searching for a similar situation that would allow for a comparison. The Oldman River Dam controversy, although in Canada and having many different variables such as history, culture and laws to name a few, had many aspects that could be compared in terms of actions taken, choices made, and how the tribes were treated. I chose to focus on sovereignty because I felt that sovereignty is both a tool for indigenous groups to use to reach their goals, but also sovereignty is something that must be protected and preserved. Analyzing what sovereignty itself is and then seeing how it is applied in a conflict situation seemed to be an appropriate way to begin to understand how both American and Canadian individuals, agencies and governments can better interact with the indigenous groups within their borders.

As will be discussed in greater depth further on, the question of what indigenous sovereignty is and how it can be asserted in conflict situations can be very problematic. Traditional, Western legal perspectives are often very different from how indigenous peoples themselves view sovereignty and their sovereign rights, and these contrasting understandings can complicate already complex disputes. The United Nations Declaration on the Rights of Indigenous Peoples, signed in 2008, is an attempt to ensure that indigenous groups receive the rights due them as distinct, sovereign entities. However, many of the articles contained in the Declaration have yet to be put into practice. In examining these two cases, this study uses the Declaration to show how indigenous sovereign rights are and are not respected in traditional conflict resolution procedures between nation-states and indigenous groups. This evaluation is very important as nation-states move to implement the articles of the UN Declaration, because it shows how these articles can be operationalized and put into practice.

This study also offers some suggestions on how indigenous groups can better assert their sovereignty in these conflict situations. By examining the resolution processes used in the Orme and Oldman River Dam conflicts and their outcomes, it is possible to evaluate what tribal actions were most effective in these situations and why. While this is not an exhaustive study and
there are many variables involved in any conflict, providing some answers to the question of what actions and processes are most effective in bringing about a positive outcome can only be useful to indigenous leaders as well as American and Canadian politicians. In this time when there are many state-native struggles, particularly over resources, this study offers some suggestions as to what might best serve the needs and interests of all stakeholders and promote positive future relationships.

The research question is as follows: how did the Yavapai and Piikani, in the conflicts over the Orme and Oldman River dams, assert their sovereignty, and how successful were these two indigenous groups in doing so? This question will be answered through an in-depth study of each of the two cases, involving archival research and interviews. I will also discuss how the Yavapai and Piikani tribal members interviewed saw sovereignty, and whether they believe that they had sovereignty in those situations.

To conclude, I will discuss how each tribe was or was not successful in asserting tribal sovereignty, and whether there are certain key components necessary for indigenous groups in general to assert sovereignty in conflict situations. These deductions will be drawn from the results of the investigations into the above research question, and summarize the ways in which the Piikani and the Yavapai were successful and unsuccessful in achieving their goals in the Oldman River and Orme Dam conflicts. This comparison, although only made between two cases, may offer some insights into dealing with indigenous conflict in the future for both indigenous groups and nation-state officials and organizations.
CHAPTER 2: BACKGROUND

This research project is placed within both the critical and structural paradigms. It is critical because it examines the continuing history of power and domination of Native peoples. In order to understand why one group is dominated by another, critical researchers study social issues surrounding power, dominance, repression and inequality, and may use their research to advocate for marginalized groups (Creswell, 2005). Schellenberg (1996) defines a structural approach to conflict and conflict resolution as taking the view that the origins of the conflict and the way that it will be resolved lie in the organization of the particular society in which the conflict occurred. I will be examining two events in these contexts, in an effort to explore the power relations and modes of production that inform these relations with regards to Native Americans and Canadians and their respective state, provincial and federal governments. In using these paradigms, I assume that there is an element of reciprocity involved in the relationship between Native Americans/Canadians and their state/provincial/federal governments: I also assume that the mechanisms that maintain this reciprocity are ideological, political, economic and structural.

Theoretical Background

To analyze sovereignty in the two case studies discussed in this research project I used a theoretical framework based in the works of Foucault and Godelier. Both theorists discuss why there are groups within societies that do not agree with the dominant narrative, and Godelier further provides an explanation for why there are some who would prefer to accept the status quo even within these groups. Both discuss the ideological, political, economic and structural mechanisms that create these societal groups and narratives of power.

Foucault's work focuses on examining how human beings have been made into subjects across history, and from there he has scrutinized the mechanisms which our societies and cultures use to dominate our members (Dreyfus and Rabinow, 1982). He identifies three ways in
which humans are objectified and cut off from others, becoming subjects: the first is known as “dividing practices”, which use science and social means to give people specific social and personal identities (Rabinow, 1984). These dividing practices divide a person internally or divide them from others: an example of such a practice would be the division of the healthy from the sick, or the mad from the sane (Dreyfus and Rabinow, 1982). The second could be called “scientific classification”, and speaks to the ways in which specific bodies are objectified through the collection and use of scientific data. The third and final mode of objectification looks at how individuals engage in a process of self-formation through undergoing a process of self-understanding. This is usually directed in some way by an outside authority, and the process of self-formation is how people change their own thoughts, actions and behavior. Each of these three modes, “those that categorize, distribute, and manipulate; those through which we have come to understand ourselves scientifically; those that we have used to form ourselves into meaning-giving selves” (Rabinow, 1984, p. 12), exerts power over people.

The first mode is most relevant to this research as through dividing practices, social and personal norms are established which would determine how people expect others to react to certain situations. This could be seen in state-indigenous conflicts as members of the dominant narrative would expect those with whom they are in contact to understand and value certain concepts. This could include putting more value on money and economic stability than on history and culture.

Gutting states that according to Foucault, “power is a matter of the subtle and meticulous control of bodies rather than the influence of ethical and judicial ideas and institutions” (2005, p. 20). In his book *Discipline and Punish*, Foucault (Rabinow, 1984) speaks of docile bodies and the political mechanisms through which human beings can be made docile; these processes always involve a minute attention to detail, and a political awareness of these details which brings these mechanisms into every aspect of state control from schools to the military. Foucault refers to this power over the human body as “bio-power”, which uses scientific knowledge and a view of the human body as something that can be controlled to objectify the body using “disciplinary
technologies”. These technologies control the docile bodies using training, normalizing certain actions, and organizing space. He further argues that disciplinary technologies were necessary for the rise of capitalism, and this assertion offers an explanation for why certain groups within a larger society cannot accept capitalism’s status quo: if these groups have not been socialized within these technologies or accepted them, as is the case with many indigenous groups, they will be in conflict with the dominant narrative. This could be seen as self-formation, in choosing either to accept or reject the dominant ideology and modify one’s behaviors and thinking patterns accordingly.

Godelier (1986) opens his book, *The Mental and the Material: Thought Economy and Society* by providing the reader with a fact and a hypothesis: the fact is that “human beings… produce society in order to live”, and the hypothesis is that “human beings have a history because they transform nature” (p.1). He further qualifies that the different ways that humans invent to act and to think change themselves and the nature that surrounds them, and it is through these interactions and relationships that culture and history are produced. In stating that nature is not external to culture and history, he raises the question of what the relations are between the material and mental forces that humans invent and the actual social relations which use these inventions to support the actions of humans on nature. In order to explain these relations, he focuses on the relations of production and on the mental and material productive forces that exist in every human interaction with nature.

As defined by Godelier (1986), relations of production must have at least one of the following three functions: determining social access to resources and control of the conditions of production; organizing labor and allocating certain members of society to these processes; and determining how the products of both individual and collective labor will be circulated and redistributed. These relationships between nature and humans thus have a very obvious mental and material component; each interaction that takes place, while it involves material subjects and products, is also governed by the mental processes that create society and culture. The combination of the physical and material ways in which humans transform nature with the social
and mental relations of production constitute a mode of production. For example, a capitalist mode of production would be characterized by the combination of tools and technology with certain mental and social relations of production. This could be seen, perhaps, in a push to regulate water flow because agribusiness success is seen as being of extreme importance, and this mental component would provide an organizing plan that would determine how productive forces and technologies would be used, whether in a dam or another type of regulation.

Godelier (1986) further distinguishes between the mental and material aspects of productive forces, stating that the mental element provides a kind of framework or “organizing plan” which acts upon and determines the ways in which productive forces work. This means that the creation of culture and cultural artifacts takes place within both a physical, natural environment and within an intellectual, mental frame. By examining the relationships between the mental and material aspects of production and reality, Godelier sees culture and the production of culture as depending on relationships between people as well as between people and nature, and power distribution as depending on these social and environmental relationships.

All this implies that power relations in a society cannot be changed except by abolishing the social relations that create power imbalances. Godelier (1986) also states that if certain individuals are aware of these imbalances, they can work to counteract them: this will not, however, change the underlying causes of the problem. He also believes that there are reasons, both economic and non-economic, that allow hierarchies to develop with the consent of people in all the different levels. Thus, it is paramount to discover the reasons why these different groups still find it advantageous to be on the lower end of the hierarchy. This argument suggests why within the two indigenous groups studied herein, when in conflict some of the group would cooperate with the agendas proposed by the two governments, rather than fighting to change the social relations of production that have put them in the position of having their land taken from them.

I have used Foucault’s theories surrounding disciplinary technologies to identify how the various governments and agencies in the Orme dam and Oldman River dam conflicts attempted
to control the Yavapai and the Piikani. From Godelier, I looked for complicity in these conflicts, asking how complicity aided the intentions of the governments and agencies in building the dams.

Sovereignty

Drawing on the work of Foucault and Godelier, the construct for this project is sovereignty. Philpott (2003) defines sovereignty as being "supreme authority within a territory". Sovereignty thus is made up of three components; authority, supremacy and territoriality. Authority means the right to command, and requires that the sovereign have legitimacy in order to do so; supremacy is fairly self evident, but could also be used in the sense that the federal government has authority over a state government, allowing the possibility for degrees of sovereignty; and territoriality is a principle that defines the members of a community over which sovereignty can be exercised. Philpott further clarifies three dimensions that help explain different forms of sovereignty. The first is that there can be many different types of groups or individuals that hold sovereignty, for example, kings and states. Sovereignty can also be absolute or non-absolute: this does not mean that a sovereign entity has absolute control over its subjects, but that while sovereignty is supreme authority, the scope of matters over which the holder has sovereignty can vary. Philpott uses absolute sovereignty to refer only to a state that has authority over all matters pertaining to it, not that the state can actually enforce its control over each individual issue or subordinate entity. Finally the relationship between internal and external dimensions of sovereignty can vary based on the recognition outsiders give to the sovereign power, and the degree of authority the holder has over outsiders and outside its borders.

As an operational definition, "sovereignty" will be defined as having control over day-to-day social mechanisms and political, economic and social choices, for both the communities and individuals within the governed territory. As a construct, "sovereign" is a socio-political and psycho-social condition connected to "sovereignty", which a person or community has when they are able to choose how to run their own lives and make decisions that will benefit their community without interference from outside agencies. As a concept, "sovereignty" is behavioral, for example, in voting behavior or participation in community programs. Even more so, sovereignty is
attitudinal, as the idea of sovereignty exists in the mind. Sovereignty, which will be discussed and defined further in the following pages, will thus be measured behaviorally, for example, in how the indigenous groups exercised their sovereign rights, and attitudinally, for example, in how the individuals in these groups believe that their sovereign rights have been respected.

This appears to be a very straightforward definition of sovereignty, however the truth of the matter is that there is a great debate going on over what sovereignty is and can be. For further background, before getting into the debate, let us take a moment to look at the origins of sovereignty, what sovereignty has meant over the centuries, and the degree to which it can or cannot be absolute.

According to Vine Deloria (1996), the term sovereignty was first used in the Near East to describe the deity, and was later appropriated by the Europeans who used it to explain the divine right of kings to rule. The church claimed a similar right over the minds of the people, but as revolutions weakened both royal and clerical power, sovereignty became linked to individuals and nations (Barker, 2005). Camilleri (1990) speaks of the decentralized feudal system, led by the church and the king, eventually breaking down and being replaced by a “system of territorially bounded sovereign states, each equipped with its own centralized administration and possessing a virtual monopoly on the legitimate use of force” (p. 14). This system brought with it administrative mechanisms and political control, and defined a system of property ownership. State sovereignty grew out of this emerging system, and was shaped by the social and economic environments of 16th and 17th century Europe.

As the state was being formed, many scholars questioned what sovereignty actually was and to whom it belonged. According to Barker (2005), the main question asked how sovereignty linked individuals and nations in giving responsibilities and privileges to both. Camilleri (1990) elaborates that such philosophers as Bodin and Hobbes saw the state which exercised sovereignty as specifically being the governing institutions, while other thinkers of the time, including Hooker, Burke, Rousseau and Hegel, saw the state as “a community of free people
based on an implicit or explicit consensus” (p. 15). Questions around how sovereignty is applied in relationships between individuals and nations are still being discussed today.

In their 1997 book, *Reclaiming Sovereignty*, Brace and Hoffman explore these contested areas by presenting various articles on the subject, which vary from expressing the view that sovereignty belongs exclusively to the state, to speaking of individual sovereignty and beyond, to arguing that animals also have sovereignty. Various authors who contributed to this book (Hoffman, Carty and Youngs, 1997) point out the difficulty in defining sovereignty only in conjunction with the state, especially as the European Union and other international organizations have some power over a state’s actions. Brace and Davidson (1997) examine what a sovereign self is, as individuals have power over themselves, while Garner (1997) argues that nature as a whole has sovereignty which could supersede human sovereignty. According to Brace and Hoffman (1997), this last idea is not accepted as a credible theory.

The traditional view of sovereignty, presented by Philpott (2003), along with the development of the concept of sovereignty, is essential for understanding current debates about indigenous sovereignty and sovereign rights. The three components of authority, supremacy and territoriality framed the original discussions about how Native nations would be treated and respected, and while these three items may not be what Native Americans and First Nation Canadians are concerned with when they speak about sovereignty, this original discourse is the one that has shaped our laws, our legal battles, and the present-day discussions and scholarship dealing with sovereignty.

In the following section I will move beyond the definition of sovereignty into that of indigenous sovereignty, which brings up the conflicts between traditional and “non-traditional” understandings of what sovereignty is and ought to be. This debate shapes the way that sovereignty is discussed and also how it is asserted in conflict situations. Without examining indigenous conceptions of tribal sovereignty, this paper would be one-sided and ignore the many facets of sovereignty that need to be explored.
Indigenous Sovereignty

While specific Canadian and American frameworks and histories of aboriginal sovereignty will be discussed in a following section, the focus here is to further discuss some of the many meanings of indigenous sovereignty. Wendy Espeland (1998), in her book, *The Struggle for Water*, examines rationality as it was defined and resisted during the struggle to build Orme Dam, focusing on how people see rationality, how they act when they are trying to be rational, and what these issues mean to individuals. Through this case study, she was also able to understand the power of frameworks of rationality when people attempt to interpret the world. She draws on Weber's understanding of subjective rationality which guides behavior, and objectified rationality, which is a view of the world that has been institutionalized by laws or other societal processes. Subjective rationality can either be instrumental, which evaluates how something can be achieved, or value, which deals with the value of a certain action outside of whether or not it will be successful. This relates to debates about sovereignty as the concept is defined in different ways by different groups and individuals: some idea of what sovereignty is eventually becomes institutionalized in the laws of a specific nation-state. It is also possible that Western theorists see sovereignty as a means to an end, as it is viewed in terms of power. Indigenous groups, on the other hand, may see sovereignty as something of intrinsic value that cannot be negotiated or appraised. Thus, as Espeland has spoken of the conflict surrounding instrumental and value rationality, this same conflict can be applied to debates over what sovereignty is.

Barker (2005) also speaks of the different meanings that have been attached to sovereignty by legal scholars and indigenous activists and groups in the introduction to her edited book, *Sovereignty Matters*. This section will examine some of the legal perspectives on sovereignty, as well as some indigenous perspectives, before moving on to a discussion of three different frameworks of sovereignty. 

Legal Perspectives
Deloria (1996) states that at the beginning of the colonization of America, the colonizers believed that indigenous nations had a sovereignty that was comparable to European sovereignty. This lasted only as long as the indigenous nations retained enough land and enough military strength to be forces to be reckoned with. This changed once the British effectively gained control over the continent, and had no more need to make alliances with the Natives to fight off other Europeans. The American Revolution later brought with it a renewed recognition of Native sovereignty as they signed many treaties with the Indian Nations. Thus, as long as the indigenous groups had enough resources, the Europeans could respect them and their sovereignty. Barker (2005) looks beyond these original recognitions of Native sovereignty, and questions whether indigenous sovereignty was ever respected; although European nations did make treaties with indigenous groups, they were not so much about recognizing sovereignty as they were about upholding the supremacy of the European newcomers and their laws.

According to Barker (2005), the Marshall Trilogy, including three court cases in 1823, 1831 and 1832, created the first definition of American indigenous sovereignty, presenting the doctrine of discovery which provided a reason for the trust relationship between American Indians and the federal government. Although the three cases were dealt with by the American Supreme Court, this trio of cases informed indigenous law under British Home Office rule in Canada, New Zealand and Australia. The doctrine of discovery stated that the indigenous groups occupying America had rights of occupancy to the land, and that discovering nations could take possession of these lands by conquest or by purchasing it. The third and final case established that the indigenous nations retain title over their lands until this title is legitimately extinguished by treaty, or by the nations choosing to submit themselves to state law (Price and Clinton, 1983). The United States have control over indigenous lands while indigenous groups retain their right to remain on and occupy their lands. Congress holds plenary power over Indian affairs, while Indian tribes have sovereign rights that are subject Congress’ powers. The United States itself has a trust responsibility to Indian tribes, which also informs how Congress may use those plenary powers (Cohen, 1942).
Although strides have been made in recognizing indigenous sovereignty, there are still many debates on this subject, and many nations are reluctant to relinquish control over indigenous groups. Roach states that one of the largest questions around indigenous sovereignty is how to protect minority rights while at the same time avoiding undermining state sovereignty (2005). He suggests an open-ended sovereignty, where instead of a nation-state there is a “nation-plus-states”; he does not give an example of how this could be achieved, admitting that he has no plan for how such a conception of sovereignty would look in actuality.

Legal definitions of indigenous sovereignty have changed a great deal over the centuries, and while I will not go into great detail about all the legal ramifications resulting from different acts, in one of the following sections I will discuss the United Nations Declaration on the Rights of Indigenous Peoples as an example of international law governing and protecting indigenous rights. I will also give a greater history of American and Canadian law dealing with indigenous sovereignty. At this point, however, I conclude that typically indigenous sovereignty has been seen as something exclusively legal and overseen by the nation-state in which the indigenous group resides.

**Emic Perspectives**

There is a large body of literature written by indigenous scholars that deals with sovereignty, and what it means to Native groups. In her edited book, *Sovereignty Matters*, Joanne Barker (2005) brings together many indigenous voices to discuss sovereignty. She herself challenges the traditional view of sovereignty, stating that the meaning of sovereignty is completely dependent on the social relations in which the term has been developed and is being used. A number of the contributors to her book posit that there is no single meaning for sovereignty, and argue that although many legal and Western scholars believe exclusively in a statist sovereignty, these ideas have been developed exclusively by Western thinkers and do not represent the diversity of ways that sovereignty can exist (Cram, 2005; Barker, 2005; Alfred, 2005).
Delgado P and Brown Childs (2005) speak of a sovereignty of thought, in which the very act of remembering and proclaiming indigenous history in traditional language or context becomes an act of sovereignty. Barker (2005) states that indigenous peoples see sovereignty as coming from the identity and culture of their people, and she notes that most see sovereignty as an inherent right based in the existence of their culture. Alfred (2005) looks at the difference between Western and indigenous sovereignty, stating that Western nation-states require that individuals belong to a nation or assimilate into a belief or social system. This keeps power in the hands of the state, and clearly delineates which voices are most important. Indigenous sovereignty, on the other hand, is based solely in respect for all individuals and groups: there is no hierarchy of decision-making, but equal power is given to all voices.

Leonie Pihama (2005) speaks of the importance of bringing Maori methods of theorizing into the university as a way to combat colonization. Kilipaka Kawaihonu Nahili Pae Ontae (2005) echoes Alfred’s concern that the concept of sovereignty has been constructed within a Western cultural framework. He also states, along with Berman Santana (2005), that in order to (re)claim indigenous sovereignty, Native groups need to return to their roots and cultural traditions. Perez (2005) takes a similar line as he encourages others to examine sovereignty in the context of colonialism, human rights, and nationalism. Finally, Miller contends that the fight for indigenous groups to have cultural self-determination and tribal sovereignty is a never-ending process.

In Aileen Moreton-Robinson’s (2007) edited book about indigenous sovereignty in Australia, she states and her contributors support the assertion that “our sovereignty is embodied, it is ontological (our being) and epistemological (our way of knowing), and it is grounded within complex relations derived from the intersubstantiation of ancestral beings, humans and land” (p. 2). From her perspective, indigenous sovereignty is very different from the Western view that sovereignty is based on a social contract, and her work focuses less on defining sovereignty objectively but in opening a dialogue so that the many manifestations of sovereignty can be discussed and explored. Her book focuses on four areas in which traditional ideas about sovereignty can be challenged: law, writing, history and policy. In each of these sections, the
authors continue to argue for an indigenous sovereignty that is based in indigenous values and understandings, rather than merely accepting a colonizing country's beliefs of how things ought to be.

Vine Deloria (1996), a well-respected and prolific indigenous author, states that “a self-disciplined community that holds itself together and acts with a unified vision possesses sufficient sovereignty to confront and resolve any difficulty (p. 123-124).” He also goes on to speak of sovereignty as a process, undergone by groups of people, as they move towards maturity. This is yet another definition for sovereignty, and does not specifically include the territorial integrity piece stressed by Philpott (2003).

**Conclusions about Indigenous Sovereignty**

The traditional definition of sovereignty, recognizing some degree of authority over a certain territory, is upheld by legal perspectives of sovereignty, although they vary according to how much authority an indigenous group may have over these areas and the people who inhabit them. According to the emic perspectives presented here, indigenous sovereignty goes beyond territorial authority, and includes a sovereignty of thought that comes from a sense of identity and culture, and is respected by all. Also, indigenous sovereignty cannot be exercised without cohesion and unity within the indigenous group. This would imply that in order for indigenous sovereignty to be upheld, outside groups must respect indigenous definitions of sovereignty, and respect indigenous laws, cultures and traditions within a territory. It may also imply that outside agencies must ensure that groups have enough resources to act in a unified manner. This could be done by providing funds for education, media, studies on environmental conservation and development or for legal fees so that the tribe could fight for their rights.

This discussion of what indigenous sovereignty is and means shows how sovereignty, like rationality, can be constructed in very different ways. As in Espeland’s (1998) discussion of how differing rationalities can create conflict, so differing conceptions of sovereignty also make it difficult for individuals and organizations to understand each other across these divides. In light of these differing views on sovereignty, it appears that sovereignty can be rooted in law, in culture
and identity, and can be both something that is granted and something that is inherent.
Sovereignty can be seen as a set of legal rights and also as an action that must be continually
exercised. As seen through the lens of Godelier, it is also obvious that Western, legal
perspectives on sovereignty differ substantially from indigenous understandings, and that these
differences in mental and material perspectives may keep indigenous groups from joining the
dominant narrative of individualism and capitalism.

Three Frameworks of Indigenous Sovereignty

Presented here is background on the American, Canadian and United Nations
conceptions of indigenous sovereignty. In order to compare the ways in which sovereignty was
asserted in the two case studies, the United Nations “Declaration on the Rights of Indigenous
Peoples” is used as a kind of baseline for sovereignty. Because American and Canadian laws
and histories are very different, it is important to look at a certain framework by which each
situation can be measured, regardless of the country’s individual laws. The UN Declaration
provides such a framework, as its articles are accepted by those who signed it to be universal to
all indigenous peoples.

Neither Canada nor the United States of America signed the Declaration, however
because it is used by the UN as a baseline for establishing indigenous rights, it is appropriate to
use it in this study in the same way. In categorizing the Declaration’s articles, a map will be
created for how the UN sees indigenous sovereignty and how it needs to be respected. Then,
using the categories to develop indicators of what sovereignty is, and how it can be seen in
conflict resolution processes and outcomes, it will be shown how each case study relates and
compares to this ideal model, and from that will show how the cases compare to each other.

American and Canadian Issues Surrounding Sovereignty

While questions of Native rights and sovereignty have existed for centuries on both sides
of the American/Canadian border, it was not until the late 1960s and early 1970s that the
indigenous groups in Canada and the United States began to call more forcefully for the right to
self-determination (Deloria and Lytle, 1984). Historically, the Native voice has been
underrepresented in discussions about government policy towards Native populations; the first book written exclusively by First Nations people in Canada on the First Nation situation was only published in 1970 (Waubageshig, 1970). A number of writers have commented on the tendency of the American and Canadian governments to ignore the Native viewpoint and tend towards paternalism (Waubageshig, 1970; Weaver, 1993; Deloria and Lytle, 1984). There is considerable frustration within the Native community on both sides of the border as they struggle to cast off the lingering remnants of colonialism even as they find that they must present their problems to the American and Canadian governments through a White perspective (Duran and Duran, 1995; Waubageshig, 1970). The question of whether or not Native Americans and Canadians should be assimilated has arisen again and again, with both sides offering up strong rationales for their own viewpoints (Castellano, 1970).

There are also vastly different views of land and what it means to Natives and Whites. The Indian belief that land is sacred and an integral part of their identity has been discussed by various authors including Hughes (1996), Armstrong (1971), d’Estree (1999), and Laduke (1999), while the viewpoint of most Whites and of the American and Canadian government that land can be bought, sold and changed has been expressed by Banner (2005) and Johansen (2000). It is in this atmosphere of controversy and misunderstanding that land rights issues are being debated and decided.

American Indigenous Sovereignty

Under American federal law, three sources of sovereign government authority are recognized; federal, state and various Indian tribes (Goodman, 2000). The Marshall Trilogy gives the three basic principles on which indigenous tribal sovereignty is based: Indian tribes are political entities with inherent sovereignty; although certain aspects of tribal sovereignty have been diminished, all powers not lost or diminished are kept by the tribes; lastly, one of the attributes of tribal sovereignty that has not been diminished is the right of the tribes to make and enforce laws that apply within tribal territory, although this right has been and is in dispute, particularly when examining tribal sovereignty over non-Indians on reserve. The American
allotment policy gave “surplus” tribal lands to non-Indians, and this brought up jurisdictional issues dealing with whether tribal governments could tax or have adjudicatory power over non-Indians on Indian lands. According to Goodman (2000), tribes have jurisdiction over non-Indians when the non-Indians have a “consensual relationship” with the tribe or tribal members, usually through business arrangements, or if the non-Indian is acting in a way that threatens the tribe. This second stipulation is complex and may have implications surrounding the regulation and use of natural resources. Goodman lists various court cases where this has been discussed, including Montana, 450 US at 565 (dealing with auto accidents involving non-Indians on highways on reserve), Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation (dealing with tribal zoning authority over non-Indian owned lands on reserve), and Montana v. United States E.P.A., 137 F. 3d 1135 (9th Cir. 1998) (addressing whether or not Indians should have jurisdiction over non-Indians on reserve in the matter of pollutant emissions). Cohen’s *Handbook of Federal Indian Law* (1942) and the Indian Reorganization Act (United States of America Congress, 1934) delineate these sovereign rights and the relationship between federal, state and Indian governments.

The American Constitution gives the federal government control over Indian affairs, and covers authority over commerce with Indian tribes, expenditures for general welfare, American property and treaties (Cohen, 1942). Because the federal government has powers of war, peace and treaties, it can be argued that Congressional powers over Indians are as far-reaching as Congressional power over non-Indians, and for this reason some have said that the federal government has plenary power over the tribes, albeit with some limitations. The congressional power of treaty-making obligates Congress to carry out its responsibilities under treaties made with the tribes, and the power of national defense means that Congress could declare war on the tribes if there were a need to protect other citizens from hostile Indians. Congressional control over tribal lands is very wide, and Congress even has the ability to override tribal determination of membership.
The President of the United States is able to consolidate agencies as well as to consolidate tribes on reservations, with their permission. The Secretary of the Interior establishes agencies, appoints members of the Indian Arts and Crafts Board and Indian Bureau employees, while the Commissioner of Indian Affairs is able to issue trader’s licenses and regulate Indian Bureau employees, among other duties (Cohen, 1942). The Secretary of the Interior may also acquire land for tribes and has the sole authority to lease tribal lands within regulations of a treaty or statute, although, in certain situations, the tribal government may also lease the land with the approval of the Secretary. The Secretary has no power to diminish Indian lands, although Congress has given certain agencies this power. As regards tribal funds, the federal government has no control over funds from individual tribal members, but exercises some control over money held in the American treasury and full control over money held in trust for a tribe in the American Treasury. This means that the federal government does have some control over money in individual tribal members’ trust accounts, and there have recently been investigations into how these accounts have been mismanaged over the years (Pevar, 2002). The most recent of these cases involved Secretary of the Interior Gail Norton, and it was ruled in 1999 that she had grossly mismanaged the trust funds (St Clair, 2002). The laws discussed above have changed since 1942, as discussed below with the Indian Self-Determination Act of 1975.

Because the constitution grants the federal government such sweeping powers over Indian tribes, state governments have very little jurisdiction of their own, and state laws have no force within Indian Territory in matters affecting Indians (Cohen, 1942). If an Indian is outside of Indian land, s/he is subject to state or territorial laws unless Congress has asserted its power over the activities the Indian is involved in. If a non-Indian is in Indian country on federal business, s/he is subject to federal laws, while if s/he is not on federal business, state laws may be applied. While in Indian country, however, the Indian government has the right to impose severance taxes on non-native individuals or groups who lease Indian lands to extract oil and minerals. This was upheld in Merrion v. Jicarilla Apache Tribe (Price and Clinton, 1983). This right is a part of tribal sovereignty as Indian governments are domestic, dependent nations.
Tribal self-government is the most basic of Indian rights, and any part of it that is not expressly limited by legislation remains a part of tribal sovereignty (Cohen, 1942). The tribe is permitted to determine and define its own form of government and to carry out its ordinances, but the Secretary of the Interior has veto power over these ordinances; this power is usually used when an ordinance would violate a federal law or is unjust to a group within the tribe. The tribe also has the power to determine tribal membership, except where Congress has passed legislation saying otherwise. The tribe regulates domestic relations, although there are some tribes that state in their constitutions that such institutions as marriage are subject to state law, and has control over patterns of descent and distribution, although the Secretary of the Interior has veto power over Indian wills dealing with restricted property. The tribe has property ownership rights of its land, and can also regulate the use of individual property by its members.

Finally, the tribe does have various statutory powers given by the federal government, the most important being the ability to supervise regular government employees if the Secretary of the Interior finds that the tribe is competent to do so. As discussed below, this right was further enshrined in the 1975 Self-Determination Act. It is important to note that while the rights listed here are guaranteed by law, it is by no means certain that these rights have always been respected by government agencies. From a solely legal perspective, while the tribe holds many powers, the federal government retains either veto power of the power to change these rights through legislation. This would mean that the tribes have no real power or sovereignty, if the federal government can always choose to change tribal decisions or laws.

The Indian Reorganization Act, or Wheeler-Howard Act, put into law in 1936, was intended to help develop Indian lands and resources, and gave the Secretary of the Interior further powers to acquire lands for tribes, to make regulations for management of Indian forests, to give Indians loans for the development purposes, and to make qualifications that, if met, would give Indians preference for jobs in Indian offices (United States Congress, 1934). Indian tribes were also allowed to organize together on the reservation for their own welfare, subject to approval from the Secretary of the Interior, and if the tribes chose to make their own constitutions,
the constitutions needed to allow the tribe their own legal counsel, prevent sale or lease of tribal lands without a majority of the tribe’s permission, and to allow the tribal council to negotiate with federal, state and local governments.

The Self-Determination and Educational Assistance Act of 1975 made native self-determination the official policy of the United States, a turning point for state-native relations (Harvard Project, 2008). The Act itself attempted to give more authority to tribal governments so that the tribes themselves could administer federal programs (Wildenthal, 2003). It gave tribes the opportunity to contract with the federal government to administer social programs and services, which had previously been the domain of the Bureau of Indian Affairs or other federal agencies. Although it is referred to as the Self-Determination Act, the Act does not grant self-government or allow tribes much control over their natural resources (Deloria and Wilkins, 1999), and it also forces tribes to abide by federal spending policies (Harvard Project, 2008).

In 1988, the federal government put a pilot program in place in an attempt to address these problems, which was eventually signed into law in 1994 with the Tribal Self-Governance Act (Harvard Project, 2008). This Act allows tribes to receive a lump payment from the government, and then choose how they want to use the funds within the various services that they have contracted. These commitments to allowing tribes to administer and manage their own programs have been very successful in serving tribal communities better, although a number of problems remain. The Harvard Project notes that in order for tribes to administer themselves, it is necessary for them to have strong and capable tribal institutions.

All this means that the United States has a great deal of power over Indian tribes, if it chooses to exercise it. States do not have much jurisdiction over tribes, and the question of where state jurisdiction ends and tribal jurisdiction begins could cause problems. The United States government, although originally it aimed to assimilate tribal members, has moved towards putting more power in the hands of Native governments. It should be noted that even as the federal government gives more power to tribes, it keeps control many issues, such as spending policies.
Canadian Indigenous Sovereignty

First Nations sovereignty in Canada has been shaped by the Royal Proclamation of 1763, the Indian Act of 1876, the White Paper of 1969, and the Calder Decision of 1973 (Maaka and Fleras, 2005). The Royal Proclamation acknowledged that Aboriginal interest in the land they lived on was a pre-existing right, and to recognize this right the Imperial Office purchased Crown lands from the Aboriginal peoples, leaving the rest of the land under Aboriginal control. The Proclamation itself stated that the Nations and Tribes of Indians who lived under Royal protection should not be disturbed, and that there should be no further settlement until the Indians gave the land to the Crown. The Proclamation guaranteed Aboriginal right to self-government, respected Aboriginal sovereignty, created alliances, promoted free trade, and made promises for a future with the Crown and the Aboriginal populations as partners.

While years of cooperation followed the Proclamation, after the War of 1812 ended and the British had no further need of Native allies, they began to break treaties and assert British sovereignty over Native peoples and lands (Maaka and Fleras, 2005). The government tried assimilationist policies as an attempt to acculturate the Aboriginal peoples, and this was seen as the best way to solve the “Indian problem”. The Crown signed eleven treaties between 1871 and 1923, forcing the Aboriginals onto reserves and opening land for settlement, and the 1876 Indian Act further enshrined these policies. The Indian Act itself had three main functions: to civilize/assimilate the Indians; to better manage the Indians and their lands, resources and expenditures; and to define which Indians were allowed access to federal resources. The Act defined who was an Indian, who came under the Act’s provisions, who could get government funds, how tribal lands and resources would be managed, and how local reserves would be governed. The Act created a three-year elective system for bands, and if Ottawa felt that a band was ready, the federal government was able to impose this system on the bands (Dickason, 2002). Many bands refused to participate in this new scheme by refusing to hold elections, the Six Nations Iroquois among them.
The Act also confirmed earlier property policies for First Nations (Alcantara, 2003). Indians who were recognized as band members, or non-enfranchised Indians, were given land by the band council and Canadian Superintendent General which they held for their life and could be transferred to widows and children. An enfranchised Indian, or one who had lost his right to be called an Indian under the provisions of the Act by proving that he had strong character (as defined by the Superintendent General) could have a fee simple interest in reserve land. This meant that the land would be passed down to his children forever. In order to become enfranchised an Indian had to prove, over the course of three years, that he would handle his land not in a communal manner, but in an individual, European style. Various government officials believed that the Indian tradition of helping each other was detrimental to helping band members escape poverty, and thought that the only way to improve the Indian situation was to end this practice and assimilate them into a European understanding of property holding.

The Department of Indian Affairs was officially established to be its own department in 1880; previously, it had been under the jurisdiction of the Department of the Interior (Dickason, 2002). The Indian Act identified how the First Nations would be controlled and directed, and the Department of Indian Affairs, under many different names, has existed to the present day. Currently it is known as INAC (department of Indian and Northern Affairs Canada).

Assimilation policies continued to be the norm until the mid 1950s, when a new generation of Aboriginal leaders emerged (Maaka and Fleras, 2005). In 1969, the White Paper was proposed by the federal government in an effort to end the special relationship between the Aboriginal peoples and the Crown, moving federal responsibility over Indian affairs to the provincial governments. This was a new attempt to integrate Aboriginal populations by desegregating the Canadian population. This would mean the First Nations would be assimilated into the population, not as a distinct group but now having the status of ethnic minorities. This loss of status would include abolishing the Indian Act and rejecting any land claims. The Aboriginal leaders condemned the paper, and the government was forced to work towards a new
policy that would allow Aboriginal peoples to control their lives and lands, but would not risk Canada’s unity.

The Calder decision of 1973 took a new approach towards the Aboriginal peoples of Canada, seeing them as sovereign peoples who never agreed to assimilation (Dickason, 2002). Frank Calder, of the Nisga’a Nation, took the attorney general of British Columbia to court declaring that provincial land legislation was invalid because the First Nations had right and title to that land. The British Columbia Supreme Court ruled that Indian right was overruled by the fact that the settlers had imposed their law, and the Supreme Court of Canada upheld that ruling. In spite of this, six of the nine justices agreed that Aboriginal right to land existed, and in response, Prime Minister Pierre Trudeau accepted that Aboriginal right existed, and he brought these rights into the constitution of 1982. This decision and the debate around the issue, although it appeared to deny Native rights, implied that Aboriginals had title to their lands and rights to their ways of life (Maaka and Fleras, 2005). It did not, however, completely change Canadian principles of colonialism and assimilation that justified Canadian sovereignty and control over Native peoples. The decision showed a new tendency to accept Aboriginal self-determination, and create new methods of governance with the input of the Aboriginal peoples.

Canada’s constitution was brought to Canada from Britain in 1982, and the debates around bringing the constitution home created considerable turmoil among the First Nations (Dickason, 2002). The indigenous groups, believing that Canada was not listening to their concerns, went to great lengths to convince the international community to pressure the Canadian government, sending delegations to Britain and Europe. When the constitution (or Charter of Rights and Freedoms) was brought back, the indigenous nations received recognition of “existing” indigenous rights, but this term was not defined. The constitution provided that, because the First Nations had not been involved in constitutional negotiations, three conferences would occur to bring together the first ministers together to discuss Aboriginal issues. These three conferences failed to result in any constructive action, and after the third conference, the indigenous groups were disillusioned by the controversy over the Meech Lake Accord, negotiated
in 1987, which would have given Quebec alone special status as a distinct society. This is what the indigenous leaders had been working towards for some years, only to have it denied them and given to another group. Although the Accord was not signed, the fact that it favored Quebec over the indigenous nations created a feeling of betrayal.

Most recently, in 1998 the Canadian government established four objectives to reaffirm its commitments to Native peoples (Maaka and Fleras, 2005). These include the renewal of partnership by redefining the relationship between Canada and Aboriginal peoples; strengthening Aboriginal governance with a goal of self-governance; designing new fiscal relationships so there will be steady funds for development; and supporting strong Aboriginal communities through economic development as well as solid infrastructure. It is important to note that although the First Nations do have considerable powers of self-government, the right to self-government is not explicitly recognized in the Canadian constitution (Kymlicka, 2004).

As in the United States, British and later Canadian governments attempted to assimilate indigenous groups into mainstream culture. This continued until the mid 1950s, but it was not until 1973 that Aboriginal peoples were seen as sovereign and the assimilationist policies ended. The Canadian government has also begun working towards giving more power to First Nations groups, however there is as yet no real legislation to recognize Aboriginal self-government or to explain how the Canadian government will better support the indigenous groups.

United Nations Declaration on the Rights of Indigenous Peoples

On September 13th, 2007, the United Nations adopted the Declaration on the Rights of Indigenous Peoples, which presents a blueprint for indigenous sovereignty worldwide. Opening by affirming that indigenous peoples are equal to all others and contribute to the diversity of civilizations and cultures, while being concerned that they are suffering from and have suffered from historic injustices, the Declaration supports the belief that indigenous peoples should have control over their lands, territories and resources, as well as over any developments that affect them. With this control, indigenous peoples will be able to maintain and strengthen their traditions, cultures and ways of life, and will be able to develop as they want to and in accordance
with their own needs and desires. Specifically, the Declaration affirms the right of indigenous peoples to self-determination politically, culturally, economically and socially, with autonomy over internal and local affairs (Articles 3 and 4). Nation-states must consult with them over issues that affect them, their lands and resources, and indigenous peoples cannot be removed from their lands unless the indigenous groups concerned give their prior, free and informed consent (Articles 10, 18, 19). Indigenous peoples have the right to redress and compensation for past injustices and for lands and resources that they used to inhabit and use, and states must create, in conjunction with the indigenous peoples, processes to uphold these rights (Articles 27, 28).

While there are many more articles which cannot be enumerated here, it would appear that the United Nations is recommending that indigenous peoples have an absolute sovereignty within their borders, and that this sovereignty be recognized, respected and upheld by nation-state governments. This absolute sovereignty that the UN is advocating seems to be, as Philpott (2003) defines it, “supreme authority within a territory” even as indigenous groups are part of a nation-state.

I have organized these rights of indigenous peoples according to three overarching categories; sovereignty in general, sovereignty in processes, and sovereignty in outcomes. Sovereignty in processes and outcomes will be discussed later in this paper along with the question of how much sovereignty was respected in the processes and outcomes of my two chosen case studies. Here, sovereignty in general is discussed as it relates to the Canadian and American systems. Articles 41-46 from the Declaration are not part of my discussion or sovereignty indicators, as they refer only to the role of the United Nations.

The first category in the general sovereignty group is human rights (United Nations, 2007). This category includes the actions of respecting tribal rights, protecting tribal rights, and creating mechanisms to protect these rights. This includes a number of articles which affirm the right of indigenous peoples to all human rights contained in the Charter of the United Nations, the Universal Declaration of Human Rights, and international law (Article 1). Tribal members are able to belong to their indigenous nations, both as individuals and as a collective whole, and they may
not be discriminated against for living in accordance with their traditions (Article 9). Finally, nation-states in which these indigenous peoples live must protect indigenous women and children from violence or discrimination (Article 22.2).

The next category is citizenship rights, which give indigenous individuals the right to a nationality, and also gives tribes the right to have their own political, social, legal, economic and cultural institutions while engaging in those of the nation-state, should they so choose (United Nations, 2007). Tribes also are able to determine their own membership; each tribal member may also be a citizen of the nation-state in which they also reside (Articles 6, 5, 33.1). A nation-state must respect and protect the citizenship rights granted to tribe, and again, institute mechanisms in order to do so. These two categories delineate the basic rights held by all indigenous peoples, and create a baseline for sovereignty in affirming that indigenous peoples, while having all the rights of other citizens of nation-states, also have a separate and equally valid set of rights attached to their membership in an indigenous group.

The third large category of articles in the Declaration includes all those dealing with the relationship of the tribe to the nation-state (United Nations, 2007). There are ten subcategories to this category, including legislation, judicial, military, resources, health, culture, education, labor, prejudice and redress. Important contributions from legislation include that tribes have the right to participate in making decisions about issues that are of interest to them, through processes that they themselves help to develop (Article 18). Governments must receive free, prior and informed consent from indigenous groups before passing legislation that would affect these groups, and must also work with the groups through indigenous organizations and processes (Article 19). Article 37.1 further stipulates that nation-states must respect and uphold all treaties and agreements that they or their predecessors entered into with indigenous groups. These points are very important in that they give indigenous groups some power over the legislative processes of the nation-state in which they live, they require consultation between the indigenous groups and the nation-state, and they uphold previous treaties and agreements, many of which have been the object of considerable dispute (Ransen, 1969).
The judicial category makes two assertions; firstly, the nation-state must create a judicial system with indigenous peoples that will deal with tribal rights over lands and resources (United Nations, 2007, Article 27). Secondly, tribes are able to access judicial systems that deal with disputes between the indigenous groups and the nation-state or other, non-indigenous parties, and these systems must consider tribal customs and laws (Article 40). These two articles bring indigenous sovereignty into the nation-state’s justice system, requiring the government to respect tribal lifeways and perhaps taking a different view of tribal rights than would be taken of a non-indigenous party in a conflict with the nation-state. This is very important, given that indigenous groups in the United States and Canada have to participate in judicial processes through courts that are foreign to their cultural traditions, and which they have not chosen. If these articles were in fact put in place by American and Canadian governments, it would require a radical re-thinking of how indigenous peoples participate in judicial decision-making processes.

The military articles state that military activities may not take place on tribal lands unless there is a significant threat or the indigenous group has agreed in advance that these activities may occur (United Nations, 2007). Also, nation-states must consult with indigenous institutions before these activities may begin (Articles 30.1, 30.2). Again, these points stress the importance of collaboration between nation-states and tribes, and respect for tribal institutions on the part of the nation-state.

Tribal resources are to be respected and protected by the nation-state, including land, territories and other natural resources and possessions (United Nations, 2007). Nation-states must also gain free and informed consent from indigenous groups before undertaking any project that would affect their lands or resources (Articles 26.3, 32.2). Once more collaboration between the nation-state and the indigenous group is preceded by the nation-state’s respect for the indigenous viewpoint. The only responsibility of the nation-state towards indigenous health is that, in the event that the indigenous group has given consent to having hazardous waste stored on their land, the nation-state must monitor tribal health and where necessary, maintain and restore health levels (Article 29.3).
The nation-state has a number of responsibilities towards indigenous peoples in regards to culture (United Nations, 2007. In the first place, the nation-state must ensure that state-owned media shows indigenous cultural diversity, and also should encourage privately-owned media to do the same (Article 16.2). The nation-state must also work to repatriate cultural and human remains to indigenous groups, and must do this through mechanisms and processes developed with these groups (2007: 12.2). Also in conjunction with indigenous groups, the nation-state will need to take steps to protect indigenous culture, traditions and intellectual property for future generations, and help the tribes to keep their connections with tribal members or other groups who live in other nation-states (Articles 13.1, 13.2, 31.2, 36). These articles place part of the responsibility for protecting and encouraging indigenous culture on the nation-state, which certainly is a different attitude than felt by government officials in the United States and Canada during those periods in which they focused on integrating indigenous groups into majority culture (Cornell, 1988).

Each tribal member has a right to all educational opportunities provided in the nation-state without discrimination, and the nation-state must also, again working with the tribes, provide tribal members with an education in the tribal culture and language if possible (United Nations, 2007, Articles 14.2, 14.3). These articles point to the equality of indigenous groups with other citizens of the nation-state, and again, put some responsibility on the state to cooperate with tribes to protect indigenous culture.

The nation-state is specifically required to help protect indigenous children against being exploited or from working in ways that would be damaging to their mental or physical health (United Nations 2007: 17.2). This article points out that indigenous children are especially vulnerable and need to be educated in order to be empowered; another example of how this Declaration sees tribal members to be equal to other citizens, but also in a unique situation. The nation-state is also required to help combat prejudice, and to help promote understanding between indigenous groups and other citizens (United Nations, 2007, Article 15.2). Once again,
the nation-state is in some way responsible to help the indigenous group combat faulty perceptions and discrimination.

The final sub-category for this category, relationship of the tribe to the nation-state, involves redress (United Nations, 2007). The articles in this section describe the various actions that require redress, including dispossessing a tribe of their lands, reducing tribal integrity as a people, any type of cultural or environmental destruction, forcing tribal relocation, forcing assimilation, or creating discriminatory propaganda aimed at a tribe (Articles 8.2, 32.3). The nation-state must, once again, create mechanisms to determine what redress is necessary in consultation with indigenous groups that respect tribal cultures, traditions and laws (Article 11.2). The definition of occasions requiring redress is very broad, and includes past injustices. Once again, the nation-state is required to collaborate with tribal institutions.

The category of “relationship of tribe to state” is very broad, and encompasses many subcategories; however there are certain themes that are emphasized across these areas (United Nations, 2007). Nation-states are required to work closely with tribal institutions in order to create mechanisms to safeguard tribal rights. Nation-states are also given a great deal of responsibility to the various tribes in terms of protecting indigenous heritage and encouraging good relations with other citizens and agencies.

The fourth and final category in the overarching group of sovereignty in general is tribal rights (United Nations, 2007). As in the previous category, there are a number of subcategories into which the various articles have been organized. The first, government, gives tribes the right to self-determination, the right to determine their own structure and membership, and the right to keep and develop their institutions and traditions as they please (Articles 3, 33.2, 34). Each of these rights allows indigenous groups to develop their political and cultural practices and organizations without any interference from outside agencies or nation-states.

The social subcategory makes the social development of the tribe a partial responsibility of the nation-state; the nation-state is required to help the tribe continually improve socially, and there is no definition of how this must be done, or how improvement needs to be defined (United
The tribes themselves also have the right to decide what responsibilities individual tribal members have to their communities, as well as the ability to maintain ties with other peoples across borders (Articles 35, 36.1). This last article could threaten nation-state sovereignty by weakening controls over its borders. The nation-state must respect and uphold these rights.

Tribes have two types of rights in relation to health; firstly, they have the right to use their traditional medicinal practices and this includes protecting the plants and animals used; secondly, they also have the right to state health and social services (United Nations, 2007, Article 24). The nation-state must take steps to protect both of these rights, and once again, this category points to a conception of indigenous peoples as having all the rights of citizenship plus a certain unique status.

There are many articles included in the culture subcategory, but to summarize, they collectively state that indigenous groups have the right to protect and develop all their cultural traditions and practices, and are not to be subjected to any kind of forced assimilation or cultural or religious destruction (United Nations, 2007, Articles 15.1, 16.1, 11.1, 12.1, 8.1, 31.1). These articles are very broad, in that they include cultural lifeways and the environments and resources that support these lifeways.

Indigenous groups are also permitted to create and control their own educational systems, using their own languages and their own culturally appropriate teaching methods (United Nations, 2007, Article 14.1). Nation-states must uphold this right, and it is interesting to note that no mention is made of how indigenous systems might be competitive or work in conjunction with state-regulated educational institutions.

Regarding rights surrounding labor, indigenous groups are entitled to all rights under international and domestic labor law, and may not be discriminated against in any way (United Nations, 2007, Articles 17.1, 17.3). This right plays into the basic citizenship rights, in which it is affirmed that indigenous groups are entitled to the same rights as other citizens.
Development is another subcategory which involves many articles, and the general idea is that tribes have the right to improve their conditions, and in order to do so may develop their own priorities and strategies for their own resources and lands and using their own institutions (United Nations, 2007, Articles 21.1, 23, 20.1, 32.1). These articles put the emphasis on indigenous groups making their own development plans without pressure from outside agencies.

Similarly, the resources subcategory acknowledges indigenous right to and control over their lands, territories and resources, and this includes those that they have traditionally owned or used (United Nations, 2007, Articles 25, 26.1). This is a very important distinction, as it implies that tribal land and resource ownership goes beyond the reserves which currently exist in the United States and Canada, and includes traditional territories and resources. There is no information about how a dispute between tribes about territories and resources should be handled.

Indigenous groups are entitled to conservation of their land and resources, and the nation-state involved is required to implement environmental assistance programs for these areas (United Nations, 2007, Article 29.1). This article does not specify that the tribes involved be consulted in the making of these programs, but other articles insist that tribes be involved in any policy making that relates to their land and resources.

Once again, tribes have the right to redress for any actions that deprive them of their development, their lands, or their means of subsistence (United Nations, 2007). It is important to note that redress should not be thought of exclusively in monetary terms, but should include lands, territories or resources equal to those taken (Articles 20.2, 28.1, 28.2). These articles also stress consultation between nation-states and indigenous groups in order to determine appropriate restitution.

This category of tribal rights is also very broad, encompassing as it does so many different areas (United Nations, 2007). A few themes within the category include the idea that tribal rights to land and redress include land that tribes have traditionally used, which may surpass the land currently reserved to indigenous groups. Tribes are also given self-
determination and responsibility for their own development, although the nation-state involved is expected to give them aid in implementing programs. See Table 1 (pg. 33) for an overview of the rights and indicators discussed above.

Table 1

*Indicators of Sovereignty, Taken from United Nations, 2007*

<table>
<thead>
<tr>
<th>Categories</th>
<th>Operationalizations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Human rights</td>
<td>• Indigenous peoples are guaranteed human rights under all international law</td>
</tr>
<tr>
<td></td>
<td>• Tribal members are protected by law from being discriminated against because of their lifestyles and traditions</td>
</tr>
<tr>
<td>Citizenship rights</td>
<td>• Each tribal member has the right to a nationality</td>
</tr>
<tr>
<td></td>
<td>• Each tribal member has the right to all rights associated with citizenship in their nation-state</td>
</tr>
<tr>
<td>Relationship of tribe to nation-state</td>
<td>• Governments must receive consent from indigenous groups before passing legislation that affects these groups</td>
</tr>
<tr>
<td></td>
<td>• Nation-states must uphold all treaties and agreements made with indigenous groups</td>
</tr>
<tr>
<td></td>
<td>• Nation-state must create judicial system to deal with disputes between nation-state and indigenous groups, the system must take tribal laws and customs into consideration</td>
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<tr>
<td></td>
<td>• Military activities may not take place on tribal lands unless there is a significant threat or the indigenous group has given permission in advance</td>
</tr>
<tr>
<td></td>
<td>• Nation-state must protect tribal lands and resources</td>
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<td>• Nation-state must protect indigenous culture</td>
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<tr>
<td>Categories</td>
<td>Operationalizations</td>
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</tr>
<tr>
<td></td>
<td>• Nation-state must help tribe provide education in tribal language and culture where possible</td>
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<td></td>
<td>• Nation-state must protect indigenous children from exploitation</td>
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<td>• Nation-state must combat prejudice against indigenous groups</td>
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<td>• Nation-state must provide redress for any actions that harm a tribe in terms of land, culture or other issues</td>
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<tr>
<td>Tribal rights</td>
<td>• Right to self-determination, both of institutions and membership</td>
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<td></td>
<td>• Right to maintain relationships with other indigenous groups across borders</td>
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<td>• Right to indigenous medicinal knowledge and state-sponsored health and social services</td>
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<td>• Right to protect and develop cultural traditions and practices and not be submitted to forced assimilation or cultural destruction</td>
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<td>• Right to create and control own educational systems</td>
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<td>• Right to all domestic and labor rights under international law</td>
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<td>• Right to develop as they choose</td>
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<td>• Right to control lands, territories and resources</td>
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<td>• Right to conservation of their lands, territories and resources</td>
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|            | • Right to redress for any actions that have deprived them of
To conclude this discussion of sovereignty in general, it is important to note that beyond being categorized into these overarching categories, there are also actions that are associated with each individual article. These actions delineate how the nation-state must react to the articles, and include consulting with tribes, giving aid to tribes, protecting tribal rights, respecting tribal rights, providing redress to tribes, and instituting mechanisms to meet specific needs. Each of these actions is important as they offer ways in which nation-states can protect and respect indigenous sovereignty. They also express underlying values which could change the ways in which indigenous-state conflicts are handled. If these actions are the most important ways in which nation-states must interact with tribes, any conflict resolution attempt must include a commitment from nation-states to consult with and show respect for indigenous groups. It is important to note that the Declaration does not explain who exactly is indigenous and to whom the Declaration is applicable.

Conclusions on Three Frameworks of Indigenous Sovereignty

Taking Philpott’s (2003) definition of sovereignty as being “supreme authority within a territory” that can vary according to the holder of sovereignty, whether the sovereignty is absolute or non-absolute and the relationship between internal and external dimensions of sovereignty, it would appear that American indigenous sovereignty is held by the federal governments and the Indian tribes, where the federal government has absolute sovereignty and the Indian tribes have non-absolute sovereignty. Indian tribal sovereignty is both recognized and limited by the federal government, and while Indian sovereignty is guaranteed on their land and over their members, this sovereignty does not extend past their borders or onto those non-members who enter their territories, though this issue is contested. It also does not guarantee that the Native nations have full control over their environment and natural resources. A similar situation exists in Canada, in that the federal government regulates Aboriginal status and self-governance, and thus Canadian First Nations also have non-absolute sovereignty.
The primary difference between American and Canadian indigenous sovereignty is that while the American constitution recognizes Native American tribes as having the status of “domestic dependent nations”, Canadian First Nations have no confirmation of their right to self-determination and autonomy (Maaka and Fleras 2005: 206). This difference represents two degrees of non-absolute sovereignty; Native Americans are legally recognized as having the right to some amount of sovereignty, while Canadian First Nations have a degree of sovereignty but are not recognized as having the right to sovereignty.

The United Nations Declaration of the Rights of Indigenous Peoples advocates for the recognition that indigenous peoples have the same rights as any other human beings and citizens of their respective countries, and insists upon a further unique status for these groups. While individual tribal members are permitted to participate fully in the political, cultural, social and economic lives of the nation-state in which they reside, they also have the right to cultivate their traditional lifeways without discrimination. Indigenous groups are able to create their own governing, judicial and educational systems, as well as to determine their priorities and goals for development. They have full control over their environment, and are seen as having jurisdiction over traditional lands and resources.

This view of indigenous sovereignty differs from the American and Canadian understanding of native rights. Since 1975, the American federal government has made native self-determination its official policy, but as stated above, allowing tribes to administer their own programs has been problematic. Also, the federal government retains a great deal of power over tribal law and jurisdiction, which does not seem to be compatible with the UN Declaration.

In Canada, self-determination also became federal policy in the early 1970s, and in 1998 the Canadian government did make promises to redefine the relationship between Canada and the First Nations, and to support the Nations in development. While these trends do show promise, they are not accepting Native ownership of traditional lands, nor do they necessarily make consultation with the First Nations a requirement.
While both the United States and Canada have made strides towards supporting indigenous peoples in self-determination, they still fall short of the UN Declaration’s view of sovereignty. The UN Declaration seems to advocate an absolute sovereignty for indigenous groups in that nation-states are required to consult with indigenous groups on all issues, and indigenous groups must give their consent to policy or legislation that affects them. While indigenous groups in the United States and Canada currently have non-absolute sovereignty, if these two nation-states were to fully implement the Declaration, there would have to be considerable overhaul of current laws and institutions in order to recognize the various completely sovereign indigenous groups that reside therein. The United Nations, simply by adopting the Declaration on the Rights of Indigenous Peoples, has created a precedent acknowledging that native groups have many more inherent rights than are generally recognized.

The three frameworks discussed provide background for the Orme and Oldman River Dam conflicts to be examined in the following pages. Although the conflicts occurred in two different countries with different laws and histories, by using the UN Declaration as a baseline we can address how the Yavapai and Piikani asserted their tribal sovereignty and make comparisons between their cases. This will be more fully discussed in the “Research Methods” section, where a table of sovereignty indicators and operationalizations will be presented.

Conflict Resolution in Sovereignty Conflicts

This section addresses conflict resolution processes in sovereignty conflicts, drawing from the literature on the subject. Using case studies, this section gives a base for creating a framework by which to judge to what degree the conflict resolution processes used in a certain situation uphold, respect or protect tribal sovereignty. The framework can also be used to judge how well tribes make use of and assert their sovereignty.

The ways in which tribes have asserted sovereignty in conflict situations have changed exceedingly over the years. Indian nations became more politically active in the 1960s and 1970s, and at this time they began taking over decision-making capabilities that had previously been the charge of the federal government. Many different methods were used to get this
decision-making power, some confrontational and some through slow accumulation of various pieces of power (Harvard Project, 2008). Examples of these methods include using activist groups who push for change and by creating agreements and contracts with the Bureau of Indian Affairs. In response, the federal government has made tribal self-determination a policy, and Indian tribes have been working towards that end.

While currently consultation processes between federal and tribal governments are touted as part of American and Canadian governmental policy (Harvard Project, 2008; Dickason, 2002), this has not always been the case. This also does not cover state/provincial interactions with tribal governments: state officials have tended to view tribes as local interest groups (Harvard Project, 2008), while tribal governments in Canada are excluded from federal-provincial-territorial executive level discussions (Slowey, 2007).

Examples of the ways in which tribal-federal-state/provincial conflict has been handled in the past include the Pick-Sloan Project and Oka conflicts. Both of these case studies offer examples of how American and Canadian governments have dealt with situations similar to the Yavapai and Piikani conflicts. Most importantly, the Oka situation occurred in March of 1990, during the Oldman River Dam conflict (Glenn, 1999), and the Pick-Sloan project took place from 1944 to 1980 (Lawson, 1982), almost concurrently with the debates over Orme dam. These cases allow me to round out the picture of how Canadian, American, provincial and state governments were treating questions of indigenous sovereignty at the time that the two conflicts I focus on occurred. Each case reflects on the importance of communication and respect in conflict situations between indigenous groups and provincial/state and federal governments.

The Oka conflict began when the mayor of Oka, Quebec, decided to build a golf course on a Mohawk graveyard (York and Pinder, 1991). The Mohawk community of Kanesatake who were impacted did not have legal title to the land, but considered it to be theirs; the Mohawk settlement is actually scattered among many lots in the area, creating a jurisdictional nightmare. After the mayor unveiled his plans in 1989, the Mohawk people organized non-violent protests and threatened to go to court to prevent it from being built. In response, the federal government
got involved, the mayor agreed to a 15-day moratorium on the project, and the federal
government made its first proposal to both parties in September of 1989. This proposal was
rejected overwhelmingly by the Mohawks, however throughout the conflict, the federal
government continued to refer back to this “framework agreement” which was in fact never
agreed upon. This left Canadians with the feeling that the Mohawks had not kept their side of the
agreed upon bargain.

Consultations with the federal government continued over the next months, however in
January of 1990, the Mohawk had to deal with an internal dispute over clan government, and
seemed to forget about the golf course issue (York and Pindera, 1991). While this was
happening, the town of Oka began to revive its plans for the golf course, and when the Mohawk
band council decided to break off negotiations in March of 1990, the mayor decided to cancel the
moratorium, which would allow development of the golf course on the contested area. On March
10th, following a demonstration at the golf course, various Mohawk band members began their
occupation of the site of Kanesatake.

The Mohawks and their supporters, including members of the Mohawk Warrior society,
built barricades and stayed by them when threatened with a contractor hired to clear it (York and
Pindera, 1991). Negotiations continued with provincial and federal officials, however no progress
was made. The town of Oka tried two more times to clear the roadblock, in May and early June,
however each time they were told by the Superior Court that they needed to negotiate. This
appears to confirm some level of indigenous sovereignty in that the court was unwilling to force
the Mohawks off the land. On July 5th, 1990, the government of Quebec announced that if the
Mohawks did not leave the barricades in four days, they would take action (York and Pindera,
1991). The action itself was not specified, but there seemed to be a threat of police intervention.
This announcement was a turning point in the escalation of the conflict, and more Warriors
poured into the area. Various Warriors also blockaded the Mercier Bridge between the island of
Montreal and the suburbs where it passed through the Akwesasne territory; this would be a huge
bargaining chip for the Mohawks at Kanesatake.
On July 11th the police raided the barricades (York and Pindera, 1991). The police and the Mohawks had exchanged gunfire, although the police quickly retreated. During the altercation, one officer was killed. It is not known if he was shot by the Mohawks or by a fellow officer. In the days following, the police attempted to starve the Mohawks out of the settlement, and human rights abuses at the checkpoints began piling up. Negotiations re-opened on July 14th, with the Mohawks demanding that the police back off and the governments asking that the Akwesasne Mohawks open the Mercier Bridge. These negotiations failed. The siege continued, as did further talks and negotiations, and on August 8th, with no progress, Premier Bourassa of Quebec called in the Canadian military, and Prime Minister Mulroney appointed a special mediator to try to reach an agreement.

Negotiations continued through August, however on the 27th, Premier Bourassa announced that he was going to send in the army to remove the barricades (York and Pindera, 1991). The following day, the Mohawks holding the Mercier Bridge evacuated amid jeering and rock-throwing from onlookers. On September 1st, the final siege began at Kanesatake with armed soldiers and helicopters entering the barricades. The evening of September 2nd, the barricades were completely dismantled. The Warriors remained in their camp, and began negotiating with the army on September 6th. The army kept attempting to get the Warriors to surrender and leave their encampment, but it was not until September 26th that the remaining Warriors, thirty men, sixteen women and six children, left the camp. As they left, the Warriors ignored the soldiers who ordered them to stop, and fighting broke out between the two groups. By evening, the soldiers had gained control, and the Mohawks were taken away in convoys.

While the golf course was not built, the conflict itself failed to make any difference in the way that Canada and its provinces related to the indigenous peoples (York and Pindera, 1991). The conflict management processes at play at Oka included force and negotiation, with some mediation. Ultimately the conflict was only ended using force. It is very important to note that this conflict, with limited bloodshed but much fear and hatred was ongoing as the Oldman River dam conflict in Alberta was reaching its most tense stages. The Oka conflict shaped Canadian
perceptions of Indian aggression, and may have impacted the ways in which the Albertan and Canadian governments reacted to Piikani demands.

The Pick-Sloan plan, originally proposed in 1944, was intended to develop the Missouri River Basin and provide flood protection for the area (Lawson, 1982). It was rushed through Congress with very little public debate about alternatives involved, and approved by President Roosevelt in December of 1944 as part of the Flood Control Act. The plan included a total of 107 dams, and would affect all aspects of life in the Missouri Basin. It would also severely affect the various Indian groups living in the area: the Sioux reservations affected included the Standing Rock, Cheyenne River, Yankton, Crow Creek, Lower Brule and Santee, and three affiliated tribes on the Fort Berthold Reservation, the Mandan, Arikara and Hidatsa Indians, were also impacted.

The indigenous groups were not informed of the Pick-Sloan Plan until it had already been approved (Lawson, 1982). This was in spite of the fact that the treaty rights in existence at the time required that tribal land could not be taken without tribal consent, and the Pick-Sloan plan would take quite a bit of native land. The Bureau of Indian Affairs made no move on behalf of the impacted tribes while the plan was being debated in Congress, and only informed them about it in 1947. At this time, the BIA created the Missouri River Basin Investigations Project (MRBI) to study what damages the Pick-Sloan Project would do to Indian lands, but by this time the Corps of Engineers had already begun preliminary construction on the dams. The Fort Randall Dam, which began construction in 1946, eventually flooded 22,091 acres of Sioux land, requiring 136 Sioux families to relocate elsewhere. The Oahe Dam claimed 160,889 acres of Sioux land, and the Big Bend Dam took an additional 21,026 acres. In sum, the Sioux lost around six percent of their land base and over a third of their population had to relocate as a result of the Pick-Sloan Project. The land they moved to was not on the river-bottom and the upland presented great challenges to every aspect of Sioux life.

The Army Corps of Engineers originally attempted to take tribal land for Garrison Dam through eminent domain without the consent of Congress, but when the Fort Berthold Mandan, Arikara and Hidatsa tribes protested in Washington, the Corps opened negotiations for the land.
Due to misunderstandings with the Corps, the tribes eventually settled for over nine million dollars less than they felt was fair market share (Lawson, 1982). This was the first skirmish over the Indian land involved in the Pick-Sloan Project, and created a precedent for the conflicts to come. It is notable that the Three Affiliated Tribes on the Fort Berthold reserve did commission their own study and appraisal of how much they were owed in damages. As noted above, they received much less than they believed to be sufficient. Congress did recognize its obligations to help the displaced Indians, although their help was insufficient to do much good. After this original concession, the reservations that had yet to make agreements for their land became more aware of their negotiating power, and in each successive settlement they received more benefits.

The Corps of Engineers also established a precedent for ignoring Indian rights and Congressional principles. With the Fort Randall Dam, the Corps illegally confiscated reserve land. According to Lawson (1982), the Indians on the Yankton reserve did not understand their legal rights, and the BIA did not challenge the condemnation processes, although eventually the BIA and the Corps negotiated a settlement out of court which was paid up over six years after the Indians had to relocate. In order to prevent similar situations in the remaining construction areas, Congress passed legislation giving the Army Chief of Engineers and the Secretary of the Interior the responsibility to negotiate settlements with the various tribes involved. If no settlement could be reached, Congress would step in as arbiter, and it was agreed that the settlement process would not stop the dams from being built. While this was a step forward, tribal officials did not feel that the law went far enough or addressed enough issues, and in order to protect themselves, they determined to go to court to fight for as many benefits as possible.

Negotiations continued from the early 1950s and continued until 1962. Although each reservation that lost land received a settlement, they were based on differing methods and so while certain tribes suffered more and received less compensation, others were more fortunate (Lawson, 1982). Each tribe felt that they had received much less than their land was worth. At the time of publication of Lawson’s book, over a decade after the final dams became operational, it was clear that the tribes involved had received very few of the benefits promised by the dams,
and had suffered extraordinarily as a result of their construction. Lawson notes that throughout the process, the government did not recognize "Native Americans as human beings with legitimate property rights", nor did they ever abide by the Winters Doctrine in regards to indigenous water rights. The Winters Doctrine was established in 1908 in Winters v. the United States (Bureau of Land Management). The Supreme Court found that an Indian Reservation has the right to reserve water for future use that will meet the requirements for the reservation. The government did not consider the Indians at all when planning the project, and did not look at how much water the reserves would require in future. After illegally taking and flooding native land, when it finally came to court, the various tribes were often forced to take whatever compensation Congress felt appropriate.

The processes used in these cases included negotiations, armed confrontation, and litigation. What clearly came across in each case was that the agencies involved did not take indigenous claims seriously, and negotiations were either very one-sided or ineffective because they did not take place between officials of a high enough level to enforce the results. Ashley and Hubbard's 2004 study examines six different tribes and their relations with federal and state governments, to offer ideas on how these relations can be improved. Their conclusions included that state-indigenous conflict resolution processes need to get away from the litigative framework, to agree to disagree on questions of jurisdiction, to meet face-to-face, to focus discussions on a narrow topic, to have an overall framework for bringing in cooperative approaches, and to use a third party. These actions are all factors that help conflict resolution approaches and interactions to produce or uphold sovereignty. According to this research, where these techniques or foci are present, indigenous groups are more likely to be able to assert their sovereignty.

Fairweather (2006) discusses various methods for resolving land-based conflict in Canada and South Africa, and she sees negotiation as being a positive experience for some indigenous communities, but less so for others. When a native group is successful in negotiation, this tends to help other groups gain bargaining power. However, she notes that negotiating power is often uneven, and generally in favor of the federal or state/provincial government rather than
the indigenous group. This would suggest that negotiating is only successful in respecting indigenous sovereignty when it is conducted in a manner that gives equal power to each party, and that supposition is upheld by the above case studies.

Fairweather (2006) also discusses the process of litigation as an option for land-based conflict, and while she notes that ground-breaking litigation upholding indigenous claims to land has been very useful, the cases do not necessarily change the status-quo of how land claims are handled in general. She also noted that not all of the indigenous group’s demands are met through litigation and court rulings. This seems to imply that litigation can be a powerful force to help indigenous peoples gain rights and land, but it does not always meet all of the needs that they express.

Sullivan (2006), who has examined sovereignty in British Columbia, Canada, would agree. She approaches sovereignty as both an end-effect of exercises of power and a performative, meaning that sovereignty is both an outcome and a process. Sullivan examines tribal flotillas against salmon farms in order to understand the current changes in the ways that tribes are asserting their sovereign rights. The situation is that British Columbia has put salmon farms on tribal territories over the objections of the First Nations that own the area. To protest these farms, tribes have organized flotillas which include speeches, rituals, recognition of First Nation sovereignty and serve formal notices of evictions to the farms. The flotillas are very peaceful, with participants rejecting the violence that has characterized many First Nations-government conflicts such as Oka, and focus rather on reason and environmental sustainability. The eviction notices themselves uphold tribal sovereignty over the land on which the farms are located.

Sullivan (2006) concludes that First Nations are able to enhance their assertions of sovereignty by engaging in treaty negotiations and participating in legal cases that may set precedence in dealing with First Nations issues. Again, this would seem to support the findings that litigative processes can be useful in upholding sovereignty in certain circumstances.
While we have discussed litigation, negotiation and armed standoff as options for state-indigenous conflict resolution, we have also noted the shortcomings of these processes. Litigation can be useful but there are also some difficulties associated with it in that even if the indigenous groups win their case, they may not have all their needs met. Negotiation seems to be a hopeful option as well, however in state-indigenous conflicts there are often power imbalances and once again, native voices are not always heard. We will now move on to discuss other conflict resolution processes that may allow for more constructive results.

Clarke (2002) examines differing understandings of sovereignty using ideographic analysis. She chose a case study of conflict in Utah over Native American tribes choosing to store nuclear waste for the government, and investigated differing stakeholder conceptions of what sovereignty means and is. Stakeholders in this conflict included Utah state officials and the members of the Goshute tribe on whose land nuclear waste was to be stored. Each stakeholder relied on their interpretations of sovereignty, and Clarke documents these differences in order to show how the parties used their ideographs, or different rationalities, of sovereignty to such an extent that their differences became irreconcilable. For instance, for Governor Leavitt, Native American sovereignty was “merely a formality”, and any actions taken by a tribe were still subject to state approval. He used this stance to justify the state stepping in and refusing to allow the Goshute tribe to store the waste.

Within the Goshute tribe, there were two factions, one for and one against the storage of nuclear waste on their reserve (Clarke, 2002). Those for the waste state categorically that Utah has no jurisdiction over what the tribe chooses to do because of the tribal sovereignty guaranteed to it by law. Those against the waste, while they have not opposed the idea of tribal sovereignty, are leading an intra-tribal lawsuit against their fellow tribal members who want to store the waste. Interestingly, the lawsuit is being funded by Governor Leavitt and the State of Utah. This brings a new definition of sovereignty that is closer to Governor Leavitt's, as well as an outside state into the affairs of a sovereign indigenous government.
While this is a complicated case that takes a legal route, it is important to note that it may offer an idea of how to improve state-indigenous conflict that does not involve the courts. Clarke’s (2002) discussion of how people become entrenched behind ideas and beliefs implies that better communication over what sovereignty means and more discussion between parties about these issues may help resolve conflicts that get stuck in conflicting ideographs.

In discussing Sullivan’s (2006) study about sovereignty in tribal flotillas against salmon farms we focused on the litigative aspect; however Sullivan also offers another way in which indigenous groups have affirmed their sovereignty. She examined the provincial government’s Central Coast Land and Coastal Resource Management Plan (CCLCRMP) which was made to create a management plan for the areas which include the salmon farms. In order to develop the plan, many groups, industries, federal, provincial and First Nations governments participated in public workshops. During the workshops, conflict arose when the First Nations were referred to as “stakeholders” in this plan; the tribal governments refused to accept this label and stated that they were participating as sovereign governments, thus bringing more power to their voices. While those in the workshops may or may not have intended the term “stakeholder” to indicate a less powerful position, by refusing the label of being a “stakeholder” in a discussion or process, the First Nations took another opportunity to remind all participating that First Nations are sovereign and as such have as much power as any other voice. In this particular instance, it appears that the First Nations representatives were intending to show that they had more power in these discussions than the industries or some of the other groups because they represented a sovereign entity.

Sunoo and Falkner (1999) investigate how consensus-building can be effective in Native-state conflicts, and in doing so map out a successful negotiation process that upholds tribal sovereignty. Using a case study of the negotiations between the Department of the Interior, the Department of Health and Human Services and various tribes and tribal organizations to correct problems in the 1975 Indian Self-Determination and Education Assistance Act, which was facilitated by the Federal Mediation and Conciliation Service, Sunoo and Falkner document how
the parties were able to achieve consensus and what strategies upheld and respected both tribal and federal powers. In spite of very different negotiating styles and differing expectations coming into the consensus-building process, the facilitating team was, through thorough preparatory work, able to create a set of guidelines to be followed that each of the parties could agree to. These guidelines respected Native American practices and cultural differences, anticipated differences in problem-solving styles, and noted common ground between the cultures. Everyone agreed to define consensus as 100 percent, meaning that everyone involved had to agree to the end product, and each person accepted the ground rules. This meant that all parties were able to develop the way in which these negotiations would take place, and did not rely on one party's understanding of negotiation practices. The end result of the negotiation was that the entire committee resolved all but four of the issues that were discussed, and those four issues did not keep them from accepting their regulations.

From this case study, Sunoo and Falkner (1999) conclude that consensus building negotiations can uphold tribal sovereignty, especially when there is a balance of power, when what is to be negotiated is very clearly defined, when negotiations are not viewed merely as consultations, and when the results of the negotiations will be enforced, giving each one involved real decision-making power. These are, once again, factors that when present in conflict management techniques, increase the likelihood that a tribe will be able to uphold their sovereignty and that sovereignty will be respected.

The above authors focused exclusively on process in conflict resolution, and outcome also needs to be addressed. I have chosen to use d’Estree and Colby’s (2004) model of evaluating success in environmental conflict resolution to discuss outcomes. This model draws on relevant work in conflict resolution studies, interviews with practitioners, parties in conflicts dealing with the environment, and researchers, and also drew on evaluation research from other fields. The framework has six categories of criteria for success, and these are outcome reached, process quality, outcome quality, relationship of parties to outcome, relationship between parties/relationship quality, and social capital. Criteria for these categories include the outcomes
being clear, just, cost-effective and sustainable as well as feasible. Other criteria deal with how the outcome affects relationships between parties and in the community both immediately and over time. The framework itself examines the effectiveness of outcomes from many different angles, each of which incorporates the views of all involved and beyond that assesses whether the outcome and the way in which it was implemented actually did what it was designed to do. These categories will be discussed further in the “Research Methods” section.

Each of the authors discussed above offers different perspectives on indigenous sovereignty and what it means to respect indigenous rights. While they focused on different cases and issues, there are some similar themes about conflict resolution processes that link them. Each would advocate for good communication in conflict situations, for various reasons. It would seem that negotiations, mediation and consensus-building are excellent avenues for respecting sovereignty and ensuring that indigenous groups are heard and respected, but only if there is a balance of power and the outcomes of these processes are upheld. It is also possible to differentiate between indicators of sovereignty in conflict resolution processes and factors that increase the likelihood that sovereignty will be respected in the processes. This is a blurry line in that, for example, good communication would indicate respect for tribal sovereignty and is an indicator that tells us whether sovereignty is being respected; it is also a factor in that where good communication exists, there is a higher likelihood that agencies and individuals will respect tribal sovereignty.

While Sullivan (2006), Fairweather (2006) and Ashley and Hubbard (2004) differ on whether litigative processes are helpful to achieving resolution, it seems that litigation can uphold sovereignty if the indigenous groups win and the stipulations of the ruling are respected. Within a conflict resolution situation, however, the evidence from Sunoo and Falkner (1999) and Clarke (2002) points to the idea that communication and consensus-building are much more successful in upholding sovereignty and in finding a solution that respects all parties. The case studies complement the theory presented in the previous section, in that they operationalize the ways in which sovereignty can be expressed or asserted. Going beyond definitions, the studies offer
examples of how indigenous groups have asserted their sovereignty in past conflicts. They also show a number of ways in which a conflict resolution process can respect sovereignty; as mentioned above, these could include the following (this is not an exhaustive list): good communication; making an attempt to understand indigenous concerns and perspectives; taking a cooperative approach to the problem; engaging in resolution processes in which all participants have some decision making power; respecting tribal sovereignty; creating guidelines or ground rules for interactions. The Oka and Pick-Sloan cases offer examples of how non-indigenous agencies and governments should not engage in conflict resolution with indigenous nations; the lack of communication and the disrespect shown toward indigenous peoples and their traditions exacerbated these conflicts. The d’Estree/Colby framework (2004) focuses on evaluating what makes an effective and successful conflict resolution outcome. Some of the criteria it provides can be applied to the question of sovereignty in outcome in that it deals with whether all parties (including indigenous groups) are satisfied with the outcome, as well as whether the outcome is sustainable and upheld in the long term.

The books and articles mentioned above have helped me develop my own indicators of sovereignty in general, in conflict resolution process, and in outcome, which I applied to the Oldman River dam and the Orme dam controversies. This list was used to answer the question of how the Yavapai and the Piikani asserted their sovereignty in the conflicts over the Orme and Oldman River dams, and how successful they were in doing so.
CHAPTER 3: RESEARCH METHODS

The project itself is a collective and intrinsic case comparison as well as an exercise in policy research, and takes an etic approach, defined by Lewis (2005) as the perspective of an outsider looking in. Being informed by the critical structural paradigm, the methodologies used are both comparative and ethnographic, and the data collection methods include background documentary/archival research and key informant interviews. In an effort to triangulate and ensure that this project is conducted in a rigorous, empirical manner, these methods examine the following three types of data: the demographic/archival, the behavioral, and the attitudinal.

This section is divided into five subsections: general methods, ethical considerations, theoretical framework, conflict analysis and sovereignty analysis. In the first, various case studies that helped to shape my research methods are discussed, and in ethical considerations, the possible ramifications for the research populations are addressed. Theoretical framework offers a discussion of Foucault and Godelier and how their theories have been used to address the question of sovereignty in conflict resolution. The final two sub-sections, the conflict and sovereignty analyses, give the research frameworks and methods used to answer the research question. The conflict analysis addresses conflict resolution processes and the indicators of sovereignty in these processes, while the sovereignty analysis offers indicators for having indigenous sovereignty.

General Methods

Two studies of Native sovereignty and land rights conflict have especially helped to shape this research; John Borrow’s (2005) comparative study, “Crown and Aboriginal Occupations of Land: A History and Comparison”, and Gail Landsman’s (1988) study, Sovereignty and Symbol: Indian-White Conflict and Ganienkeh. Borrow, after giving considerable background on historical context for Native conflict avoidance strategies and subsequently
occupations and civil disobedience on and off reservations, concludes with the thesis that land and resource conflict between the Canadian government and the First Nations is largely caused by a lack of recognition and affirmation of Native rights by the government. His very detailed explanation of context and history and his comparison of a large number of cases offer an excellent example of how I should go about doing the same type of work on a much smaller scale.

While Borrow provides a largely archival model, Landsman (1988) offers a strong fieldwork example. Working in a conflict situation, she dealt with both Natives and Whites, and managed to keep a good relationship with both sides. Her discussion of the ethical considerations that must be addressed when researching a conflict situation was illuminating, and her description of her three methods of data collection, open-ended interviewing, participant observation and archival work have been very useful in developing methods for this thesis.

Ethical Considerations

Landsman’s (1988) discussion of ethics for her research in an ongoing conflict situation that dealt with a Native-White land dispute has been most helpful in framing my own ethical concerns. While she worried that the research populations might ask her to take sides, she found that if she was honest about her embarrassment and anxiety about imposing herself on these people during what must be difficult times, they were more likely to regard her as a potential ally, and were very accepting of her speaking to both sides in the dispute. She stressed honesty in keeping everyone involved informed, in asking permission to do research, and in maintaining a confidential process. She dealt with concerns about the effect that she might have in the field in stirring up a conflict that had for the most part died down, and was careful to be aware of the impact that she might have on leaving the field; in order to respect the feelings of all concerned, she sent out a preliminary paper to individuals on both sides before publishing.

In my research, I also faced an ongoing though less volatile conflict situation in Alberta; the problems that might have arisen were avoided due to the fact that I respected the Chief’s request that I not conduct research on the reservation. In Arizona, while there were some
lingering feelings on both sides, the conflict was over, and by being up-front and honest about my research aims, I was able to avoid stirring up old resentments. The fieldwork portion of this research concluded without incident, but the write-up itself could cause some difficulties. The tribal members I interviewed in Arizona had many different perspectives on the conflict, and those who were most involved still feel some resentment towards those they perceive as having jumped on the bandwagon at the end of the conflict. In order to avoid creating more tension within the community, I intend to keep key informants as part of the research process, and will follow Landsman's lead in sending them a preliminary paper to ensure that everyone feels that they have been fairly represented. This was also suggested by Ken Wilson to keep the research populations involved while exiting the field (1993:197). Another method I will use to protect my research population is to do everything in my power to keep this paper from being published in this form, as requested by the Yavapai Tribal President. If I do chose to publish at some point, I will remove all reference to my interviews with the Yavapai.

Theoretical Framework

Sovereignty in conflict resolution will be examined as seen in the theme of power, using Michel Foucault's and Maurice Godelier's theoretical bases, as discussed above. Foucault's discussion (Dreyfus and Rabinow, 1982) of how human beings are made subject through disciplinary technologies will inform the discussion of how the indigenous tribes experienced these technologies, and their resistance to the nation-state's governing bodies' attempts to overcome their reluctance to accept money for their land. Disciplinary technologies were used to create a human who was docile and productive, and although these techniques were originally developed in prisons and armies and the like, eventually they were also used on the working classes. With a scientific understanding of the human species and viewing the body as something to be regulated, disciplinary technologies were brought into various seats of power including schools, offices, and the workplace. These same disciplinary technologies can be seen in state-indigenous conflicts as nation-states attempt to regulate behaviors that seem to be outside the norm. This regulation can take the form of education in schools or through government agencies,
punishment in prisons, police disciplinary action, or normalizing minute aspects of behavior, perhaps in negotiations where only lawyers or men are permitted to speak. Each of these techniques can undermine minority conceptions of what is appropriate, and bring indigenous groups more in line with majority thinking.

Possible examples of disciplinary technologies in state-indigenous conflict might include mapping a territory and confining a previously nomadic group to a certain enclosed area when once their territory included wherever they chose to go. It could also involve imposing a system of government on a group and refusing to speak to group leaders not elected by this imposed system.

In his 1982 article “The Subject and Power”, Foucault discusses the links between power relations and relationships of communication. Power relations involve hierarchies or systems of distribution of labor, and relationships of communication are used to communicate and finalize these relations, by putting the power relations into effect and making them happen. An example of using relationships of communication as a disciplinary technology would be for a nation-state to impose a certain perspective of what indigenous sovereignty is and encompasses on all interactions with an indigenous group. Whether or not the indigenous group agreed with this interpretation, they would be forced to deal with it and work within it unless they had enough power to challenge it.

Godelier’s understanding of how power relations are transformed will also inform this investigation of how the indigenous groups were able or unable to change social and political relationships with outside agencies and groups as a result of these conflicts. In the analysis, the question of whether actions taken during these conflicts assisted indigenous groups in that outside agencies involved learned new respect for indigenous sovereign rights will be addressed. This could only be accomplished if, as mentioned above, the social relations that cause power imbalances are abolished.

Using Godelier’s frames for examining social relations (1986), we see that legal and emic views of sovereignty are shaped by very different mental and material forces. Legal perspectives
are shaped by a conception of property ownership and using property to make money, while emic views see land and resources as part of indigenous identity and something to be cherished and protected rather than used and exploited. These differences in the way that Western legal scholars and indigenous groups view their interactions with nature have created vastly different cultural and social understandings of what sovereignty means. As seen in the above section on sovereignty, Western perspectives on sovereignty include legal authority over a certain territory, and have to do with power. Emic perspectives on sovereignty, on the other hand, respect cohesion and unity within an indigenous group, and while power over the group's present and future resources and ways of life is a part of this, there is respect for individuals and individual thought that is inherent in the indigenous conception of sovereignty. Moreton-Robinson (2005) describes this when she conceptualizes indigenous sovereignty as a dialogue, rather than an objective definition that has a clear hierarchy of who has the most power.

These differences in Western and indigenous thought are examples of how Foucault's relationships of communication can further domination of one group by another. Because the Western, legal views of sovereignty are accepted and enshrined in the American and Canadian legal systems, indigenous groups are forced to subscribe to this particular definition of sovereignty. This is one more example of a disciplinary technology that can be used in state-indigenous conflicts.

Godelier further posits that inequities in social hierarchy occur with the consent of all groups in a society: some groups see their lower position as advantageous for the society as a whole (1986). This may explain why members of indigenous sovereign nations do not actively seek to become members of the dominant society. Their cultures often do not depend so much on individual accumulation of wealth but rather in a deep relationship to the land and their own people, and this fact would allow them to prefer staying in their position in the hierarchy rather than gaining rank by accepting Western ideals of sovereignty and capitalist value systems.

Taken together, these theoretical bases provide a framework through which to examine the political, economic, structural and historical mechanisms that underlie the two dam-building
conflicts in Arizona and Alberta. From Foucault, the analysis focuses on how indigenous groups experienced disciplinary technologies and their resistance to the governing bodies’ attempts to overcome their resistance to accept money for land. From Godelier, I examine the mental and material frames that guide our perceptions of what sovereignty is, and why some groups prefer to remain at the lower end of the social hierarchy will be examined, focusing on the social relations that create power imbalances. I also discuss how indigenous nations were able or unable to transform power relationships through these conflicts.

Conflict Analysis

Conflict Framework

In order to compare both conflicts, I intend to examine the conflict resolution processes used in both, the indicators of sovereignty within these processes, and the indicators of sovereignty in process outcomes. Each of these frameworks is drawn from previously discussed literature on these subjects.

Conflict Processes

Christopher Moore, a sociologist and conflict management professional, offers a “Continuum of Conflict Management and Resolution Approaches” (2003, p. 7), which describes the various approaches that exist with which to address conflict. According to Moore, there are ten different ways to address conflict: conflict avoidance, informal discussion and problem-solving, negotiation, mediation, administrative decision, arbitration, judicial decision, legislative decision, nonviolent direct action and violence. It is important to note that nonviolent direct action and violence are actually conflict management processes, rather than conflict resolution. These span four types of conflict resolution and management: private decision-making by parties; private third-party decision-making; legal, authoritative third-party decision-making, and extralegal coerced decision making. The first four fall under the category of private decision making by parties, and only involves those who are in conflict. Mediation does bring in a third party, however the mediator has no decision making ability. A mediator aids the negotiation process, but is
neutral as to content, and that is why mediation remains under private decision-making by the parties.

Administrative decision and arbitration come under private third-party decision-making. These two approaches decrease the personal power of the parties, because the third party hears the case and makes a decision based upon what they have heard. This third party may not be impartial in administrative decision-making, as they may represent a company or agency. An arbitrator, on the other hand, is an impartial and neutral third party who makes a decision about the case that can either be advisory or binding. An arbitrator is always outside of the conflict.

Legal, authoritative third-party decision making is public, as opposed to the previous approaches. The judicial approach is most often seen in the court case, where parties are represented by lawyers and the case is judged by an impartial third party, a judge and sometimes a jury. A legislative approach involves voting, either by citizen groups or by legislators. This means that if a party would like to influence legislation, they need to influence the voters.

Finally, there remains extralegal coerced decision making. These approaches are often not socially acceptable, and use coercion to force the opponent to accept an issue. Nonviolent action occurs when a group or individual acts or does not act in a way that will force the other party to make concessions. There is no physical coercion or violence involved. A violent act could also be called physical coercion, and this means that a party has the means to damage another party, and can also convince the second party that they will use this power. The continuum is shown in Table 2 (pg. 57).
Table 2

<table>
<thead>
<tr>
<th>Continuum of Conflict Management and Resolution Approaches, Taken from Moore, 2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>Private decision-making by Parties</td>
</tr>
<tr>
<td>Conflict Avoidance</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Increased coercion and likelihood of win-lose outcome</td>
</tr>
</tbody>
</table>

I will describe the approaches to conflict used in the Orme and Oldman River Dam conflicts using this terminology. Various authors have discussed the merits of many of these options in state-indigenous conflicts; this will be discussed in the results section. The indicators of sovereignty in conflict resolution processes, however, rather than the processes themselves, are more useful in assessing whether indigenous sovereignty was respected or not. This will be discussed further in the following paragraphs along with the sovereignty in process indicators.

Sovereignty in Conflict Resolution Processes

Based on the literature discussed in the subsection “Conflict Resolution in Sovereignty Conflicts”, I have developed a list of indicators of sovereignty in conflict resolution processes. These indicators, rather than the conflict resolution processes themselves, tell us whether or not sovereignty was respected in the two case studies.

This study proposes that there are nine indicators of sovereignty in conflict resolution processes: respect, communication, decision making power given to all participants, equal power, indigenous group taking action as a sovereign entity, nation-state getting informed consent before passing legislation affecting indigenous groups, consultation occurring, prompt and fair decision-making in disputes, and nation-state ensuring that indigenous groups understand processes and can be understood by the other parties involved. These indicators provide a scale of how much
sovereignty was or was not respected and/or asserted in these processes, but can also be seen as factors that increase the likelihood that a government or agency will respect or a tribe will successfully assert sovereignty. Each of these indicators, when present, will support the possibility that tribal sovereignty will be respected and asserted.

Respect could involve paying attention to cultural differences and dealing with them, engaging with self-chosen indigenous leaders rather than choosing someone that meets an outside government’s criteria, arranging transportation for indigenous groups to meetings or having meetings at accessible places, having meetings with high-level officials from outside agencies, and establishing ground rules for interactions and sticking to them. There are many other ways that respect can be given in conflict resolution processes; however these are some examples taken from previous studies seen in the literature review.

Communication is, as we saw in the literature review, essential for effective conflict resolution. To show that sovereignty is being respected, indigenous groups should be informed of plans and projects involving them early on, difficulties that arise should be discussed rather than ignored, and communications should also be respectful in that outside agencies are listening to indigenous concerns rather than riding roughshod over them.

Giving participants in processes some decision making power can be shown in that officials participating in the processes have the power to enforce the agreements that they make with indigenous groups. As such, negotiations are not treated as merely consultations, but the items that result from them will be enforced and upheld. This can only be accomplished if officials who have a certain level of power participate in these processes. It is not a discussion of issues and then the most powerful party (i.e. the federal government) will make their own decisions; rather, it is a dialogue that will end in a mutually agreed upon decision.

Power differentials are very important, because as was seen in the Pick-Sloan case (Lawson, 1982), the indigenous groups were threatened with having their land taken from them forcibly using eminent domain proceedings if they did not cooperate. This could keep them from adequately expressing their needs and concerns. In order to have equal power, indigenous
groups must be treated as having equal power in conflict resolution processes. One way to do this is for everyone to agree that outcomes can only be achieved using either full consensus or a consensus of a majority percentage from all parties. Threats made based on superior coercive power are also off-limits for processes that respect tribal sovereignty.

Indigenous groups taking action to protect their interests are indicators of sovereignty. Again, there are many ways that indigenous groups can take action, and I have listed a few here: undertaking studies of plans, building support and coalitions to increase bargaining power, taking legal action, taking either nonviolent or violent direct action, and continually reminding other parties involved of their status as sovereign nations rather than mere stakeholders in a dispute.

Consultation is also an indicator that sovereignty is being respected. Evidence of indigenous groups are consulted in the planning and design stages of a new project and having the opportunity to make sure that their needs and concerns are addressed for the duration of the project would show that sovereignty has been respected.

A nation-state is required, through the United Nations Declaration on the Rights of Indigenous Peoples, to get free, prior and informed consent from indigenous groups before passing legislation that would affect them (2007). Any processes used in conflict resolution must result in prompt and fair decision-making. While timeliness will depend on the process used, issues should at least be addressed soon after they are identified, and actions should not be taken while these issues are in the process of being resolved. Lastly, the nation-state involved must ensure that indigenous groups can understand the processes being used, and can be understood by other parties involved. This may include providing translators and interpreters for any party, and cultural misunderstandings need to be discussed and respected.

Table 3 (pg. 60) shows a chart of these indicators and the ways in which they are operationalized. The list of the ways in which these indicators are operationalized is not exhaustive as there are many different methods by which these indicators could be manifested: each of the operationalizations shown in the table comes directly from the literature discussed in the previous chapter. Since I have concluded my studies, I believe that another indicator that
might be useful in understanding sovereignty in conflict resolution processes would be whether or not the nation-state or other agencies actively seek to respect and protect indigenous sovereignty. This would entail all of the above but also consulting with tribal leaders about what social capital needs to be created so that the community can come together to discuss these issues and handle them appropriately. I did not examine this last in my research; however it would be an interesting question to discuss.

Table 3

*Indicators of Sovereignty in Conflict Resolution Processes*

<table>
<thead>
<tr>
<th>Indicator</th>
<th>Operationalization</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Respect</strong></td>
<td>• Paying attention to cultural differences and dealing with them instead of ignoring them</td>
</tr>
<tr>
<td></td>
<td>• Engaging with the leaders indigenous groups have chosen for themselves, rather than with leaders outside agencies have chosen</td>
</tr>
<tr>
<td></td>
<td>• Arranging transportation for indigenous groups to attend meetings or having meetings in accessible areas</td>
</tr>
<tr>
<td></td>
<td>• Meetings take place with officials at high levels</td>
</tr>
<tr>
<td></td>
<td>• Ground rules for interactions are created together and are upheld</td>
</tr>
<tr>
<td></td>
<td>• Tribal concerns are addressed</td>
</tr>
<tr>
<td><strong>Communication</strong></td>
<td>• Indigenous groups are informed of plans and projects in early stages of planning</td>
</tr>
<tr>
<td></td>
<td>• When difficulties arise, they are discussed rather than ignored</td>
</tr>
<tr>
<td></td>
<td>• Communications are respectful – outside agencies are hearing indigenous concerns and not ignoring them</td>
</tr>
<tr>
<td>Indicator</td>
<td>Operationalization</td>
</tr>
<tr>
<td>------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| Decision making power given to all participants | • Officials participate who have the power to enforce the agreements they make  
• Negotiations are not treated as consultations and results will be enforced |
| Equal power                                    | • Indigenous groups are treated as equal powers in discussion and negotiations – this may mean that outcomes must be built using consensus  
• There are no references to taking away land using eminent domain or other coercive forces by non-native parties |
| Indigenous group taking action as a sovereign entity | • Indigenous group undertakes studies of proposed plans  
• Indigenous group builds support and coalitions to increase bargaining power  
• Indigenous group takes legal actions to protect themselves  
• Indigenous group takes direct action to protect interests – nonviolent or violent  
• Indigenous group refuses to be labeled as a stakeholder in a negotiation, but continually reminds other parties of their status as a sovereign nation |
<p>| Consultation occurs                            | • Indigenous groups are consulted about plans and projects and are included in the planning – this means that they are brought in for the design stage and their needs and concerns are addressed |</p>
<table>
<thead>
<tr>
<th>Indicator</th>
<th>Operationalization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nation-State getting in informed consent before passing legislation affecting indigenous groups</td>
<td>• Nation-state seeks free, prior and informed consent from the indigenous group before passing any legislation that would affect them</td>
</tr>
<tr>
<td>Prompt and fair decision-making in disputes</td>
<td>• Decision-making is timely – issues are addressed soon after they are identified, and actions are not taken before these issues are resolved</td>
</tr>
<tr>
<td>Nation-State ensures indigenous groups understand processes and can be understood by other parties</td>
<td>• Translators and interpreters are provided • Cultural misunderstandings are discussed and respected rather than ignored or devalued</td>
</tr>
</tbody>
</table>

**Sovereignty in Process Outcomes**

As mentioned above, d'Estree and Colby’s framework for evaluating success in conflict resolution outcomes will be used to examine and compare the outcomes of the Orme and Oldman River Dam conflicts (2004). Categories available include outcome reached, process quality, outcome quality, relationship of parties to outcome, relationship between parties/relationship quality, and social capital. For the purposes of this study, I have chosen to use some of the criteria in the categories of outcome reached, outcome quality, and relationship of parties to outcome because my research focused exclusively on process and outcome, and I did not investigate other parties’ relationships to the outcome.

Reaching the outcome basically asks whether an agreement was reached, and whether it has been unanimously ratified and publicly accepted. The question of unanimity can also be replaced with that of consensus, where not everyone may agree with the result but is at least prepared to live with it. This is an indicator of sovereignty in that it verifies whether an outcome
has been imposed on an indigenous group against their will or whether they are satisfied with it. The public acknowledgement of the outcome is important because it is essential that indigenous groups be informed of decisions, rather than finding out through the media or not being informed at all. Finally, ratification can support sovereignty in that an indigenous group may be invited to sign an agreement, giving them recognition of their sovereign nature and of their importance to the process and outcome.

Outcome quality evaluates the actual outcome according to whether the outcome is culturally sustainable and supports community self-determination. It also asks if the outcome is clear, and this is important to sovereignty in that an outcome could clearly recognize the sovereign nature of the indigenous group involved or it could ignore tribal sovereignty or even repudiate it. Finally, the indicator of public acceptability again verifies whether an indigenous group is satisfied with the outcome or whether they feel it has been imposed upon them. In general, this category concerns itself with the short-term, although it can also be applied to the long-term depending on what the outcome is.

The relationship of parties to the outcome focuses on whether the parties are satisfied with the outcome itself. This includes whether they believe it is fair, and if they will abide by its terms. Satisfaction and fairness assesses how the indigenous group feels about the outcome, and compliance over time is significant because if the outcome upholds tribal sovereignty, it will need to continue upholding in the years to follow. This will need to be assessed both with the immediate outcome, and again over time. See Table 4 (pg. 63) for an overview of the framework.

Table 4

| Effective Environmental Conflict Resolution Criteria Categories, Taken from d’Estree & Colby, 2004 |
|-------------------------------------------------|---------------------------------|
| Criteria                              | Indicator                      | Operalization                   |
| Outcome Reached                      | Unanimity or consensus         | • Tribe agreed to outcome       |
|                                    |                                 | • Agreement was reached by      |
### Outcome Quality

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Indicator</th>
<th>Operalization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public acknowledgement of</td>
<td>Outcome was formally and publicly</td>
<td>consensus and tribe was included in the process</td>
</tr>
<tr>
<td>outcome</td>
<td>acknowledged</td>
<td></td>
</tr>
<tr>
<td>Ratification</td>
<td>Tribe ratified the agreement</td>
<td></td>
</tr>
</tbody>
</table>

#### Cultural sustainability/community self-determination

- Outcome does not prevent tribe from any kind of cultural expression
- Outcome supports tribal culture
- Outcome supports community self-determination processes

#### Clarity of outcome

- Outcome clearly supports tribal sovereignty in language and intent

#### Public acceptability

- Tribe accepts the outcome

### Relationship of Parties to Outcome

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Operalization</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outcome satisfaction/fairness as</td>
<td>Tribe sees outcome as satisfactory and fair</td>
</tr>
<tr>
<td>assessed by parties</td>
<td></td>
</tr>
<tr>
<td>Compliance with outcome over time</td>
<td>All parties comply with outcome over time, especially those particulars that relate to sovereignty, self-determination or cultural sustainability</td>
</tr>
</tbody>
</table>

Beyond the success of these processes, using the United Nations Declaration on the Rights of Indigenous Peoples (2007) we will also assess whether the outcomes upheld tribal sovereignty or not. There are seven indicators here: indigenous groups having the right to their lands, having the right to develop their lands, only being relocated with prior consent from the...
groups themselves, cultures and traditions not being destroyed, having the right to continue to practice their cultures and traditions, all previous treaties and agreements are to be enforced, and nation-states must provide redress for any actions that have deprived indigenous peoples in terms of culture, land, or environment. Basically, if any of these are not met, the outcome does not completely uphold tribal sovereignty. Table 5 (pg. 65) offers a table of these indicators and the ways they have been operationalized.

Table 5

<table>
<thead>
<tr>
<th>Indicators of Sovereignty in Outcome, Taken from United Nations, 2007</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Indicators</strong></td>
</tr>
<tr>
<td>Indigenous groups have the right to the lands they have traditionally owned, occupied, used or acquired</td>
</tr>
<tr>
<td>Indigenous groups have the right to develop the lands they own as they choose</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Indigenous groups can only be relocated with their consent, and the nation-state must agree with them on just compensation</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Indigenous groups have a right not to have their culture or practices be destroyed, or to be assimilated forcibly against their will</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Indicators</td>
</tr>
<tr>
<td>---------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Indigenous groups have the right to practice their customs and traditions, to use their religious sites in private, and to keep their sciences including medicinal plants and knowledge of local flora and fauna</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Indigenous groups have the right to the enforcement and recognition of all treaties and agreements made with nation-states</td>
</tr>
<tr>
<td>Nation-states must provide redress for any actions that deprive indigenous groups of their development, lands, means of subsistence, cultural or environmental destruction or for any action that reduces tribal integrity as a people</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

**Method for Researching**

The above frameworks were applied to the results of data acquired through background, archival and interview research. The archival research provided information on the processes used and on many of the sovereignty in process indicators. Each of the three frameworks was used to identify what information in the archives was most relevant.

The background documentary/archival research took place at the beginning of my research, in the months prior to entering the field, and forms the base for all future research. Archives visited included the Arizona State Archives, the University of Arizona Archives at...
In order to fill in the gaps from the archives, I conducted key informant interviews with as many Yavapai and Piikani tribal members as possible. Key informants are defined by Hefferan (2005) as being people within the culture who help the researcher gain cultural understanding, and she warns to choose key informants carefully using Spradley’s five guidelines: ensure that the person is enculturated enough to be a good informant; ensure that the person is currently involved with the research area/population; ensure that the person knows about cultural areas that are unfamiliar to the researcher; ensure that the person has enough time to spend being an informant; and lastly, ensure that the person is not over-analytical of his/her culture. I modified these requirements because I was focusing very specifically on an historic event. Thus, I interviewed informants including people who were and were not currently involved with the research population because some of them had lost contact with the groups in the years since the end of the conflict. The second two requirements were fulfilled because each person had personal contact with cultural areas that I was unable to observe because of their historic nature, and the interviews rarely lasted longer than an hour and a half. The final requirement was met in my interviews with tribal members, however outsiders tended to be more analytical; in spite of this, I felt they were able to present a different and important perspective. Because I was in the field for such a limited time, I used semi-structured interviews, as defined by Beebe (2001); they are controlled but flexible, keeping the interviewees talking about things that are related to the research problem.

I used a snowball technique to identify who I would interview: this entailed asking each interviewee to recommend others who were involved in the conflicts and who would be willing to discuss their role with me. This was very effective with the Yavapai, but the chief of the Piikani asked that I not come on reserve to discuss this conflict as it is still ongoing. I was able to speak with one Piikani tribal member who also worked for the government, and he was a very valuable
source of information. Please see Appendices A and B for a copy of my consent form and my list of interview questions.

The combination of these methods, background archival research and key-informant interviewing, enabled me to begin peeling back the layers of the historical, ideological, political, economic and structural mechanisms that inform power relations and sovereignty on these two reservations.

Sovereignty Analysis

Sovereignty Framework

There are various questions in the list used in the key informant interviews (see Appendix B for the specific questions) that invited interviewees to share their thoughts and beliefs about what sovereignty is. Again, I was able to speak with many Yavapai tribal members, but only one Piikani tribal member, so while the data is very interesting in terms of the debate on what sovereignty is, it is most definitely not representative.
CHAPTER 4: CASE STUDIES

As stated in my introduction, I intend to examine how tribes assert sovereignty in conflict situations using two case studies as illustrations. Having already given a literature review and an understanding of what sovereignty, specifically indigenous sovereignty, is, as well as an overview of the frameworks and methods used, I am now moving on to describe both cases. In order to answer the question of how both the Yavapai and Piikani tribes asserted (or did not assert) indigenous sovereignty in their differing conflicts, I will begin by presenting the conflicts with their history, timelines, an analysis of the various parties, sources and issues, a discussion of the consequences of these conflicts and some information on the current situation. I will then move on to analyze how the tribes asserted sovereignty in these situations, and how the various other parties involved responded. I will conclude each study with a discussion of whether tribal members felt they had sovereignty during these conflicts.

These two cases were chosen because they involve very similar conflicts. In each, the state/provincial government planned to build a dam that would impact the indigenous populations residing nearby. Residents of both Arizona and southern Alberta are concerned about having enough water for the future. Neither of the governments consulted these indigenous groups until after all the plans had been made. Both conflicts lasted quite some time, and in one case the dam was cancelled and in the other it was built. Using these specific cases, it is possible to compare how different conflict resolution processes contribute to the assertion and protection of sovereignty and the eventual achievement of an outcome that recognizes indigenous concerns. It is important to recognize that there are other factors in these cases that also may have contributed to asserting and protecting sovereignty, and in the comparison of these two cases other factors did arise, such as tribal unity. These will be discussed later. The cases also illustrate some of the differences between the United States and Canada in the treatment of such conflicts,
and highlight those laws and attitudes that do not conform to the United Nations Declaration on the Rights of Indigenous Peoples.

Orme Dam

Conflict Analysis

Historical Background

Orme Dam was first proposed in 1922, under the name of Maxwell Dam, as part of a project to bring Colorado River water to irrigate Maricopa and Pima counties in Arizona (Johnson, 1977). At this time, it was obvious that both California and Arizona would both need the Colorado River for irrigation and development in the near future, and this was the year that the Colorado River Compact, which regulated water use by Colorado, New Mexico, Utah, Wyoming, Arizona, California and Nevada was signed into law, although Arizona did not ratify the agreement. This began an era of disputes between California and Arizona that would last until the Supreme Court resolved Arizona’s lawsuit versus California in the matter of rights to the Colorado River in Arizona’s favor in 1963 (Schilling, 1998). While these conflicts were going on, the Arizona State government began investigating how best to use Colorado River water in the early 1940s, eventually proposing Central Arizona Project (CAP) authorizing legislation in the Senate in 1947 (Johnson, 1977). The CAP legislation would pass in 1950, but it was not till the Supreme Court decision of 1963 cleared up the California/Arizona dispute that Arizona was able to take action on the CAP. After many more studies, hearings and discussions about the CAP plan to bring Colorado River water to Arizona, President Johnson signed the CAP, including Orme Dam, into law on September 30th, 1968.

Orme Dam itself was planned as a small piece of the CAP infrastructure, and would primarily be used to store water destined for Phoenix, to conserve water from the Salt and Verde Rivers, to provide flood control and to give recreational benefits from a reservoir that would be created behind the dam (Schilling, 1998). It would be located at the confluence of the Salt and Verde Rivers, and if built as proposed, would flood almost two thirds of the Fort McDowell Yavapai reservation and force reserve residents to relocate.
It is important to give some idea of Yavapai history, which became a significant issue over the course of the conflict over Orme Dam. The Yavapai had originally used over 20,000 square miles in Arizona, but once the Americans entered the area in 1865, they rounded up both Yavapai and Apaches and sent them to various camps in the early 1870s (Schilling, 1998). From these camps, the Indians were forced to relocate to the San Carlos reserve near Camp Verde in 1875 (Mariella, 1983); the march to San Carlos was brutal, and is known by the Yavapai as the Trail of Tears (Schilling, 1998). It was not until 1899 that the Yavapai were allowed to leave San Carlos permanently, and by 1901 most of them had returned to their homelands (Mariella, 1983). A number of them had moved to Fort McDowell, an erstwhile military base, and in 1903 President Roosevelt created the Camp McDowell Indian Reserve on land where the old fort had been, and gave it to the Yavapai representatives who traveled to Washington with a petition for the land.

The threat of removal still hung over the Yavapai, as beginning in 1909, BIA officials complaining of problems with the Fort McDowell irrigation system began to suggest that it might be cheaper to move the Indian farmers to the Salt River Valley Indian Reservation than to repair the irrigation ditches (Mariella, 1983). The 1910 Kent Decree recognized this relocation policy by awarding the Yavapai of Fort McDowell 390 miners’ inches of water from the Verde River until they be moved to the Salt River Valley reserve. Once the Decree was passed, the Indians were approached about the proposed relocation; they refused to even consider it. In spite of their strong opposition to another move, the federal government continued to press relocation on them over the next thirty years. This continuous push to relocate would next be felt as Arizona worked to build Orme Dam, affirming the Yavapai belief that White people do not keep their promises and that they would never have to stop fighting for their land. One informant put it this way; “you know that they [the federal government] aren’t looking out for you because of history (Informant 7, personal communication, June 23, 2008).

Brief Conflict Timeline

Orme Dam was, as stated above, originally proposed in 1922 and eventually signed into law with the Central Arizona Project legislation in 1968. The actual part of the conflict that I am
focusing on involves the Fort McDowell Yavapai Nation and the various governments and agencies who supported Orme Dam, and did not really begin until the early 1960s. While I will briefly summarize the various stages and events in the conflict here, please see Appendix C for a more in-depth timeline taken from Ron Schilling’s 1998 thesis on the conflict. I have left out the various tribal actions from this timeline, as these will be discussed in greater detail as I get into the next few questions; here, I have included only the conflict’s political highlights.

Schilling (1998) claims that there is some record of Indian discussions with the Bureau of Reclamation (referred to as BOR) about Orme Dam from the 1950s. He does not state what these discussions touched on, though he did mention that the conversations were put on hold until the Arizona-California dispute was settled. During the 1960s, there was minimal contact between BOR and the Indians, and most of this contact was initiated by the Indians. (The two nations most concerned with the Orme Dam proposal were the Fort McDowell Yavapai and the Salt River Pima-Maricopa, but my work focuses on the Yavapai who had much more to lose in the event that the dam was built.) BOR did attempt to address tribal concerns and tribal representatives were taken to Washington to discuss the situation in more detail, but an informal vote held at Fort McDowell in 1966 showed almost half of the reservation staunchly against the dam, with another quarter wanting to wait for a non-tribal assessment of the situation. President Johnson signed the Colorado River Basin Project Act into law in 1968, with the CAP included and Orme Dam as a part of the CAP.

The 1970s saw the conflict heating up, with a number of studies and reports in the early years, and the first concrete sign of Yavapai opposition to the dam from then Tribal Chairman Doka in 1972 (Schilling, 1998). 1973 marked the first time that BOR went out to the reservation and met with tribal members in an attempt to educate them about the benefits Orme Dam would bring. The 1976 official referendum on Orme Dam showed that the tribe was officially against the building of the dam, and at that point the tribal chairman announced that it would cease negotiations with BOR. A large coalition also began forming during the 1970s, which will be discussed further in subsequent sections, but in 1976 fourteen organizations, including the
Yavapai nation and non-native groups, scheduled a news conference against Orme Dam, and in 1979 twenty-two organizations joined the Orme Alternatives Coalition.

1977 brought an unexpected and nearly fatal setback to the Central Arizona Project; President Jimmy Carter eliminated the CAP from the federal budget in March, and when he reinstated the project, he did so after removing the proposed Orme, Hooker and Charleston dams (Schilling, 1998). This seemed to be the end of the Orme Dam proposal, but massive flooding in 1978 and 1979 kept the idea of Orme alive. The Central Arizona Water Control Study was created in 1979 to study how to deal with the flooding and other needs that Orme would meet, and once completed, the CAWCS offered eight alternatives to Orme Dam. Only three of these alternatives included a dam at the confluence of the Salt and Verde Rivers. In 1981, Secretary of the Interior James Watt officially chose alternative 6, one of the solutions that would have no affect on the Fort McDowell Yavapai. This was the end of Orme Dam.

Conflict Resolution Processes Used

As mentioned in the conflict analysis subsection, Moore (2003) offers a continuum of ten different conflict management processes that are available to any party in a conflict situation. The conflict management processes used in the Orme Dam conflict included legislative decisions, unofficial negotiations, judicial decisions, problem-solving and a final administrative decision (see continuum in Table 2, p. 57). The legislative decision was the signing into law of the Central Arizona Project in 1968 (Schilling, 1998). The unofficial negotiations began in the 1950s when discussions first happened between the Bureau of Reclamation and the Yavapai, and these discussions continued for the duration of the conflict. Although numbers and land exchange ideas were talked about, the tribe was never made a formal offer (Informant 4, personal communication, June 17, 2008).

The judicial decisions portion of the conflict resolution processes used in the Orme Dam conflict relate to the many Appropriations Hearings that tribal members attended in Washington over the years. There are records of tribal members and tribal council members speaking in Washington from 1977 to 1980 (Departmental Water Projects Review Team, March 1977; Hood,
Yavapai were asking the federal government to step in and stop the dam from being built. Also a judicial decision, the only litigative action taken by a Yavapai tribal member was the legal suit against the Bureau of Reclamation in 1975, and only one tribal elder is listed on this suit (Various Plaintiffs, June 1975). The case, an attempt to prevent BOR from building a siphon that would have precluded an alternative to Orme dam, was never settled and the siphon was built anyway. It was not part of the necessary construction for Orme, but merely deleted one more option that could have been built instead of Orme. (Informant 13, personal communication, June 27, 2008). This case was not a typical action by a tribal community; in fact, the rest of the tribe had nothing to do with it. This case acted to bring attention to the issues and to help solidify the coalition against Orme Dam.

Informal and formal discussion and problem-solving took place throughout the CAWCS process, when task forces gathered information on alternatives to Orme Dam and pros and cons for all proposed plans. The end result of these processes was to recommend an alternative to Orme. This alternative was adopted and the plan to build Orme Dam was officially put to rest by Secretary of the Interior James Watt’s administrative decision.

It is interesting that the Yavapai used five of the ten conflict management processes identified by Moore (2003). The Oka and Pick-Sloan conflicts only used three processes: negotiation, armed confrontation, and litigation. This range of conflict resolution processes used may have been a result of Yavapai assertion of sovereignty or perhaps resulted in better assertion of sovereignty.

Analysis of Parties

There were many different parties present in this conflict, from the government officials and various agencies, to the different Native American tribes, to the citizen groups both supporting and opposing the building of Orme Dam. For the purposes of my study, I am focusing on the Fort McDowell Yavapai, the government of Arizona, the Bureau of Reclamation, and the
There are smaller subgroups in each of the above, including agencies, task forces, and people divided by opinion; these will also be discussed.

**Fort McDowell Yavapai Nation.** According to Khera and Mariella (1983), before White settlers arrived in the area, Yavapai territory included desert, mountain, and transition environmental zones, which gave them a steady supply of food, both animal and plant. The Yavapai were primarily hunter-gatherers, although they also practiced agriculture. Large extended family groups travelled and hunted together, and smaller family groups could move to more fruitful areas if necessary or if there was internal strife. There were many local groups that formed sub-tribes, and these were led by a man of importance, called “bamulva” and another, older man who acted as a kind of civic leader, called “bavwete” (Gifford 1936). The bamulva would usually have gained this title through his war experience, while the bavwete was a respected older man, probably too old to fight. The bavwete would advise the people about their hunting and gathering practices and also gave public lectures on appropriate behavior within the tribe. This implies that while there was a hierarchy, the tribal leadership probably had to depend on some kind of consensus-building in order for a leader to remain in power. The BIA was the first to appoint chiefs, and these were called “mayora”. These mayora would have been chosen in a non-traditional way, and it may have been expected that they would make decisions, rather than ruling by consensus. This would also have changed the traditional hierarchy by changing the system of governance.

While Espeland (1998) speaks of the Yavapai as having been united in their opposition to Orme Dam, Schilling (1998) hints at some fragmentation on the reserve during the conflict and my own interviews at Fort McDowell indicated that it took some time before the majority of the tribal members began to overtly oppose the dam. Schilling notes that there were a range of attitudes on the reservation towards Carolina Butler, a woman who actively worked for the Yavapai and formed the Committee to Save Fort McDowell. She was also very involved in creating the coalition that eventually helped to inform government officials and citizens about the Fort McDowell viewpoint. There were probably a number of reasons for this, including the fact
that she was non-Native, and this engendered some mistrust. Eventually, she was accepted by the tribe and council as being able to help them, but this took some time. Schilling also mentioned that the tribal council was advised not to take an official stand against Orme dam until BOR had completed its studies; BOR did not actually complete the studies until 1976, which meant that to outsiders and some tribal members, the tribal council appeared to be unconcerned with the threat.

While Schilling (1998) discusses these issues briefly, he does not analyze them as deeply as he could. In my previous discussion of indigenous sovereignty, it was stated that only united and cohesive indigenous groups can have and assert sovereignty (Vine Deloria, 1996). The fragmentation within the Fort McDowell community at the beginning of the conflict prevented the community from acting in a unified manner and from ensuring that their voices were heard. If the Yavapai had been unable to come together with one aim, it could be that they would not have succeeded in convincing the Arizona government to cancel the building of Orme Dam. This is also shown with Carolina Butler. She could not have acted for the Yavapai unless the tribal government had permitted her to do so. She had been asked by certain elders to help work against the dam, but until these elders and the tribal government shared a common purpose, the Arizona and federal governments could have ignored the elders and Butler and chosen to listen only to the elected officials. This also shows a disinclination to change power relations, and to uphold social relations that create power imbalances as described by Godelier. By preferring not to fight the dam, various Yavapai tribal members were consenting to the very power relations that kept them dominated by more powerful segments of society, including the Arizona government. It is also possible that some tribal members preferred to take more time to make decisions, and so this hesitation to accept Carolina Butler was less of an accession to power relations and more of a desire to go slowly. While that may be so, the process of the various factions on reserve coming together showed a commitment to fight these social relations and change the way the Yavapai were viewed on the hierarchy of power.
Many tribal members in the summer of 2008 spoke of the difficulty of speaking out against Orme at the beginning of the conflict, and a number mentioned the different factions which divided the Fort McDowell Mohave-Apache Community (Informant 4, personal communication, June 17, 2008 and June 24, 2008; Informant 8, personal communication, June 23, 2008; Informant 10, personal communication, June 27, 2008). Informant 3 stated that “it was a real difficult time to take a stand [against Orme dam], but we needed to make that stand” (personal communication, June 16, 2008). This same informant noted that the federal government would only deal with the elected tribal council, and this angered some of the elders. In fact, certain elders were so concerned that they organized a trip to Washington D.C. on their own to inform the federal government of what might be happening to their land. The decision to only speak with elected individuals shows how the American government used Foucauldian disciplinary technologies by imposing their Western understanding of sovereignty on the Yavapai, as Gifford (1936) notes that the BIA created the position of chief, and this was not a traditional Yavapai method of governance.

The small group of vocal elders was not fully supported by the tribal council, and in fact was sometimes locked out of council meetings in the late 1960s and early 1970s (Informant 3, personal communication, June 16, 2008). This is significant because the United Nations Declaration on the Rights of Indigenous Peoples (2007) clearly states that indigenous groups have the right to self-determination and to maintain their traditional decision-making processes and institutions. The tribal council and elective system is not the traditional Yavapai decision-making process (Khera and Mariella, 1983), and thus the government was choosing who it would deal with rather than taking Yavapai traditions into account. This is further evidence of Foucault’s disciplinary technologies in that the federal government was imposing a system of leadership on the Yavapai and then forcing them to uphold it because the governments and agencies would only deal with leaders elected using this imposed system. The Declaration (2007) also posits that the nation-state must consult with representative indigenous institutions before making decisions.
concerning them, and it was evidently the case that the elected tribal council was not representing the entire tribe.

Further evidence that there was division in the tribe, Clinton Pattea, then chairman of the Fort McDowell Tribal Council, also wrote a letter in 1968 to Secretary of the Interior Udall expressing support for the CAP and asking for fair compensation for tribal lands to be flooded, that the tribe be kept fully informed, and a few other details (Pattea to Udall, January 31, 1968). This letter was interpreted by the federal government to mean that the Fort McDowell Yavapai were in support of the dam, and when the tribe found out about the letter some years later, there was an outcry that Pattea did not speak for the tribe (Scottsdale Progress, 1974). The Tribal Council was only made aware that the letter had been sent when they found a copy of it in their files in 1974. Pattea himself later said that he was not representing the tribe in writing that letter, but that he only wrote it because the government and BOR had not had appropriate discussions with the tribe. This letter once again shows how individuals within the tribe were choosing to consent to the extant power relations, which kept the tribe less powerful than the other parties to the conflict.

It may also be helpful here to discuss why it is difficult for subordinate social groups to take open, collective action. This was not an original part of my research analysis, but in examining the data it became very clear that group unity in action was an important theme, and so I have included this discussion about what makes collective action difficult. Scott (1985) states that there are very rarely actions of resistance on the part of subordinate social groups that are both open and collective. Reasons for this include the fact that change usually occurs slowly and affecting small numbers of people at a time; that change may impact various members of the group differently, with some receiving benefits from change, perhaps because of other alliances such as kinship and patronage; that avoiding conflict by moving away can be a more appealing way of protesting change; that there is a strong fear of repression exists in the event that the group resists; and that the reality is that the group needs to survive, and so adapts even as they resent the difficulties imposed upon them. For the Yavapai, an understanding of the changes
came up gradually, so that only certain tribal members were aware of the danger of losing their lands from the very beginning. One informant stated that “many people didn’t believe it [that the land would be flooded], except one small group” (Informant 3, personal communication, June 16, 2008). The fact that not everyone perceived there was a threat and therefore did not recognize that change was coming is why collective action was not used at the beginning of the conflict.

The fact that change may affect people differently also made collective action difficult. Some thought they would receive more benefits, especially money; “the tribal government was looking at the fact that lots of people wanted money, and they were looking for advancements to a different level” (Informant 3, personal communication, June 16, 2008). It took a long time for the community to come together in the belief that the land was worth more than money, and that they needed to fight collectively in order to keep the land.

The question of avoiding conflict by moving away did not come up in this controversy to the best of my knowledge, however the question of possible repression may also have kept people from uniting originally. One tribal member put it this way; “The reason for the split [over whether to fight or not] was that we were a poor reservation, and everything we had we had gotten from the government, so it was hard to fight the government” (Informant 8, personal communication, June 23, 2008). This is the only time in the interviews that anyone mentioned such a fear, but it may have played a large role in tribal members not wanting to fight for their land.

The final reason that collective, open resistance often does not come up is that people feel that the important thing is to survive, and so they adapt, albeit with anger. This did not come up in the Orme Dam conflict, because the people equated keeping the land with surviving as a people. One informant said that in choosing an alternative to Orme dam, the federal government “saved the land and preserved the way of life and sovereignty for the community” (Informant 1, personal communication, June 10, 2008). To accept the loss of their land would be to perish as a people, so the only thing the tribe could do was undertake collective, open action. This indicates that although there were misunderstandings about the threat, and although some tribal members
thought that selling their land would bring them more benefits than keeping it, and although there were possible fears of repression against them if they stood up for their land, eventually the community was able to unite against a common threat and did use open, collective actions of resistance. This is seen in the referendums which overwhelmingly reject the dam (Schilling, 1998). No matter how divided the Yavapai were at the beginning of the conflict surrounding Orme Dam, they were able to work together against the dam for the final stages.

*Government of Arizona.* There were many different groups and individuals in the Government of Arizona that played important roles in the conflict. During the long days of getting the CAP authorized from 1918 to 1968, Secretary Stewart Udall and Senator Hayden (among others) played important roles in pushing the legislation through the Senate (Johnson, 1977). A number of different Governors served in office over the approximately forty years that Orme Dam was discussed, with Governor Babbitt (1978-1983) in particular coming up in many of the archival records. From my searches in the Arizona State Archives and the Arizona State University Archives, there were no signs of internal dissent within the government of Arizona: everyone was committed to the Central Arizona Project, and Orme Dam as a feature of the project.

Specific stances did change over the years. As the Fort McDowell Yavapai and their supporters became more vocal against Orme Dam, there are more records of meetings between governors and the Yavapai, more records of correspondence, and in the late 1970s, government committees such as the Interagency Task Force on Orme Dam Alternatives included a few Fort McDowell Yavapai in their membership (Interagency Task Force, 1977; Informant 4, personal communication, June 17, 2008). Within the Arizona government, such committees as the Interagency Task Force and the Governor’s Advisory Board (which also included a few Yavapai tribal members) were also created at about the same time in order to investigate alternatives to Orme Dam. The groups were committed to the CAP and brought together many different viewpoints in an advisory capacity, some of which were for and some opposing the creation of a dam. These groups do not signal a change in the Arizona government policies, but rather an
accommodation of a large portion of the population who were against Orme Dam and its many potential impacts.

This change in stance does show how power relations were slowly changing. The Yavapai shifted from not even being consulted during the early years of the conflict to being included in official decision-making capacities; this shows that Godelier’s social relations were being abolished. Godelier (1986) states that hierarchies are only maintained with the consent of those in the lower groups, and drawing on this statement, it appears that the Yavapai chose not to consent to remain in a less powerful position, but to build a power base and stand up to protect their rights. As a result of this decision and the actions taken to protect themselves, social relations that once saw the BOR and the Arizona government as having the ability to make decisions without consulting indigenous groups changed. The Yavapai emerged as important parties with the ability to contribute to making decisions that would affect them.

Federal Government. The federal government’s Bureau of Reclamation played a huge role in the Orme Dam conflict. In her 1998 book, The Struggle for Water: Politics, Rationality and Identity in the American Southwest, Wendy Espeland examines the Orme Dam controversy and specifically focuses on the differing definitions of rationality between the Yavapai and two different groups in the Bureau of Reclamation: the Bureau engineers (who she terms as the Old Guard) and the newer Bureau employees (the New Guard). For this section, her discussion of BOR itself and the two factions who were at work during the Orme controversy is most relevant.

The “Old Guard”, according to Espeland, were the engineers, those who were “dedicated to their agency and to the dam they had spent years designing and defending” (1998, xiv). They had made the plans for Orme Dam, had been with BOR through the years when big dam projects were the norm, and now saw Orme as a symbol of their power and a way to justify their past. This subgroup in BOR had a huge personal and professional interest in building Orme.

The “New Guard” were younger, non-traditional BOR employees who had been brought in to comply with the National Environmental Policy Act requirements, which had been signed into law in 1970 (Espeland, 1998). These new employees represented a number of disciplines,
among them biology and social science, and as a group they wanted to make Environmental Impact Statements that were worth something, and that went beyond merely confirming decisions that had already been made. They believed that everything in dispute here could be commensurated, defined as using a common measurement unit in order to compare properties that are typically measured by different units. An example of this would be attempting to compare an indigenous understanding of the sacredness of land with a Western dollar amount. The New Guard thus created the Central Arizona Water Control Study using rational decision-making models to break things down enough so that different values could be seen and understood on a common scale. Thus, within BOR, there were two specific parties, the Old Guard who were willing to fight for Orme, and the New Guard who wanted to use rationalism to compare the various issues in play. As Espeland points out, the New Guard’s model of commensuration was not applicable to the situation, because the Old Guard’s attachment to the dam itself was not measurable, and nor was the Yavapai attachment to their land. The Old Guard had come to view Orme Dam as synonymous with their engineering ideals, and as Espeland said, “to abandon Orme Dam was to admit having wasted much of their careers” (1999, p. 16). For the Yavapai, their land is central to how they live and what their identity is; to lose the land would be to lose themselves and their culture. There is no way for these deep-set values to be put on a scale and evaluated in terms of each other because they are so tied to identity. The New Guard’s attempt to do so ultimately failed. This is an example of Foucault’s dividing practices, in that even as the New Guard attempted to respect Yavapai concerns, they still believed that money, land and identity could be compared. By making this a norm of the decision-making process, neither the Yavapai nor the Old Guard had a forum in which their concerns could be aired or understood, and particularly the Yavapai were continually faced with an attitude of incomprehension over what was most important to them.

Beyond the Bureau of Reclamation, other entities within the federal government also played a major role in this conflict, although these other individuals and governing bodies did not appear to be overly involved in the details. It was the Senate that originally signed the CAP,
including Orme Dam, into law in 1968, President Carter who removed Orme Dam from the CAP in 1977, and the Secretary of the Interior James Watt who eventually chose to completely reject Orme Dam in favor of another alternative, but in the actual negotiations and day-to-day dealings between the parties, the federal government, aside from BOR, appeared to take a back seat. In my searches in the archives, I found very little indicating that the Bureau of Indian Affairs was involved in any way. Various officials and Yavapai tribal members went to Washington to testify before Appropriations Committees and to speak with individual senators, and this may have contributed to changing the view that Orme Dam was a needed and necessary part of the CAP. As early as 1976, Morris Udall reacted to the Yavapai referendum rejecting Orme Dam by saying that he did not see how the federal government could support taking tribal land in view of the overwhelmingly negative vote (Schilling, 1998). Although Washington’s view seemed to support choosing an alternative to Orme during the late 1970s and probably contributed to the eventual decision to abandon the proposed dam, this dispute was primarily between the Yavapai, the Government of Arizona, and the Bureau of Reclamation.

Analysis of Conflict Sources

I have already given a brief history of the conflict itself, and from this history we can identify certain sources of the conflict. As Espeland notes, the idea of bringing Colorado River water to Arizona had been first developed in the late 1800s, and had become a “sacred cow” for Arizona and its populace (1998). For the Arizona government and many Arizona citizens, it was imperative to take steps to ensure that Arizona would not be faced with a water shortage in the future (Johnson, 1977). Flood control was also essential as the floods of 1978 and 1979 took out numerous bridges; this raised the cry for Orme Dam (Schilling, 1998). For the Bureau of Reclamation, that meant building a dam and Orme Dam, situated as it was on the confluence of the Salt and Verde Rivers, was in the ideal place to achieve a number of engineering goals at once.

The Yavapai feared the destruction of their culture if they were to be forced to relocate again, as the proposed construction of Orme Dam threatened. Yavapai cosmology states that the
world has been destroyed by catastrophe three times, and they venerate the places where certain events occurred during the different ages of the world (Khera and Mariella 1983). These areas include Montezuma Well and the Cave of First Woman in the Red Rock Mountains. Neither of these sacred sites is located on the land that would have been flooded by Orme Dam, however there may be other sacred sites located on that land. Even if there are no such sites, Yavapai ritual is closely tied to the sacredness of the land on which the people live and which sustains them and the flooding of Fort McDowell would have destroyed their link to their land (Khera and Mariella, 1983). The Yavapai also have a long history of betrayal by Whites and the American government, and that created another source of tension. These four points, Arizona avoiding a future water shortage and creating flood control, while the Yavapai were afraid of cultural destruction and used to Anglo betrayal, were the original sources of the Orme Dam conflict, and numerous issues further confused things.

**Analysis of Issues**

Christopher Moore also offers a framework for understanding the issues of a conflict in his book, *The Mediation Process*. The five categories of issues are relationship, data, interest, structural, and value, and are shown in Moore’s “circle of conflict” (see Figure 1, pg. 85) (Moore 2003). All five of these categories are reflected in the Orme Dam controversy.
I have already mentioned that the Yavapai have a distrustful relationship with the American government and non-Natives in general, and this was exacerbated by poor communication from BOR and the Arizona government. Various informants who were involved in the conflict stated that to the government, the Yavapai “were like a second thought” (Informant 7, personal communication, June 23, 2008): there was never any discussion around whether the dam would be built, but the Indians were expected to go along with plans that had been made without their knowledge (Informant 1, personal communication, June 10, 2008; Informant 2, personal communication, June 14, 2008). Another informant stated that “the government did not carry out their trust obligations” (Informant 7, personal communication, June 23, 2008). These were disciplinary technologies as the government made decisions and began to enforce them without discussing them with the Yavapai. The Yavapai, in turn, fought these power relations by increasing their power and changing perceptions of the importance of the indigenous voice. This eventually brought them into the decision-making process.
There were also stereotypes brought out about the Indians, even in the Task Force for Alternatives to Orme Dam. One of my Yavapai informants (Informant 4, personal communication, June 17, 2008) who was on the Task Force told me that he was very glad to be there because other members brought up all kinds of insulting things about Indians, for instance, that they were lazy. This informant was grateful to have the chance to contradict these notions and prejudices, but it is obvious that other parties held misperceptions about the Yavapai that colored their choices around including Indians in the decision-making process or respecting Native views. Using these stereotypes is another type of disciplinary technology and dividing practice, in that the Yavapai and Indians in general were kept down by widespread perceptions that they were not worth including in the decision-making process.

There were data issues as well, as the Yavapai repeatedly asked for information about the dam and its impacts, including estimates of lake fluctuation levels once it was built, and were told that BOR did not have that information (Schilling, 1998). There were also very different views on what was relevant. As Espeland (1998) discusses, land is considered sacred to the Yavapai and this respect of and value for the land above all other issues was considered by the Yavapai to be relevant to the decision-making process. The BOR, on the other hand, was not interested in the relevance of land as a sacred resource but in the importance of creating water resources that would take care of Arizona for the next generations. These different views made it almost impossible for these two parties to communicate, as they continually brought up viewpoints that the other side considered to be irrelevant. These views also played into assessment procedures: although the BOR might consider the CAWCS process to be extremely fair and just, the Yavapai could not see it that way as it did not allow for an understanding of the land as something sacred that could not be bought or sold. The different methods of assessment of worth made it even more difficult for the parties to communicate their perspectives and get beyond the deadlocks of believing the other parties’ views to be irrelevant. The BOR and the government of Arizona controlled the discourse around what was relevant, and this was again a disciplinary technology
designed to keep the Yavapai as docile and unable to challenge the dominant narrative that states that money and profit are more important than land and identity.

There are three types of interests, as defined by Moore (2003): substantive, which are for money or specific goods; procedural, which defines how people need to be treated in the process of negotiations; and psychological, which deals with the emotional and relationship needs that parties feel during the process and need to have met in the outcome of the negotiation. The Yavapai, as mentioned above, respect the land as a sacred entity and they draw their identity from it (Espeland, 1998). Espeland (1998) quotes one young Yavapai man from the reservation as saying “there’s no real dividing line that separates you from it [the land]” (p. 2). Losing their homeland would mean that they would lose their culture and that which makes them who they are. This was both a substantive and a psychological need in that they needed land, and also the emotional relationship that they have with it. Arizona agribusiness and developers, on the other hand, put a great deal of importance on having enough water for the future (Schilling, 1998). This is again a substantive need. As the struggle continued, Arizona citizens also worried about flood control and many were of the opinion that only Orme Dam could provide the protection they needed (Schilling, 1998). This need for flood control is both substantive and psychological: the citizens needed a specific service, flood control, but they also needed to feel safe.

Procedural interests for each side would have included being heard, and this is one interest that the Yavapai continually felt was not met (Schilling, 1998). One informant stated that, “the government was trying to tell people how they would benefit from the dam. They weren’t listening to the people, just telling them how to do things” (Informant 3, personal communication, June 16, 2008). The Yavapai also felt coerced, and as the processes changed from expecting the Yavapai to accept Orme Dam and its ramifications to hearing their concerns, the procedural need to be brought into the process was also met: it took a long time, but the Indians and their allies were eventually able to convince the agencies that “benefits imposed on us is not a benefit” (Informant 1, personal communication, June 10, 2008).
Structurally, there were some imbalances in power. Specifically, in a letter dated February 21st, 1973, C.A. Pugh of the Bureau of Reclamation told then tribal Chairman, Robert Doka, that after formal appraisals were made of the land to be used for the dam, a formal offer would be made to the Fort McDowell community. The community was at liberty to refuse the offer, but if they did so, the lands could be taken using eminent domain. This structural imbalance put the Yavapai at a disadvantage in resolving the conflict, and was another disciplinary technology aimed at controlling and dominating the Yavapai.

Finally, the Orme Dam controversy was definitely a values conflict. There were fundamentally different lifeways and ideologies at stake here, with all the differing criteria for evaluating ideas and formulating goals that this implies. The difference in how land is valued has been discussed above, and certainly it was difficult for the Yavapai to hear that their land was worth a dollar amount when it is beyond compare to them. Other parties could not accept that land was worth more than money, and to sell the tribal homeland would be like selling a piece of your heritage. One Yavapai teenager is quoted as having said, “The land is our mother. You don’t sell your mother” (Espeland, 1998, p. 183). These value systems are mutually exclusive, creating more difficulty in communication throughout the conflict. Also, certain informants I interviewed told me that they felt their job was just letting people know that there were people on the reservation who did not want to move and change their lifestyles; getting people to understand their point of view was a huge issue for some (Informant 3, personal communication, June 16, 2008; Informant 4, personal communication, June 17, 2008; Informant 5, personal communication, June 18, 2008). Again this shows a different value system in that other parties to the conflict did not seem to think much of moving, while for the Yavapai, moving would destroy their traditions and way of life.

Each of the five types of issues (relationship, data, interest, structural and value) did play a role in this conflict. The history of distrust and relationship issues made dealing with the problems very difficult. The Yavapai were disinclined to trust any non-Native agencies or organizations especially when the individuals in these organizations held various negative
stereotypes about Indians. Data issues made mutual understanding difficult if not impossible, and the fact that each group considered different types of data to be applicable meant that they could not discuss the worth of the land or how it might be assessed. Substantive, procedural and psychological interests were also at play. Having the land was a substantive issue for both parties, while the Yavapai were concerned that they were being left out of the decision-making procedures and processes. Psychologically, each group was interested in maintaining a feeling either of oneness with the land (Yavapai) or of security from the danger of floods (Arizona citizens). Power imbalances made the situation more difficult as the Yavapai were unable to protect their interests and be heard when they were afraid that they would lose their land anyway. The different value systems also contributed to making communication and understanding between parties more difficult, as each party valued the land and how it would be used in different ways.

Consequences

The immediate consequences of the Orme Dam conflict were that the dam was not built. This was an incredible victory, for interest groups to defeat a dam that had been passed in congressional legislation. The Yavapai were not relocated, and they celebrated their victory with a Pow Wow that has since become an annual celebration (Informant 3, personal communication, June 16, 2008). According to Schilling (1998), four factors dealt the death blow to Orme Dam: Indian opposition to the project, criticism of the project by environmental and taxpayer groups, questionable economics and the threat of litigation. Although the Yavapai had less power than the agencies and organizations promoting Orme Dam, they managed to build a power base through coalitions and threatening litigation and this power base was strong enough to force the Arizona government to change their plans and build an alternative to Orme.

While this is exactly the outcome that the Yavapai desired, Espeland (1998) points out that they were, in spite of this victory, ambivalent about it. They were overjoyed that the dam would not be built, but they would have preferred different reasons for winning. They felt
misrepresented by the procedures used to decide whether Orme Dam should be built or not, and the final decision was not made based on the fact that it would be wrong to take their land.

In the longer term, the struggle over Orme Dam has changed the Yavapai in other, less obvious, ways. Espeland (1998) notes that through their efforts to retain their land and identity, the Yavapai have had to develop cohesive accounts of who they are and why they are different; they have also had to enter into local politics, expanding their horizons and becoming more politically aware. The fact that they were able to effectively fight Orme Dam when they had so few resources and political leverage at the outset has changed how they see themselves and their understanding of what they are capable of achieving. The Yavapai were also, as a result of the dam not being built, able to create a casino and world-class golf course, plant thousands of pecans and citrus trees on their communal farm, create and expand the sand and gravel company, and bring people back to the reserve (Informant 1, personal communication, June 10, 2008).

This informant also noted that the tribe has a lot more respect, and this victory put them on the way to having more of a government-to-government relationship with the government of Arizona and the federal government. He also stated that while he feels that the tribe has enough sovereignty to protect themselves and their homeland, they need to continually exercise this sovereignty and remind outside governments of Yavapai tribal sovereignty. The Orme Dam conflict strengthened tribal sovereignty, according to him: “the government needed to allow us to defend ourselves. We needed respect, and we were able to get that” (Informant 1, personal communication, June 10, 2008). This restructuring of power and the structural issues discussed above came about as a result of the political leverage and power that the Yavapai were able to create with their coalitions and continual, public opposition to Orme Dam.

Tribal Assertion of Sovereignty

As discussed in the methods section, two frameworks will be used to discuss the indicators of sovereignty in conflict resolution processes and outcomes (see Table 3, pg. 60, for processes, Tables 4 and 5, pg. 63 and 65, for outcomes).
Indicators of Sovereignty in Conflict Resolution Processes

Respect. The first indicator of sovereignty in the conflict resolution processes deals with respect. Ways in which this indicator could be operationalized include outside governments and agencies paying attention to cultural differences instead of ignoring them, engaging with leaders that indigenous groups have chosen for themselves, arranging transportation for indigenous groups to attend meetings or having meetings in accessible areas, high level outside officials meeting with indigenous groups, and establishing and upholding ground rules for interactions. At the beginning of the Orme Dam conflict, tribal members felt that they were not respected by the government (Informant 1, personal communication, June 10, 2008). It was very difficult for them to get to hearings on whether the dam should be built, and often it was very expensive for them to pay for their own gas and transportation (Informant 5, personal communication, June 18, 2008). Meetings did not take place in which high level officials could discuss the proposed project with tribal members (Schilling, 1998), and Yavapai concerns were not truly addressed till late in the conflict (Williams, M. to Regional Director, BOR, personal communication, 1976; Williams, K. to Regional Director, BOR, personal communication, 1976; Dickson, L. to Regional Director, BOR, personal communication, 1976; Johnson, A. to Regional Director, BOR, personal communication, 1976; Williams, J. to Regional Director, BOR, personal communication, 1976). Andrew Johnson’s letter (1976) stated,

You say that we Indians of Ft. McDowell were kept well informed what was going on about Orme Dam. This is not so. Information about Orme Dam was all but kept away from us until everything was settled and worked out for you. When the bill about CAP and thus Orme Dam was introduced to Congress in 1947 the Bureau of Reclamation did not tell us Indians about Ft. McDowell. Also later on we were kept out from all decisive meetings. The community was never officially informed until everything was authorized by Congress.

Later, in 1977, five Indians were included on the Interagency Task Force on Orme Dam alternatives, one of whom was from Fort McDowell (Membership list, 1977). One of the tribal members who was on the Task Force did not feel that this was overly helpful. He stated that out of the forty people on the committee, only five of them were against the dam; “what kind of odds is that? [the others were all] hand-picked by the governor” (Informant 4, personal communication,
June 17, 2008). As he continued on the task force, this informant did, however, begin to see public opinion swing in favor of the Yavapai. He was able to bring the rest of the task force members out to the reservation to see how the tribal members lived, and this may have helped the task force eventually chose an alternative to Orme Dam.

The fact that a Yavapai was on the task force and that they were able to exert some influence over other members showed that the Yavapai and other Indians involved were now being respected and treated as important parties to the conflict. It would appear that although the Yavapai were not respected in the beginning stages of the conflict, as time went on they were brought into meetings, their concerns were heard, and they were treated more respectfully.

Communication. The second indicator deals with communication and as discussed in the “Issues” subsection above, the Yavapai in general felt that they were not heard by outside agencies. Communication can be measured in terms of when indigenous groups are informed of plans and projects, asking whether difficulties are discussed and addressed rather than ignored, and whether communications are respectful and outside agencies are truly listening to indigenous concerns. Although the Yavapai appeared to be aware that there was a possible dam project in their futures, they were not informed about the dam until the legislation was passed. This as well as the ongoing frustration at not being heard by outside agencies supports the assertion that sovereignty was not respected through communication during the conflict resolution processes.

Carolina Butler, founder of the Committee to Save Fort McDowell and outspoken advocate and support for the Fort McDowell Yavapai Nation throughout the conflict, wrote an article in 1995 giving the story of the Orme Dam controversy. She stated that over the many years while the CAP was being debated in Congress, although many Arizona statesmen went out to testify, no one informed the Fort McDowell natives and it was not till four years after the legislation was passed that BOR actually met with the tribe. Schilling (1998) states that there were meetings between BOR and the tribal council prior to this, but when I spoke with various tribal members during the summer of 2008, they said that they were not informed until much later. One tribal member stated that “they should’ve contacted us and come out to the reservation and
talked with the people and the council, which they never did until the legislation was passed” (Informant 1, personal communication, July 7, 2008). Pattea’s letter of 1968 to Secretary Udall reflected the frustration felt about not being informed about the possible loss of their land. This lack of communication shows a distinct lack of respect for indigenous sovereignty on the part of BOR and the State of Arizona.

The Yavapai tribal council apparently participated in some discussions with the Bureau of Reclamation during the 1950s, but no actions were taken because the Arizona-California water dispute was still ongoing. There was some communication in the 1960s, but according to Schilling (1998), most discussions were initiated by the Salt River Pima-Maricopa tribe, not the Yavapai. The first requests for information from the tribal council that I found in the archives were letters sent in 1963 from then council Chairman Andrew Johnson to Arizona Senators Barry Goldwater and Carl Hayden, and various other government representatives in Washington. Each of the letters asked for help in dealing with a situation that Johnson did not yet understand; all he knew was that people were trying to take his tribe’s lands, and he needed more information and support (Johnson to Goldwater, personal communication, March 23, 1963; Johnson to Goldwater, personal communication, July 5, 1963; Johnson to Haley, personal communication, November 4, 1963; Johnson to Hayden, personal communication, June 25, 1963; Johnson to Nash, personal communication, September 22, 1963).

The Bureau of Reclamation and other government officials did eventually respond to the Tribal Council’s many letters, however Schilling reports many instances where the tribe felt frustrated that it was not being heard. Ben Avery’s 1972 article in the Arizona Republic quotes a council member;

“We were given five minutes to talk to Secretary of Interior Roger Morton two weeks ago, but our coordinator, a BIA employee, told him we wanted more land… We wanted them to select an alternate site for the dam, store water in Carl Pleasant Dam, use Granite Reef Dam, and not flood our reservation. But no one listens to us.

The Scottsdale Progress printed a summary of what BOR might offer the Yavapai, but notes that a formal offer has not been made (1974). This was extremely frustrating to Informant 4, a tribal
member who had been a council member during the conflict; “the offer was made by the newspaper”, and not by any officials (personal communication, June 17, 2008).

Consultation is an indicator of sovereignty because if an indigenous group is consulted about a project, it shows that the agencies involved are respecting their status as a sovereign nation that will be impacted by the plans. It can be included with the communication indicator because it involves outside agencies choosing to communicate with indigenous groups at early stages in the planning and decision making processes. Although the Yavapai were not consulted in any of the preliminary planning stages, towards the end of the conflict, it appeared that the various officials involved were taking the Yavapai more seriously, as when two tribal members were invited to sit on the Committee for Orme Dam Alternatives (Informant 4, personal communication, June 17, 2008). Consultation did take place, however not until the final stages of the conflict.

**Indicators of Power.** Giving some decision making power to all participants is another indicator of sovereignty in that if a tribe enters into negotiations, they expect that they agreements reached are binding: if the agreements reached are not enforced, that would signify that the other parties did not see the tribe as a sovereign entity to be respected. I found no evidence of the Yavapai being given some degree of decision making power as there were no official negotiations.

Equal power has been identified as an important indicator of sovereignty, as without it, decisions can be made without consulting the tribe. Equal power can be seen in committing to use a consensus-building type of process where all participants have equal voices or in keeping from making references to taking resources or land by force. The Yavapai did not have many resources when Orme Dam was first proposed. They were a poor tribe, and one non-Native opponent to Orme Dam stated that the tribe had no money, nor did they even know how to send telegrams (Informant 5, personal communication, June 18, 2008). Butler (1995) also stated that in the early years of the conflict the Fort McDowell elders who went to Washington D.C. to present their case had to pay their own way and get their own lodgings. These facts seem to indicate that
there were no agencies, mechanisms or resources available to the Fort McDowell Yavapai to help them protect their sovereignty or give them equal footing with other parties.

In order to effectively fight Orme Dam, the tribe needed to create its own sources of power, and they did so by creating a vast coalition of supporters and groups with other complaints about the proposed dam. One tribal member joined another group of individuals and organizations to do the only legal action that took place during this conflict (Informant 13, personal communication, June 26, 2008). Along with these citizens and organizations, he took BOR to court to try to stop them from building a siphon that would have kept one of the alternatives to Orme from being built. The case was never settled and the siphon was built, but he was able to get the Yavapai point of view heard and bring more power to the Yavapai’s cause. Every single person I interviewed, whether Yavapai or non-Native, stated that having the support network was essential to fighting Orme Dam. One informant stated that

There was a big movement against Orme that included the Audubon society and other organizations. The eagles were on the extinction list, and my theory is that’s what saved us – not the water that would drive the Indians out, but that it would destroy the eagles’ habitat. The Audubon society was very strong and a lot more organized. There were also lots of church groups involved. (Informant 9, personal communication, June 24, 2008)

In order to assert their sovereignty and make sure their voices were heard, the Fort McDowell Yavapai had no choice but to create a large enough power base that would force government agencies and officials to deal with them as equals.

When it comes to equal power in a discussion between the state and federal government and an Indian government, the question of eminent domain can also arise. Under the provisions of the CAP legislation, the government did have the right to acquire the Fort McDowell land using eminent domain if tribal members refused to give up their land (Schilling, 1998). At one point early in the dispute, the tribe was threatened with having their land taken through eminent domain if they did not cooperate. One informant told me that “they [BOR] said that if we didn’t approve it [giving up tribal land for Orme Dam], they’d condemn the land and take it away” (Informant 14, personal communication, July 3, 2008). This again shows the power imbalance between the Yavapai and the Arizona government.
Taking Action as a Sovereign Entity. The fifth indicator of sovereignty in conflict resolution processes is that of the indigenous group taking action as a sovereign entity. These actions can include doing studies on proposed plans, building support and coalitions to increase bargaining power, taking legal actions, or direct violent or non-violent actions to protect interests, with the possibility of other actions as well. As stated above, as early as 1963 tribal Chairman Andrew Johnson began sending out letters to various officials asking for help and information (Johnson to Goldwater, personal communication, March 23, 1963; Johnson to Goldwater, personal communication, July 5, 1963; Johnson to Haley, personal communication, November 4, 1963; Johnson to Hayden, personal communication, June 25, 1963; Johnson to Nash, personal communication, September 22, 1963). The next tribal action was to issue a joint tribal paper with the Salt River Pima Maricopa Indian Tribe on the proposed Maxwell Dam (would eventually be known as Orme Dam) (Salt River Pima Maricopa and Fort McDowell Indian Communities, 1964). This paper listed the contact between the Bureau of Reclamation and the two Indian communities, explains the dissatisfaction felt by the communities at BOR’s performance, and asks for information on various issues that Maxwell Dam would bring up. One statement in particular affirms tribal sovereignty:

We are less than impressed by the Bureau of Reclamation’s performance. It does not take the Indians, or their rights, at all seriously. Apparently it views the two reservations as no more than off-breed sorts of federal land, and that the Bureau of Indian Affairs (a sister Agency) will, when the time comes, see that the Indians stay in line. (Salt River Pima Maricopa and Fort McDowell Indian Communities, 1964)

From 1964 on, there are many letters from various tribal chairmen asking for more information, as well as some tribal resolutions stating their unequivocal opposition to Orme Dam (Fort McDowell Mohave-Apache Community Council Resolution 77-08, 1977; Smith to Fannin, personal communication, Jan 23, 1969; Smith to Weiler, personal communication, October 22, 1968; Steiner to Doka, personal communication, March 5, 1973). In 1981, tribal chairman Norman Austin also sent letters advocating that an alternative to Orme Dam be chosen and inviting decision-makers out to the reserve to see why they did not want their land inundated (Austin to
Besides letters, the tribal council took other actions; it completed its own tribal report on Orme Dam and its possible effects in 1971, and stated that they would expect to have control over all developments on tribal lands if the dam was built (Schilling, 1998). This is similar to the Fort Berthold study done on the Garrison Dam project in the Pick-Sloan case (Lawson, 1982). In 1976, the tribal council held polls and a referendum on Orme Dam, each of which condemned the dam (Fort McDowell Mohave Apache Indian Community, September 25, 1976). Chairman Johnson presented the results of the polls to the US House and Senate Appropriations Committees (March 26, 1976). In 1977, along with the other four central Arizona tribes, Fort McDowell issued a statement to address President Carter’s objections to the CAP, and included the point that Orme Dam should be eliminated from the CAP (Five Central Arizona Indian Tribes, March 8, 1977). The Council also held a press conference in 1980 asking for help from the general public to keep Orme Dam from destroying a Native American culture, as well as putting out a flyer to inform the public about alternatives to Orme dam (Fort McDowell Mohave Apache Indian Community, March 3, 1980; Fort McDowell Mohave Apache Indian Community, March 27, 1981). Finally, in a letter to dam opponents in 1981, Chairman Austin spoke about officials who had and would visit the reservation and upcoming coalition activities which included ecumenical services, a 10,000 meter run and the Trail of Tears march to the Capitol (Austin to Opponents of Orme Dam, August 10, 1981). Tribal Council members also went to Washington to speak about Orme Dam throughout the controversy (Schilling, 1998).

Although the tribal council did take many actions over the course of the conflict, it took them a long time to start acting. The Yavapai were not united at the beginning of the Orme Dam conflict. According to Schilling (1998), the tribal attorney Tom Fredericks advised the tribal council not to take a stand on Orme Dam until BOR finished its studies; the studies were not completed until 1976. Various other tribal members, however, got involved from the very beginning. According to one tribal member who was involved as a child in the conflict (Informant 3, personal
communication, June 16, 2008), a small group of people began fighting Orme Dam from the late 1960s until the rest of the tribe got on board. This small group was in contact with Carolina Butler, who created the Committee to Save Fort McDowell, and began forming the coalition that would be so powerful towards the end of the conflict. They also began going to a public hearings in surrounding towns in order to inform people that the Yavapai did not want their land flooded. They also went to Washington DC in order to present their views to various senators. Two 1973 letters from Tribal Chairman Gilbert Jones point to the various factions within the Yavapai tribe; one to Carolina Butler, asking her not to interfere on the reservation without the permission of the tribal council, and a second to Senator Goldwater informing him that the tribe can only take a stand on matters by creating a resolution (Jones to Butler, personal communication, October 17, 1973; Jones to Goldwater, personal communication, November 16 1973). This would mean that decision-making rested in the hands of the tribal council and majority, and would perhaps exclude the small group of elders spoken of by Informant 3 who presented opposition to the dam from the 1960s (Informant 3, personal communication, June 16, 2008). Pattea’s 1968 letter to Udall supporting the CAP and Orme Dam also indicates that some within the tribe felt that the dam might bring good development opportunities, although in 1974, the Tribal Council said that this had never been their official position (Pattea to Udall, personal communication, January 31, 1968; Scottsdale Progress, 1974).

All of this disunity changed towards the end of the conflict, again as witnessed by Informant 3 (personal communication, June 16, 2008). By this time, the tribe was united in its opposition to Orme Dam, and Tribal Chairman Norman Austin was extremely active in writing letters and organizing events with the tribe and its coalition to support the Yavapai viewpoint (Austin to Broadbent, personal communication, June 10, 1981; Austin to Hemley, personal communication, September 24, 1981; Austin to Hinds, personal communication, July 15, 1981; Austin to Opponents of Orme Dam, August 10, 1981).

Although unity is not necessarily an indicator of the presence of sovereignty in conflict resolution processes, it did contribute to the tribe’s ability to assert their sovereignty. At the
beginning of the conflict, the tribe was not acting as one and it seemed that the dam would be built over their objections. As the tribe coalesced and worked together to fight the dam, they began taking more actions as a sovereign nation. One tribal member stated that

There was a split on the reservation in the beginning, but it unified toward the end. It was split because we were a poor reservation, and everything we had we had gotten from the government, so it was hard to fight against the government… when the conflict first started, it was very unpopular to stand against Orme Dam because people were afraid of the government. (Informant 8, personal communication, June 23, 2008)

The awareness-raising and coalition-building activities seem to have made up the bulk of the work against Orme Dam. Almost everyone interviewed at Fort McDowell spoke about the overwhelming support of the community, and the importance of attacking Orme on many fronts. Bringing in environmentalists, recreational users of the Verde River, taxpayers groups and Native concerns created a powerful network of groups and individuals united against Orme Dam (Schilling, 1998). Attending public hearings about Orme Dam and engaging in events like the 1981 Trail of Tears March to the Capitol also kept reminding the public that the Yavapai did not want to be relocated (Informant 4, personal communication, June 17, 2008; Informant 10, personal communication, June 27, 2008; Informant 15, personal communication, June 10, 2008; Tulumello, 1981).

*United Nations Declarations Indicators.* According to the United Nations Declaration on the Rights of Indigenous Peoples (2007), a nation-state is required to get informed consent from indigenous groups before passing legislation that would affect them. This is also an indicator of sovereignty in process, and it was not met in this situation. The CAP legislation was passed before the Yavapai were even informed about the possibility of a dam, and certainly their consent was not solicited (Schilling, 1998).

Prompt and fair decision-making is an indicator of sovereignty in process because it implies respect for those who have brought issues to be resolved. Also, waiting to take action until after decisions have been made upholds sovereignty because waiting recognizes the right of those who brought the issues to have these questions resolved before anything is completed. In the case of the Orme Dam dispute, Yavapai issues were eventually addressed, and no actions
were taken until a decision had been made. The almost twenty-year conflict may not have been completely time-efficient, but once the Yavapai had brought enough attention to the problems, they were addressed. One tribal member who was a child at the time, looking back realizes that people were getting sick during the years of the conflict, probably from stress and fear of the unknown. There were so many unknowns during that time; “when they would be relocated, where they would be relocated, how many years it would take, and so on” (Informant 10, June 27, 2008). The delay in getting these issues addressed was hugely stressful for everyone on the reservation, and if the agencies involved had discussed the issues with the tribe earlier, it is possible that resolution would have been made in a more prompt manner.

Also required by the United Nations Declaration on the Rights of Indigenous People (2007) is that the nation-state ensures that indigenous groups understand conflict resolution processes and can be understood by other parties to the process. In this case, Carolina Butler first began making the Yavapai aware of their rights in regards to the conflict and processes (Schilling, 1998). The state and federal government took no actions to inform the tribes about the processes available to them in the situation until the CAWCS was convened. In inviting the Yavapai to participate in this problem-solving process, Arizona did ensure that they understood what was going on towards the end of the conflict.

**Indicators of Sovereignty in Process Outcomes**

As discussed above, I am using d’Estree and Colby’s (2004) criteria for effective environmental conflict resolution and certain articles from the United Nations Declaration on the Rights of Indigenous Peoples (2007) to guide my discussion of whether the outcomes of these processes were effective. Although some of these indicators refer to other parties in the conflict, I have focused exclusively on the indigenous perspective and do not offer any information on other parties. Please see Tables 4 and 5, pg. 63 and 65, for a quick review of these frameworks.

**d’Estree and Colby Framework.** The Orme Dam conflict meets the first criteria of outcome reached, as Secretary of the Interior James Watt announced that an alternative to Orme Dam would be built (Schilling, 1998). Indicators for this criterion include unanimity or consensus,
public acknowledgement of outcome, and ratification. This alternative was chosen by recommendations from various groups, and although there is no information on whether individuals in these groups came to consensus that Alternative 6 was the best option, the fact that it was recommended by the various committees imply that most were satisfied with this outcome. Informant 4, who was one of the Yavapai on the committee to study alternatives to Orme Dam, notes that when it came time to vote for which option to recommend, "no one voted for any of the plans involving Orme dam" (personal communication, June 17, 2008). While consensus may not have been a requirement of the conflict resolution process, it seems that consensus was reached. The outcome was publicly acknowledged by Secretary James Watt when he issued a statement saying that he did not support the dam (Informant 3, personal communication, June 16, 2008). The decision was ratified in that Orme Dam was not built.

Indicators for outcome quality include cultural sustainability/community self-determination, clarity of outcome and public acceptability. It was culturally sustainable in that the dam was not built and the Yavapai were not required to change their lifestyle (Informant 1, personal communication, June 10, 2008; Schilling, 1998). It also implied some community self-determination, as if the Yavapai had not fought the dam, it is probable that the dam would have been built. Schilling (1998) lists Indian opposition as one of the four key factors that kept Orme dam from being built, and so Yavapai self-determination was eventually respected in this case. The outcome, not having the dam be built, was very clear, and it was also acceptable to the Yavapai in that it was exactly the outcome they desired.

Relationship of parties to outcome can be judged by outcome satisfaction/fairness as assessed by parties, and compliance with outcome over time. The relationship of the Yavapai to the outcome was that it was fair, and they were satisfied. Informant 4 teared up when recalling the vote to build an alternative to Orme; "it's just as hard today as it was back then, emotionally for me" (personal communication, June 17, 2008). Another informant repeatedly stated "no all the way to Orme dam" in our interview, indicating that she is satisfied with the outcome, although possibly also wary of the project coming up again in future (Informant 11, personal
communication, July 1, 2008). The dam has not been built since then, and so the outcome was also durable and stable and has been complied with over time (Informant 1, personal communication, June 10, 2008).

In spite of this satisfaction with the immediate outcome, the Yavapai do have enduring fears about losing their land (Informant 3, personal communication, June 16, 2008; Informant 4, personal communication, June 17, 2008; Informant 5, personal communication, June 18, 2008; Informant 7, personal communication, June 23, 2008; Informant 8, personal communication, June 23, 2008; Informant 14, personal communication, July 3, 2008). One informant believes that a similar threat “could come under a different name”, and for this reason it is important to always teach the children to protect their homeland (Informant 10, personal information, June 27, 2008). Another informant believes that as Arizona needs more water, the government could put more pressure and a “slow harassment” on the tribe to build a dam (Informant 11, personal communication, July 1, 2008). This could imply that although this was a successful outcome, it failed to address certain deep seated fears and questions about how conflict is handled between indigenous groups and government agencies. Perhaps although the outcome is successful, because it did not deal with certain unresolved issues that were not as obvious to the conflict (for example, enduring fears about the government’s reliability in protecting Indian interests, which was not identified as an issue to be examined), the outcome is not as complete as it could be.

While I did not originally intend to investigate social capital, during my research I found that there was some evidence of how social capital was impacted by process outcomes. Social capital is defined by Uphoff and Wijayaratna (2000) as “mutually beneficial collective action”. Uphoff and Wijayaratna offer three streams of social capital, and d’Estree and Colby seem to be speaking of human capital, or “people’s capacity for productive activity that utilizes these other forms of capital [physical, or made by people, and natural, or coming from nature ]” (Uphoff and Wijayaratna, 2000, p. 1876). It measures if there has been any transformation in relationships, and also if the parties are set up to handle future disputes (d’Estree and Colby, 2004). Finally, social capital reminds us that there is a larger context in which this conflict is situated, and asks if
there have been changes to the social system as a result of the conflict. Indicators include citizen capacity to use collective resources, and discusses whether the larger community is able to work together to develop environmental policy.

There was some evident social system transformation and increase in social capital as defined by Uphoff and Wijayaratna (2000). Some tribal members believe that the Orme Dam conflict empowered the tribe and allowed them to stand up for their rights in later conflicts. They specifically mentioned a 1992 casino raid in this context. One informant told me that “Everything that I learned from Orme Dam, I applied it to that casino raid. The thing about Orme Dam and the casino raid – you don’t realize the impact these things will have down the road, not just on this reservation, not just in this state” (Informant 3, personal communication, June 16, 2008). Another informant told me about the governor of the state coming out to negotiate with the Yavapai during this raid (Informant 1, personal communication, June 10, 2008). This is a huge change from how the Yavapai were treated over Orme Dam, and shows at least the beginnings of a government-to-government relationship when dealing with conflict. This indicates that Yavapai social capital and ability to deal with future conflicts has increased as a result of the Orme Dam conflict. The CAWCS process also created a precedent that could be repeated in a similar case and would ensure at least some kind of collaboration. By bringing all parties to the conflict into a rational process meant to examine all possible solutions, the CAWCS has provided a model for conflict resolution that could be used and improved upon in the future. This is a possible example of better community capacity to make environmental decisions together.

Specifically for the Yavapai, the struggle to present a united front also increased social capital. The internal disputes around the tribal elders versus the elected tribal council, whether or not Carolina Butler should be allowed to help in the fight, and what stance to take on Orme dam eventually coalesced with the entire tribe joining together in the Trail of Tears March and various other actions. This decision to change the social relations between the Yavapai and the outside governments and agencies empowered the Yavapai and brought them together into a stronger
indigenous nation that could better assert their sovereignty in later conflicts. Social capital not only increased between the Yavapai and outside groups, but also within the Yavapai tribe itself.

*United Nations Declaration Framework.* The lands and resources section in the United Nations Declaration on the Rights of Indigenous Peoples affirms indigenous right to their lands and resources that they have “traditionally owned, occupied, or otherwise used or acquired” (2007, Articles 26.3, 26.1). They may develop these lands and resources however they choose, and they have the right to strengthen their spiritual relationship these lands. Finally, they may only be relocated with their own consent, and the nation-state involved must enter into an agreement with the indigenous peoples in order to assure just and fair compensation. The Orme Dam conflict upheld these various rights in that the tribe was not relocated and there were no developments made on tribal territory without tribal consent.

The UN Declaration also states that the indigenous group has the right to develop their own lands as they choose. This is operationalized in that indigenous groups have chosen to develop their lands in the ways agreed to in the process outcomes, and that nothing in the outcome will keep the indigenous group from developing their lands in the future. Both of these outcomes are met in the Orme Dam conflict as the indigenous lands in question were not developed, and the outcome made no stipulations about how they could develop their lands in the future. As discussed above, since the Orme Dam conflict, the tribe has developed many new organizations and corporations, including a hotel and golf course, a tribal farm, and a sand and gravel company.

Indigenous peoples must give their consent prior to being relocated, and must have agreed on just compensation for the relocation prior to going through with it. Since there was no relocation required in this case, this indicator does not apply.

Indigenous groups have the right not to have their culture and practices destroyed or to be assimilated forcibly. Further, tribes have the right to practice their customs and traditions, to use their religious sites in private, and to keep their sciences which would include medicinal plants and knowledge of local flora and fauna. Again, the outcomes of the Orme Dam conflict
supported these requirements as the dam was not built and their land was not affected in any way by the eventual outcome.

Indigenous peoples have the right to the recognition and enforcement of all treaties and agreements made with nation-states. Once again, by respecting the borders of the Yavapai reserve, the outcomes of the Orme Dam conflict respected this article.

Finally, the nation-state is required to provide redress for any action that deprives the tribe of their cultural values or identities, dispossesses them of land or resources, forces a relocation, forces assimilation or integration, or promotes discrimination against them. Redress should take the form of lands or resources equal to what has been lost, or, if the tribe agrees, monetary compensation or other items that may be appropriate. Because nothing was taken from the Yavapai during the Orme Dam conflict, the outcome still supports these requirements.

**Degree of Tribal Sovereignty Possessed**

In speaking with the Yavapai informants, a number of common beliefs were brought to the surface as far as what sovereignty means to them. The vast majority of the Yavapai I spoke with (Informant 1, personal communication, June 10, 2008; Informant 3, personal communication, June 16, 2008 and July 1, 2008; Informant 4, personal communication, June 17, 2008; Informant 5, personal communication, June 20, 2008; Informant 7, personal communication, June 23, 2008 and June 30, 2008; Informant 8, personal communication, August 5, 2008; Informant 10, personal communication, June 27, 2008) believed that sovereignty is an inherent right to a tribal way of life and homeland, which included having a say in what happens to one’s community, being able to live in one’s own way with the land and environment, preserving one’s identity and history. This view of sovereignty echoes Barker’s (2005) assertion that sovereignty comes from culture and identity. One informant put it this way:

In order to practice true sovereignty, all native peoples throughout America must always remember where they came from, and know who they are as a people, and protect their identity, culture, lands, and their rights from influences that would destroy them in order to have true sovereignty. (Informant 8, personal communication, August 5, 2008)

Having self-determination was another important aspect of sovereignty; informants (Informant 2, personal communication, June 14, 2008; Informant 4, personal communication, 105
June 17, 2008; Informant 5, personal communication, June 20, 2008; Informant 7, personal
communication, June 23, 2008; Informant 8, personal communication, June 23, 2008; Informant
9, personal communication, June 24, 2008; Informant 10, personal communication, June 27,
2008; Informant 11, personal communication, July 1, 2008) agreed that having their own
government and being able to choose their own destiny through their own institutions and laws
was necessary to have sovereignty. One stated that “sovereignty is built on self-determination”
(Informant 8, personal communication, June 23, 2008). Some informants (Informant 3, personal
communication, July 1, 2008; Informant 4, personal communication, June 17, 2008) stated that
sovereignty is not inherently legal, but legal rights have been attached to the idea. I take this to
mean that sovereignty is more a state of being than something that can be conferred by
governments, and this is confirmed by one informant who stated that “having the right to go get
those plants and things from the land – that’s where freedom and sovereignty comes in”
(Informant 4, personal communication, June 24, 2008). Others (Informant 1, personal
communication, June 10, 2008; Informant 2, personal communication, June 14, 2008; Informant
4, personal communication, June 17, 2008) confirmed that sovereignty is having a government-
to-government relationship with outside nations.

Some claimed that sovereignty is tied up in group unity, stating that “to have sovereignty
is to have that support [the support of the tribe] behind you” (Informant 3, personal
communication, June 16, 2008), while others stated that it requires a solid economic base
(Informant 4, personal communication, June 17, 2008). Finally, sovereignty is action, in that “the
tribe needs to preserve it and exercise it” in order to have it (Informant 1, personal
communication, June 10, 2008; Informant 7, personal communication, June 23, 2008; Informant
8, personal communication, June 23, 2008; Informant 10, personal communication, June 27,
2008). Of those I interviewed, most felt that they possessed some aspects of sovereignty but they
needed to keep reminding other entities that they are sovereign nations, and to keep pushing to
ensure that they received more of their rights as such.
When asked whether sovereignty was upheld during the Orme Dam conflict, my informants generally stated that there was an early indifference to Native sovereignty, and then, when other groups became involved and as the tribe gained a voice and public support, agencies began to respectfully include the tribe in the processes. Most informants felt that the federal government and the other agencies should have been more respectful towards the tribe, should have communicated better, and should have discussed the issues with the tribe earlier and in a more proactive manner.

On the whole, my informants felt that the governments and agencies had not cared for their interests, and that the whole proposal had been a “ramrod effort” (Informant 1, personal communication, June 10, 2008 and July 1, 2008; Informant 2, personal communication, June 14, 2008; Informant 3, personal communication, July 1, 2008; Informant 8, personal communication, June 23, 2008; Informant 9, personal communication, June 24, 2008; Informant 10, personal communication, June 27, 2008; Informant 11, personal communication, July 1, 2008; Informant 14, personal communication, July 3, 2008). Many felt that the government was just telling them what to do, and were only consulting with the tribe as a formality, until they finally started looking at alternatives to Orme Dam (Informant 1, personal communication, June 10, 2008; Informant 2, personal communication, June 14, 2008; Informant 3, personal communication, June 16, 2008; Informant 4, personal communication, June 24, 2008; Informant 5, personal communication, June 18, 2008; Informant 9, personal communication, June 24, 2008; Informant 13, personal communication, June 27, 2008). Secretary of the Interior Watt’s visit to the reserve made a deep impression on most of the tribe, and they felt that that visit showed a great deal of respect for their people (Informant 2, personal communication, June 13, 2008 and June 14, 2008; Informant 3, personal communication, June 16, 2008; Informant 7, personal communication, June 23, 2008; Informant 14, personal communication, July 3, 2008). Informant 1 (personal communication, June 10, 2008), who was involved in the tribal government during the actual conflict, stated that there was no government-to-government relationship “like we should have had”. He further stated that sovereignty was not respected at first, but once the tribe and their supporters had convinced the
agencies involved that the dam was a bad idea, they started having more of a government-to-
government relationship.

In discussing the outcome of the Orme Dam conflict, community members agreed that their sovereignty was upheld because the dam was not built. The tribe was able to be heard and their tribal sovereignty was respected. One point that was raised, however, by a number of informants, is that there is still fear that the government will try to take their land again in the future (Informant 3, 6/16/08; Informant 4, personal communication, June 17, 2008; Informant 5, personal communication, June 18, 2008; Informant 7, personal communication, June 23, 2008; Informant 8, personal communication, June 23, 2008; Informant 10, personal communication, June 27, 2008; Informant 11, personal communication, July 1, 2008; Informant 14, personal communication, July 3, 2008). This is an important point, because although they won this battle, in the long run they worry about having to face a similar situation. Although tribal sovereignty was upheld in this case, that does not mean that it will be respected in the future. Espeland’s point that the Yavapai have been empowered by the Orme Dam struggle holds true (1998), and there is a sense on the reserve that they can accomplish great things, but my interviews indicate that there remains an uncertainty about the limits of their power.

Conclusions on Orme Dam

In sum, my research, both in archives and in interviews, indicates that the conflict resolution processes at the beginning of the Orme Dam conflict did not respect tribal sovereignty. Communication was scarce and consultation did not occur between parties, and the Yavapai did not have the power to protect their interests. The tribe increased their power base by taking action as a sovereign nation, and although there were factions among individual tribal members, eventually they were able to come together and make their voices heard. By exercising their right to act as a sovereign nation to protect themselves, the Yavapai received respect for their sovereignty.

The outcome, Orme Dam not being built, upheld tribal sovereignty in the short term but in the long term there remains fear of a future encroachment on Yavapai territory. The outcome did
increase Yavapai ability to work together as a tribe to protect their interests, and may have given more tools for use in future conflicts. The overall impression on reserve is that the Yavapai gained a great deal of confidence through this conflict resolution process and outcome, and while there remain fears for the future of their land, they are prepared to fight for their rights and they are optimistic because of what they have already managed to accomplish.

Oldman River Dam

Conflict Analysis

Historical Background

The project to build the Oldman River Dam started in 1974, when Alberta Environment, a department in the provincial government of Alberta, began identifying a number of possible dam sites in southwestern Alberta (Wick N.D.). In the early 1970s, Alberta was attempting to diversify its economy, and the government decided to focus on delivering water management programs to support agriculture in the semi-arid region of south Alberta (Glenn, 1999). While Alberta was working towards this end, the federal government of Canada decided to give Alberta control over what were previously federally-owned irrigation works in 1973, and two years later, Alberta presented its new Water Management for Irrigation Use policy, which included a commitment to build a dam on the Oldman River.

The Oldman River flows east from the Rocky Mountains, through the foothills and brings water to the semi-arid southern Alberta (Glenn, 1999). For years, the river would run high in spring and then diminish to not much more than a trickle for the rest of the year. Damming the Oldman River was seen as the logical step for many farmers in the area, who depend on the water to make their living. The politicians at the time, hoping to increase their influence in the area, knew that harnessing the Oldman River would increase their popularity among this population.

The Oldman River bisects the Peigan (Piikani) Nation reserve. The Piikani belong to the Blackfoot Indian Nation, and their small land base of 181.4 square miles was reserved to them in 1877 when they signed Treaty 7, giving up all of their land, including the Oldman River Basin, to
the Crown (Glenn, 1999). It was not until 1882 that Crown commissioners came out to Alberta to establish the reserves, by which time the buffalo had diminished and the Piikani had lost that part of their way of life (Pard, 1985). Since 1880, ranching and farming have been economic mainstays for the Piikani people, although in 1985, during the Oldman River Dam controversy, only 30% of the reserve population was employed.

Brief Conflict Timeline

For a more in-depth conflict timeline, please see Appendix D. Here I have summarized only the major events involved in the Oldman River dam controversy.

In June of 1976, Alberta Environment published a five-volume report detailing the various investigations done on the Oldman River, going through the various possible dam sites, and eventually recommending a dam at the Three Rivers site, which is located upriver of the Piikani reserve (Glenn, 1999). The dam would create a reservoir and provide on-stream water storage in order to meet irrigation needs downstream. On-stream storage refers to damming a river and creating a reservoir in what was once a riverbed, as opposed to off-stream storage where reservoirs are created to store water away from the river or stream. The reactions to this proposal were mixed; the agricultural population in general was supportive, though farmers whose land would be flooded for the reservoir were very much against it. The Piikani band also reminded the government that they interpreted Treaty 7 as giving the rivers to the Indians, and stated that the Piikani nation must be consulted before any work was done. Because the reactions were so mixed, Alberta Environment decided to do another round of studies, and began the Phase II investigations of a dam on the Oldman.

Phase II was completed in 1978, and recommended that a dam be built on the Oldman at either the Three Rivers or the Brocket damsite (Brocket is a town on the Piikani reserve) (Glenn, 1999). The Alberta government was not in favor of putting the dam on the Piikani reserve, although this was never mentioned publicly. Beginning in 1976, there had been a conflict between the Piikani Nation and provincial Water Management Service about a weir located on reserve and leased by the Lethbridge Northern Irrigation District. The WMS had asked the Piikani for more
land for the weir and headworks, but the Piikani had done research indicating that the original lease was invalid. The Piikani stated that they would negotiate to give the WMS more land, however the WMS would need to pay for past use of the land where the headworks were located. The province declined to negotiate both issues together, and although the Piikani did allow the WMS to come onto the property in May of 1978, when it was clear that nothing was happening to deal with the land ownership issues, the Piikani created a blockade on their land that kept all provincial and LNID personnel from accessing the weir. Alberta courts passed an injunction that prevented the Piikani from blocking the weir, and the province began negotiating with the Piikani in order to get more land.

As all this was going on, the Environmental Council of Alberta (ECA) was conducting hearings into building a dam on the Oldman River (Glenn, 1999). Established in 1978, the Panel heard from people from all walks of life, including Piikani tribal members. In 1979, the ECA released a report recommending that a dam not be built, and instead that the government should focus on improving existing irrigation works by making off-stream reservoirs to store more water. The government then waited one year before announcing in August of 1980 that a dam would be built on the Oldman River, although the decision of where it would be was going to be deferred until the Piikani Nation had time to decide whether they would like a dam at the Brocket site (de Loë, 1999).

In 1981, the negotiations between the province and Piikani over the LNID weir concluded, with an agreement reached that not only dealt with the weir, but also gave the Piikani the government’s help in developing an irrigation system and in making a proposal for the Brocket damsite (Glenn, 1999). This resulted in a study, managed by the Piikani and funded jointly by Alberta and the federal Department of Indian Affairs that assessed the impact a Brocket dam would have on the reserve. Completed in 1983, this was used to make a proposal for the damsite, and in November of that year, then chief Peter Yellowhorn informed the province that the Piikani were ready to begin negotiations. Once again, this is similar to the study undertaken by the Three Affiliated Tribes during the Pick-Sloan case on Garrison Dam (Lawson, 1982).
Alberta never responded to the Piikani’s report; instead, on August 9th, 1984, Premier Peter Lougheed informed the press that construction on a dam at Three Rivers, now known as the Oldman River Dam would begin in 1986 (Glenn, 1999). The Piikani (and the other opposing parties) learned of this decision via the news media.

Over the next few years, the Piikani and other opposing parties launched various legal actions against Alberta and attempted to stop construction of the dam (de Loë, 1999). They also applied to the federal government to ask them to step in and conduct a federal Environmental Impact Assessment (EIA). I should note that these actions and requests were made independently of each other; there was little, if any, cooperation between the Piikani and the other groups opposing the dam. Finally, in 1990, the Federal Court of Appeal ruled that the federal government was required to do an EIA, which was not begun until 1991. Later in the year, a group of Piikani known as the Lonefighters, frustrated by the continuing construction of the dam, attempted to divert the Oldman River around the LNID weir.

The Lonefighter diversion attempt began on August 3rd, 1990, and lasted until an armed standoff on September 7th (Glenn, 1999). After inviting the media onto the reserve for a groundbreaking ceremony, the Lonefighters brought the reporters to the Oldman River and showed them a bulldozer clearing an unused channel. Lonefighter members informed them that they were trying to divert the river around the LNID weir, preventing the LNID from getting any water. Later, at a press conference, Milton Born With A Tooth, leader of the group, explained that they were attempting to pressure Alberta into ending construction on the Oldman River Dam. The Royal Canadian Mounted Police (RCMP) kept an eye on the situation, and arranged a meeting between the Piikani Chief and Council and various Alberta Environment officials on August 7th, at which Chief Bastien received assurance from RCMP Superintendent Maguire, who was in command of the area, that the RCMP would not enter the Lonefighter’s camp or go to the diversion area unless they were in the company of the chief or a band councilor. The Piikani themselves had mixed opinions over whether to support the Lonefighters or not; many feared that these actions would cost them their annual payment from Alberta for use of the LNID weir. The Council, while
saying that they did not endorse the Lonefighters’ actions, also refrained from actually condemning the diversion attempt.

The situation created great public outcry, with various supporters of the dam claiming that Alberta should not let itself be dictated to by a band of “renegade Indians”, and making statements that the diversion was illegal (Glenn, 1999). The Piikani were of the opinion that their actions were perfectly legal; they were not breaking their 1981 agreement about the LNID weir, and the diversion was located completely on Piikani land. Even the RCMP Superintendent Maguire stated on August 16th that as far as he was concerned, the Lonefighters had not committed any crime.

Work on the channel proceeded slowly until late August, when the Lonefighters received a backhoe from an anonymous donor (Glenn, 1999). On the 28th of August, the Lonefighters broke through the bank, and some water began pushing its way through the break. Although the diversion was not causing a noticeable drain on the LNID, Alberta officials were very concerned that it could become more efficient the longer it was allowed to exist, and on August 29th, the province was issued an injunction from the Alberta Court of the Queen’s Bench forbidding anyone from keeping water from entering the LNID weir. The Lonefighters, convinced by their lawyers that they had to obey the injunction, ceased work almost immediately.

The RCMP continued to watch the Lonefighters, and were prepared to take action if they attempted to continue work on the diversion, but there was no evidence that any work was being done on the site (Glenn, 1999). During the first week of September, various Alberta Environment officials decided to enter the reserve to repair the breach, and the RCMP was ordered to provide protection for the team. Originally, Maguire had scheduled meetings with Chief Bastien in order to keep his commitment to inform the chief of their intent to go on the reserve, but the chief did not show up for one of the meetings and eventually Maguire decided to go to the council office in Brocket the morning of the planned operation, not keeping his commitment to give advance notice. On September 7th, the day of the operation, Maguire was still unable to inform Chief
Bastien, and ninety RCMP officers and an Alberta Environment team entered the reservation along with a fleet of vehicles.

No one in the Alberta party attempted to contact the Lonefighter group, and when they heard that “an army of RCMP” was entering the reservation, they were completely unprepared and disbelieving (Glenn, 1999). As the Alberta party approached the diversion site, ten Lonefighters appeared and started yelling at them to get off reserve land. When they were ignored, some of them began to throw rocks at the Alberta team. Milton Born With A Tooth fired two shots into the air to warn the intruders, and at that, the team retreated behind the dike. Later, the RCMP stated that the shots had been aimed at them. The Alberta team vacated the premises, and the Lonefighters dug a bunker, beginning an armed standoff. The team had entered the reserve around 8:30 am, and around 10:30, negotiations began between Piikani Council Members and the RCMP. Chief Bastien found out about it by calling the council office around 10:30, and only arrived later in the day. That evening, the Council passed a resolution ordering the RCMP and Alberta Environment off their land, this whole situation having been seen as a betrayal.

The Lonefighter standoff, although it ended peacefully, only served to exacerbate tensions between the various parties, and brought more attention to the issues (Glenn, 1999). Milton Born With A Tooth’s trial for unlawful use of a firearm, which took place on February 25th, 1991, also created more tension, as the judge was openly racist and eventually faced a review panel for his insensitivity.

Following the Lonefighter diversion attempt and the trial, the federal government completed an environmental review on an almost completely operational Oldman River dam without the cooperation of the Alberta government (de Loë, 1999). On May 22, 1992, the EIA Panel recommended that the dam be decommissioned, but if that was not to happen, gave a list of other requirements that Alberta had to fulfill. Many of these requirements dealt with compensation to the Piikani Nation. Both Alberta and the federal government refused to
decommission the dam, and on October 9th, 1992, Alberta gave itself permission to operate the Oldman River Dam.

Conflict Resolution Processes Used

There are three major conflict management processes that were used during the Oldman River dam controversy; negotiation, judicial decisions, and violence (see continuum in Table 1, p. 33). The negotiation began right at the beginning of the conflict, when the province of Alberta announced that it was going to regulate the Oldman River with a dam (Glenn, 1999). In order to do so, it needed to complete works on headworks that were situated on the Piikani Reserve, and so needed access to some part of the reserve. The Piikani were in favor of eventually having a dam at Brocket, on their reservation, and were eager to begin negotiations to give Alberta some access to their land, but also wanted to deal with issues of land ownership and right-of-way. Alberta attempted to ignore the land ownership questions, and in response, the Piikani blocked off access to the headworks in a physically coercive action. This caused an intense water problem for the area, and Alberta then began to negotiate in 1979. In 1981, Alberta and the Piikani Band signed an understanding wherein Alberta paid them for the land and offered resources and help as the Piikani made a proposal to have a dam built at Brocket. In 1983, the Piikani submitted this proposal to the Alberta Environment Minister Bradley and said they were ready to begin negotiations for a Brocket dam.

The Piikani waited almost a year for the Alberta government to get back to them, and in 1984, Premier Lougheed announced to the media that a dam would be built at the Three Rivers site, something the Piikani were completely opposed to (Glenn, 1999). This immediately began a period of judicial decision-making in which the Piikani brought cases to provincial and federal court that lasted from 1986 to 1992, and has continued since the dam was built and began operating.

As stated earlier, the Piikani Band originally launched cases against Alberta and the federal government in 1986, and in 1988, they petitioned the federal government to do a full environmental assessment on the Oldman Project (Glenn, 1999). Finally, in 1990, after the
federal government had stated that Alberta needed to have a federal environmental assessment of the project but still had made no move to carry out the assessment, the Lonefighters began a second physically coercive action.

After the Lonefighter situation was resolved, the judicial decision-making continued and so did the construction on the dam, even as the federal environmental assessment panel recommended decommissioning the dam because Alberta had been terribly lax in researching the project and ensuring that all needs were met (Glenn, 1999). The federal government refused to consider decommissioning the dam. The Panel had insisted that three recommendations must be fulfilled or the dam should be decommissioned, but Canada said that it would only consider decommissioning the dam if they were not met, rather than confirming the Panel’s authority by promising that the dam would be decommissioned if the recommendations were not met. Since then, discussions of negotiations and negotiations have continued very slowly due to a number of problems which will be discussed in the outcome section of this paper (Informant 21, personal communication, October 20, 2008).

Analysis of Parties

As in the Orme Dam dispute, there were a number of parties in the Oldman River dam controversy. Stakeholders ranged from anglers, farmers whose land would be immersed, farmers who needed water, to First Nations tribes and their factions and many provincial and federal government agencies and departments. Here I will be discussing the Piikani Nation, the Government of Alberta and the federal government. These are the three important stakeholders in assessing how indigenous sovereignty was or was not respected in this situation.

Piikani Nation. The Piikani are a Blackfoot tribe, a nomadic people which travelled in small family groups (Dempsey, 2001). There was very little formal structure in the band, aside from having a band leader. This band leader was chosen by the people and typically was very successful in battle and was generous with his wealth. If he became unsuccessful, the people would follow a different leader. In wartime, a war chief would have complete control over the band and its governance but once peace returned, the civil leader would take over again.
This conflict took place over almost twenty years, from when the Oldman River dam was first proposed to when it became operational, and over that time period many different viewpoints surfaced on the Piikani reserve (Glenn, 1999). There were also a number of different groups who believed that certain approaches or decisions would be better than others. As noted above, the Piikani seemed to be wary but not opposed to development on the Oldman River, and informed the government that they would have to be consulted before any work was authorized to happen. Throughout the LNID weir negotiations, various Piikani tribal members expressed their opposition to giving up any reserve land, while others planned a proposal to build a dam on reserve at the Brocket site. Once the dam had been announced, it seemed that at least the tribal leaders were most concerned about protecting their interest in the Oldman riverbeds, and they went to court to make these claims. The Alberta and Canadian governments did have communications with tribal leadership, but the traditional Blackfoot method of government involved only one leader and very little structure (Dempsey, 2001). The band government was an overlay and although elections happened often, it appears that the Canadian method of band leadership was not effective for the Piikani. By only communicating with band council members, Alberta and Canada continually reinforced a Canadian, not a Piikani, understanding of indigenous sovereignty.

The Lonefighter standoff also brought up different viewpoints within the community. Glenn (1999) notes that there were two groups represented on-reserve; the materialists who were interested in development, and the traditionalists who wanted to keep a more traditional lifestyle by maintaining their cultural and spiritual practices. These practices include ceremonies and rituals such as the sun dance and vision quests; the sun dance in particular makes use of the sacred cottonwood trees near the banks of the Oldman River which would be affected by regularizing the flow of water on the banks of the river. One tribal member stated that if the cottonwoods became extinct, so also would Piikani culture and religion; the cottonwoods are very important in Piikani rituals, and also play a large role in preserving traditional methods of hunting and fishing. The Lonefighters themselves were a small group from the reservation and elsewhere, and some on the reservation did not support their actions in attempting to divert the river.
Although there were differing opinions on how best to protect indigenous traditions and whether a dam would be good for the reserve or not, the Oldman River and Valley is the Piikani homeland and is an important part of Piikani tradition and culture (Glenn, 1999). Russell (1987) states that the Oldman River is sacred to the Piikani, and this value was often reiterated throughout the negotiations, hearings and debates. It was also this value that was most reflected in the eventual recommendations made by the federal government’s Environmental Impact Assessment in 1992.

The Oldman River being sacred to the Piikani was the only real value that was continually reiterated during the controversy. The band was divided on everything else, including whether the river and surrounding area should be developed, by whom, and in what ways the Piikani should express their views. This disunity was never effectively resolved, and the Piikani remained divided even after the dam was built. Social relations can only be transformed when a group of individuals acts collectively to change them (Godelier, 1986), and the Piikani were never cohesive enough to do this. Because they were unable to increase their power to transform social relations, they remained in a less powerful position throughout most of the conflict, only gaining more power after the dam was built and the federal government ruled that the Piikani deserved reparations. Because they were not united, the Piikani were unable to change existing social relations enough to prevent the dam from being built, but after the fact, they were granted some concessions.

Using Scott (1985) to investigate group collective, open action, I have less data than with the Yavapai because I was unable to speak with tribal members on reserve. I have no information on whether the Piikani became aware of the threat to their lands and lifestyles at the same time, or if information trickled down slowly. It is possible that various individuals would have benefited from the dam while others would have had negative effects. According to one non-Native informant,

The original feeling among the tribal council was to have the dam on the reserve for the jobs and money it would bring. The chief was very strongly in favor, although it was very controversial given that many tribal members didn’t want a dam that would flood the best tribal lands. (Informant 20, personal communication, October 20, 2008)
This means that it was impossible to take collective action as there were so many different opinions. It is also possible that various tribal members felt that they would receive more benefits than others because of kinship ties or patronage. The one Piikani informant I spoke with stated that “there was an unscrupulous group in council for 4 years, and were all about money and not about rights – just putting the money in their pocket” (Informants 17 and 18, personal communication, August 1, 2008). The distrust engendered by corruption, especially in the tribal council, would make it even more difficult to undertake collective action.

I have no data as to whether people left the reserve over this issue, thus avoiding open action by taking flight, nor do I have any information as to whether the tribal members feared repression if they spoke out. Certainly the Lonefighters did not seem to worry about armed conflict, although many of the other Piikani tribal members did not support them in their takeover (Glenn, 1999).

The final reason why open, collective resistance often does not take place is that groups will accept detrimental change in an effort to survive. Here I have no data regarding the early stages of the conflict, but later on one tribal member would say that

We can’t be silent anymore. The silence has to be broken, because this is our concern. The environment has a big part in our culture. It’s very important that we save the rivers, the only rivers that we have, the lifestream of our culture. (Oldman River Dam Environmental Assessment Panel, 1991, p. 2297)

This supports the idea that tribal members eventually realized that the river and the water were essential to cultural survival, and was worth taking open, collective action.

While I do not have a great deal of data because I was only able to interview one tribal member, it does appear that it was difficult for the Piikani to take open, collective action against the Oldman River Dam in part because the band was divided over what would benefit them most, and there were concerns of corruption and rival factions within the tribe. The fact that the community was able to rally around the desire for cultural survival towards the end of the conflict does indicate that eventually there was some unity around not wanting the dam, but not in time to save their environment from being irrevocably altered by the dam.
Government of Alberta. The provincial government agency most involved in this conflict was Alberta Environment, although there were many individuals and groups within the government who were involved in different aspects (Glenn, 1999). Alberta Environment was created in 1975 and its purpose was to operate and maintain all headworks to bring water to irrigation districts, and to ensure that water got to the districts. In order to do so, the department would need to regulate the South Saskatchewan River System, particularly the Oldman River. The original intent with building the dam and improving irrigation systems in southern Alberta was to bring more water to the farmers but also to improve the public’s perception of an incoming government. For the engineers involved, building the dam was a way to use their expertise to regulate a harsh environment; it was also a way to promote their own careers.

From the beginning, Alberta only investigated damsites on the Oldman River, and did not look at alternative off-stream water storage (Glenn 1999). This would become more important as the conflict progressed and was noted in later studies, but it shows that Alberta intended to build a dam no matter what objections might be raised. Also, Alberta ignored opponents as much as it could throughout the studies and building processes: in the LNID weir conflict, Alberta only began negotiating with the Piikani once it became clear that they had no other choice; when reports stated that a dam was not the best solution, the government took a break for a few years before renaming the dam and beginning again (de Loë, 1999); and when ordered to participate in a federal EIS, Alberta ignored it and continued building the dam. These actions show a provincial government not interested in listening to opponents, but intent on completing the task they had decided to accomplish (Glenn, 1999). This is an example of a disciplinary technology in that Alberta made a decision and attempted to enforce it using law and strength to avoid having to listen to Piikani concerns. The Alberta government first gave itself permission to build a dam and later gave itself permission to operate the dam, in an effort to use the law to prevent the Piikani and other concerned groups and individuals from being heard or from gaining the power to challenge the dam.
The reasons behind this push for the Oldman River Dam include the fact that the politicians in Alberta worked with water agencies and the irrigation community (irrigators, contractors, merchants etc) to create water projects that would bring the politicians votes, the water agencies money and power, and the irrigation community water and money (Glenn, 1999). The Oldman River Dam was perfect for this “Iron Triangle” (p. 131), because it would bring a great deal more land under irrigation, benefiting each of the above groups. While the government said that it would consult with all Albertans on this project, they consistently did not do so, and “environmental groups and Indian bands were left to conclude that these opportunities [consulting on the dam project] were available only to “some Albertans”” (p. 139). Thus, Alberta was not interested in hearing any viewpoints that were against building the Oldman River Dam.

Federal Government. Glenn (1999) states that the federal government of Canada “by acting or, more frequently, not acting in areas where the dam infringed on its constitutional responsibilities, contributed substantially to the controversy” (p.8). Opponents to the dam did bring a number of cases before federal court, and many of these cases were designed to force the federal government to complete an environmental assessment, which eventually the Federal Court of Appeal confirmed was necessary (de Loë, 1999). This case is another example of difficulties between the federal and provincial governments in Canada as they struggle over who controls what resources (Glenn, 1999).

Canada’s refusal to participate in the conflict was also called into question by the Piikani when they took the federal government and the minister of Indian Affairs to court; the Piikani stated that both of these entities were required to protect Piikani rights, and as such had a duty to prevent construction of the dam (Glenn, 1999). In choosing to take a passive role throughout the conflict until they were forced to step in at the end, the federal government played a permissive role that may have further inflamed the controversy. This inaction is a disciplinary technology in that the government chose to ignore the Piikani, which could have resulted in the Piikani dropping the issues and remaining docile.
Analysis of Conflict Sources

The conflict originated in the desire of the Alberta government to create a better water supply for use in irrigation. Their exclusive focus on a large dam and reservoir instead of looking at smaller, less invasive off-stream options drew a great deal of opposition, not only from the Piikani but from others whose homes and lifestyles would also be affected. The Piikani have title to the waters of the Oldman River as it flows through their homeland, and they were concerned to protect their water and land or at least receive appropriate compensation for it. While there were other sources of tension for the various parties involved, the plan to build the Oldman River Dam and Reservoir was the original cause of this conflict.

Analysis of Issues

Again using Moore’s Circle of Conflict (see Figure 1, pg. 85), each of the five types of issues are represented here. There were definite relationship issues in that strong emotions were involved on all sides and there were miscommunications and oftentimes poor communication between the parties concerned. One informant stated that “the Oldman Dam was a kind of learning curve… after building it Alberta realized that they needed to get aboriginal input” (Informant 20, personal communication, October 20, 2008). Glenn (1999) states that the government of Alberta did not communicate well with the Piikani on issues involving the Oldman River Dam, and this would have exacerbated the conflict. This was a repetitive negative behavior on the part of the province, which would have created more relationship issues on behalf of the Piikani. During the conflict, the Piikani leadership would change about every two years, and since concerns were not well-voiced within the band itself, the leadership could not speak with authority about Piikani concerns (Informant 21, personal communication, October 20, 2008). This also caused many miscommunications. The province was very aware of the Piikani ability to take physically coercive action, as was seen when they blocked off the LNID weir. For this reason, Alberta also distrusted the Piikani as they could do something similar any time they chose. Alberta used the disciplinary technology of avoiding the Piikani as much as possible, when they chose not to build a dam on the reserve. Alberta preferred to not have to deal with Piikani
sovereignty and the problems that could arise from having a dam on their land, and so ignored 
them as much as possible.

This was a data conflict because once again the parties had very different views on what 
was relevant to the conflict. Alberta saw the essential issue as providing water to the irrigation 
district (Glenn, 1999), therefore the only information relevant to the conflict would be how to 
assure that the project would give the most water to the district. The Piikani, on the other hand, 
felt that their land and ecosystem was the most important issue, and thus data related to the 
continuance of their traditions was of the utmost importance and relevance. This is shown in the 
federal environmental assessment hearings that eventually took place at on the reserve at 
Brocket. In his opening speech, then Chief Leonard Bastien stated;

Our people and our culture have been tied to the land and the rivers and the mountains 
from time immemorial. We live and have lived in harmony with the land. To the Peigan, 
land and water do not generate diversification or multiplier effects. Rather, it is the 
foundation of a culture which has existed here in this area in harmony with nature for 
thousands of years. We must find a way to resolve the issues of the Oldman River Dam 
in the way that respects the rights of the Peigan Nation. (Oldman River Dam 
Environmental Assessment Panel, 1991, p. 2142-2143)

This shows the dividing practice of Alberta and other agencies seeing money and development 
as more important than identity or culture, and ignoring the fact that the Piikani did not see it that 
way.

There was also a lack of information, in that while Alberta studied the Oldman River Dam 
extensively, they did not recognize that they needed to gather information on how it would impact 
the Piikani nation (Lombard North Group and the Sibbald Group, Vol. 1 and 2, 1978). This shows 
that the government either ignored the fact that or did not realize that the Piikani would be 
impacted by a dam upriver, and knowledge of this signaled to the Piikani that they were not 
important.

There were substantive, procedural and psychological interests at play in this case. 
Substantively, the irrigation farmers desired a regulated Oldman River to give them more water 
(Glenn, 1999). The government wished to grant that desire and to win votes by doing so. The 
Piikani were interested in protecting their land and lifeways (Oldman River Dam Environmental
Assessment Panel, 1991), although some were also interested in being paid for the impact on their traditions (Informant 20, personal communication, October 20, 2008). A summary of the Piikani interests is written in a Proposal for Resolution of Major Issues Relating to the Oldman River Dam that the band submitted to the Alberta government in 1987;

The potential impacts of the Oldman River Dam and Reservoir on the cultural and spiritual heritage of the Peigan is immeasurable. In the absence of a proper allocation of water, development of irrigable lands, protection and preservation of the river valley floor, design of a safe dam, protection and preservation of fish and wildlife and proper operation of the dam, the Peigan Nation cannot survive, neither economically, spiritually nor culturally. A more complete analysis of the cultural and spiritual impacts of the project on the Peigan Reserve and its membership is needed. (Peigan Nation, 1987, p. 14)

Procedurally, the Piikani wanted to be heard and included in the process. This did not happen until the federal government did the environmental assessment after the dam was almost operational. In 1987, the Piikani had written a Proposal for the Resolution of Major Issues Related to the Oldman River Dam. In this, they stated that their concerns had been ignored by the government of Alberta. Then, in 1989, then chief of the Piikani wrote a letter to unknown officials, asking for help because the province of Alberta had ignored tribal concerns and issues (Little Moustache, N. to Unknown). Psychologically, the Piikani wished to keep the relationship with their ecosystem that they had had for generations, while the irrigation farmers wanted the security of knowing that they would have water for the future (Glenn, 1999).

Structurally, there were definitely inequalities, and this is especially seen in the Lonefighters’ attempt to divert the river: they felt that they were not being heard as they went through all the legal routes to protect their land and still Alberta kept building the dam (Glenn, 1999). No one was even acknowledging their concerns, and they were powerless to protect their rights by using the normal, legal procedures. It was not until the federal government finally initiated the environmental assessment that the Piikani were able to be heard and their needs were met. Eventually, in the negotiations with the federal government, Alberta and the Piikani band, the structural issues were resolved. This did not happen until over twenty years after the conflict had begun. This ignoring of the Piikani and their concerns is a disciplinary technology that
is designed to keep the Piikani powerless. By filing court cases, the Piikani did challenge this technique.

Lastly, it is also a values conflict because, as discussed above, the Piikani value their land and ecosystem as part of their culture, part of what makes them who they are. Holy Roads Woman, a tribal elder who spoke at the federal environmental assessment hearings, said the following about environment:

We need the willows, the plants and herbs, for all eternity, for healing and for our medicines. It is imperative that the Oldman River still provide this for us. Even though the world is changing, we still need these. We have our sundances, we have our ceremonies, we have our sacred societies, our sweat lodges, and our pipes. They’re still a part of our lives. (Oldman River Dam Environmental Assessment Panel, 1991, p. 2188)

Alberta, on the other hand, saw a river valley and a need for water. The government valued creating more water resources over protecting a sacred landscape (Russell, 1987). These exclusive goals, one of preserving a traditional way of life and the other increasing the resources of farmers in order to gain capital and votes, made it very difficult for the various parties in this dispute to communicate and understand each others’ needs and perspectives.

Each of the five conflict issues were represented in the Oldman River Dam conflict. The miscommunications and repeated negative behavior created a distrustful relationship on all sides. The different views on what was relevant and the lack of information contributed to misunderstandings and disagreements. The various interests appeared to be irreconcilable, which may also have kept parties from communicating as well. The structural inequalities were eventually dealt with but not until the end of the conflict, and the differing values placed on land and water also complicated this conflict situation.

**Consequences**

Immediate consequences were that the dam and reservoir were built and the river was regulated. Also, because the federal environmental assessment dictated it, a number of mechanisms and studies were put in place to help mitigate the damages sustained by the Piikani once the dam was running; these studies and mechanisms continued over the short and long term. In the short term and long term, the ecosystem has changed without regular flooding, which
has affected the Piikani lifeways (Informants 17 and 18, personal communication, August 1, 2008). This dispute has also continued since 1992; certain legal actions continued long after the dam was built (Glenn, 1999), and in my conversation with the current chief of the Piikani Nation, he informed me that I would not be able to come on reserve to interview people about the situation as they are in an ongoing litigative action (Chief Crow Shoe, personal communication, July 23, 2008).

According to the federal Environmental Assessment Panel, Alberta was required to establish a process by which it could mitigate any impacts of the dam on the Piikani Nation (Glenn, 1999). In February of 1994, a Memorandum of Understanding was signed between the Peigan Nation and the Department of Indian Affairs and Northern Development. This Memorandum established a Joint Task Group and trilateral process by which Canada and the Piikani would work out their various issues involving water from the LNID weir to the present and future Piikani water needs. The agenda also included an intention to create a process to monitor and mitigate the environmental impacts of the Oldman River Dam (Kingston to Glenn, personal communication, July 22, 1994).

Alberta and the Piikani Nation began talks on the environmental assessment panel's recommendations in 1998, but although these talks were supposed to become negotiations, nothing substantive has come from these. Alberta has also worked to delay the Piikani water rights suit against them from coming to trial; as of 1999 it was moved back to 2000. Also as of 1999, there had been no progress on the Piikani case against the federal government. An eventual settlement reached in 2002 between the Piikani and the governments of Canada and Alberta gave the Piikani $64.3 million dollars to be used for development and to settle the disputes over the LNID headworks and the Oldman River Dam (Narine, 2002). The settlement also ended any claims the Piikani had on the federal government involving water rights and discontinued the litigation begun in 1986 against both the federal and provincial governments.

Since this conflict occurred there a consultancy program has been set up between First Nations and the Alberta government, and one tribal member I spoke with feels that because they
now have this program, Alberta would not be able to treat the Piikani as they did during the Oldman River dam conflict. He believes that the Oldman River dam was a turning point in provincial-First Nations relations, and is hopeful for the future (Informants 17 and 18, personal communication, August 1, 2008).

Tribal Assertion of Sovereignty

Once again, two frameworks will be used to discuss the indicators of sovereignty in conflict resolution processes and outcomes (see Table 3, pg. 60, for processes, Tables 4 and 5, pg. 63 and 65, for outcomes).

Indicators of Sovereignty in Conflict Resolution Processes

Respect. The first indicator of sovereignty in conflict resolution processes is that of respect. As discussed above, this indicator could be operationalized by outside governments and agencies paying attention to cultural differences instead of ignoring them, engaging with leaders that indigenous groups have chosen for themselves, arranging transportation for indigenous groups to attend meetings or having meetings in accessible areas, high level outside officials meeting with indigenous groups, and establishing and upholding ground rules for interactions. According to various informants, including two who had worked for the Alberta government during the conflict, Alberta did not listen to or address Piikani interests until the second round of Environmental Assessment Panel hearings undertaken by the federal government when the dam was already almost completed (Informant 20, personal communication, October 20, 2008; Informant 21, personal communication, October 20, 2008). This took place in 1991 when the EAP held hearings on the Piikani reserve, and for twelve hours tribal members were able to speak about the importance of their land and ecosystem which were intrinsic parts of their culture and religion (Allison, November 22, 1991; Oldman River Dam Environmental Assessment Panel, 1991). The final EAP report actually recommended that the dam be decommissioned, in large part because of the impacts of the dam on the Piikani Nation (Oldman River Dam Environmental Assessment Panel, May 1992). The report made a number of requirements that had to be met.

1 My interview with Informant 17 took place at the same time as my interview with Informant 18, hence the citation of both 17 and 18 together. Informant 17 is a tribal member, while Informant 18 is not.
should the province refuse to decommission the dam (which it did), and many of these dealt with reaching new agreements with the Piikani, and monitoring and mitigating impacts on the tribe. This means that until the federal government stepped in to conduct the EAP, the Piikani were not being respected or considered to have any bearing on the construction of the Oldman River Dam.

This is only true of the Oldman River Dam situation. The government had previously engaged in negotiations with the Piikani over the LNID weir, as discussed in the brief timeline of the conflict, and had even offered to help them make a proposal to have a dam on the reserve at the Brocket site. Once they had decided to put the dam at the Oldman River site, however, the only record of Alberta listening to Piikani concerns is when Premier Getty agreed to fund a study on the impacts of the Oldman River Dam on the Piikani in 1986 (Glenn, 1999). After that, it appears that Alberta only addressed the Piikani about these issues in court or while engaged in attempting to stop the Lonefighter diversion.

Communication. Communication is a second important indicator of sovereignty in conflict resolution, and at the beginning of the conflict, the focus was very much on the LNID weir and the negotiations surrounding those issues (Cookson to Small Legs, personal communication, July 17, 1980; Lougheed to Small Legs, personal communication, June 6, 1978). Once again, communication can include questions about when indigenous groups are informed of plans and projects, asking whether difficulties are discussed and addressed rather than ignored, and whether communications are respectful and outside agencies are truly listening to indigenous concerns. A letter mailed around that time specifically states that all LNID weir negotiations were “entirely separate from the issues of a possible new dam somewhere on the Oldman River” (Russell to Small Legs, personal communication, December 4, 1978). This confirms what was said above about Alberta being willing to negotiate other issues with the Piikani, but not the Oldman River Dam. My two government informants also confirm that Alberta did not communicate with the Piikani about band concerns around the Oldman River Dam until the federal government did the second EAP (Informant 20, personal communication, October 20, 2008; Informant 21, personal communication, October 20, 2008).
It should also be noted that although Alberta made the decision to wait for the Piikani to present a proposal on having an on-reserve dam before choosing the dam location, the Piikani received no response from Alberta after they had submitted that proposal (Glenn, 1999). The first they heard back from Alberta was a letter dated the same day that Premier Lougheed announced that the Oldman River Dam would be built at the Three Rivers damsite. Thus, while they were informed promptly about the decision to build the Oldman River Dam, they were not acknowledged or communicated with in regards to their own proposal.

Outside governments and agencies consulting with indigenous groups over proposed projects is another indicator of sovereignty being respected in conflict resolution processes. The Piikani were not consulted in the Oldman River Dam conflict. They were left out of all planning phases, and although their voices were eventually heard in the federal environmental assessments, they were not asked to help create processes or plans to mitigate the situation. Perhaps in the later negotiations between Canada, Alberta and the Piikani the band might have been able to offer suggestions, but I have no record of these discussions or their results.

**Indicators of Power**. Decision making power given to all participants indicates is seen through agreements made with all parties having some say in what the agreement will be, and is also seen when the agreements are enforced. Agreements made between the Piikani and Alberta when they did sit down to the negotiating table have been enforced. This occurred after the dam was built, however, and the following quotations from tribal members very clearly show that the Piikani did not feel that they had any decision making power as regards the Oldman River dam itself.

We have noted in earlier Panel hearings that the technical advisers to the Panel have consistently commented on the lack or poor quality of technical analysis relating to the Peigan people or to the impact of the dam on our traditional way of life. We know that this is consistent with our experience with both Alberta and Canada. (Chief Leonard Bastien, Oldman River Dam Environmental Assessment Hearings, 1991, p. 2141-2142)

The government made this decision, this sudden decision, and placed it upon us. It never even considered the native people. These waters were given to us native people. They flow out of the mountains that we may live off of them, but there was no consideration for us. They made this decision, a sudden decision, that now we have to live with (Nick Smith, Oldman River Dam Environmental Assessment Hearings, 1991, p. 2194)
As discussed in the timeline, Alberta respected the agreements over the LNID weir, and after the dam had been built, discussions between Canada, Alberta and the Piikani commenced to determine how future conflicts could be dealt with and how the impacts of the dam on the Piikani will be monitored. Although these discussions are still ongoing, because they are occurring at a national and provincial level, it is reasonable to say that the officials negotiating have the power to enforce the agreements that are made. I have no further information on these discussions.

Equal power is essential for negotiation processes to meet the needs of all parties. The Piikani Nation, according to one informant, is very poor, and relies completely on a few businesses and government support; they have no resources or revenues apart from that (Informants 17 and 18, personal communication, August 1, 2008). It does not appear that the group had many resources at their disposal as they attempted to keep the Oldman River dam from being built.

I have no information on how the Piikani financed their court cases, although I will note that they received funds from the federal government to pay for studies and various other interventions in the process (Wouters to Bastien, 1990). It is possible that such funds also helped them in their litigative efforts.

The fact that the Albertan and Canadian governments did help fund Piikani actions suggests that the governments were willing to help level the inequalities in power. Negotiations over the LNID weir and eventually between Canada, Alberta and the band appear to have also been conducted on an equal footing. There was never any talk of having land forcibly taken from the Piikani, however Alberta’s long exclusion of the Piikani from the decision-making process surrounding the Oldman River Dam shows Alberta’s power to decide who the stakeholders were, in spite of Piikani protestations that they had legitimate interests in the river.

Taking Action as a Sovereign Entity. Another indicator of sovereignty in process is seen when a tribe takes action as a sovereign nation, and this can involve any number of actions from doing studies, building coalitions, and taking direct or legal actions to protect indigenous interests.
After the dam was first proposed, the Piikani Nation responded with its views on the dam, and also participated in public hearings in 1978 (Bridges, 1992). 1978 was also the year in which then band Chief Nelson Small Legs led a group of Piikani to block government access to the LNID weir on the reserve; while not part of the actual Oldman River dam conflict, after the blockade the province began negotiating with the Piikani in order to expand the headworks once a dam was built on the Oldman River (Glenn, 1999). The next action taken by the band council was in 1981, when they created a “Proposed Statement of Position” which invited federal, provincial and regional authorities to meet with the Band Administration to discuss the logistics for looking at an on-reserve dam at Brocket (Peigan Band Administration, January 1981).

The Band also commissioned many studies on the possible impacts of a dam on the Oldman River at Brocket, which are summarized in the Woods Gordon report of 1983 and were financed by the government of Alberta (October 13, 1983). These studies were used to create a proposal to build the dam at Brocket. Chief Peter Yellowhorn forwarded the studies and proposal to the government of Alberta in November of 1983, indicating that the tribe was prepared to begin negotiations (Glenn, 1999).

After it had been announced in 1984 that the Oldman River dam would be placed at the Three Rivers site, the Piikani brought lawsuits against the Alberta government and the Canadian government in 1986 (Court of the Queen’s Bench Alberta, April 11, 1986; Canada, June 18, 1986). As noted above, I have no information on how these lawsuits were funded. Both lawsuits stated that Alberta had no legal right to build the Oldman River dam and Reservoir, and the one against Canada specifically said that the federal government had a responsibility to protect indigenous rights in this circumstance.

In 1987, the Piikani band once more attempted to resolve the issues in a document, submitted to Alberta, summarizing the major issues surrounding the Oldman River dam that needed to be resolved. They concluded by stating that they would seek other means of resolution, perhaps by involving federal officials, if these problems were not resolved (Peigan Nation, April 1987). The language used in this document affirms Piikani tribal sovereignty:
On the basis of research concluded and ongoing construction of the Oldman River Dam, it is more urgent than ever that the government of Canada assist the Peigan Nation to preserve and protect its valuable rights, health and welfare, environment and cultural and spiritual values. Our investigations disclose that these issues have been ignored by the Province of Alberta. In some cases the Province has made decisions that violate the rights, titles and interests of the Peigan Nation. (Peigan Nation, 1987, p. 1)

In 1989, Nelbert Little Mustache, a councilor with the Band Council, wrote letters to a number of different federal officials and concerned individuals asking for help in getting the federal government to do an EAP on the Oldman River dam. He mentioned that sacred sites were going to be inundated by the dam and reservoir, and noted that the destruction of the cottonwood forests, as described in reports, would “deprive us of our traditional hunting, trapping, and fishing rights guaranteed to us when our ancestors signed Treaty No. 7 in 1877” (Little Mustache to Cadieax, personal communication, March 29, 1989; Little Mustache to Unknown, personal communication, 1989). Three band council resolutions requesting an EAP were also sent to the Department of Indian and Northern Affairs (Hunter to Turbayne, personal communication, April 19, 1989). The final tribal action before the dam was made operational was taken by Chief Bastien, when he asked for $50,000.00 from the federal government to participate in the federal EAP if it occurred; this request was granted and the money was transferred (Wouters to Bastien, personal communication, April 12, 1990; Goodwin to Wouters, personal communication, N.D).

Although there were other factions within the Piikani Nation at the time, only two actions were taken by non tribal council members; the Lonefighters’ diversion attempt of 1990 and certain actions in conjunction with it, and a Piikani spiritual ceremony (not described by any authors I have read) meant to be a demonstration of opposition (Lethbridge Herald, May 1991). See the conflict timeline for a thorough discussion of the Lonefighter standoff.

Following the Lonefighter’s action, various members of the Lonefighters allied with two British Columbia Members of Parliament to call for a public inquiry into the construction of the dam and how the province handled the Lonefighter situation and eventual trial of Milton Born With A Tooth (Lethbridge Herald, January 21, 1991).
As discussed in the section on Yavapai tribal unity during the Orme Dam conflict, lack of unity also played a role in hindering the Piikani attempt to assert their sovereignty. The Piikani did not present a united front against the dam until it was almost operational. There was great confusion among the band itself, with people unsure of what was being proposed, and no one was speaking authoritatively on behalf of the entire tribe (Informant 20, personal communication, October 20, 2008; Informant 21, personal communication, October 20, 2008). One tribal member also spoke of the corruption within the tribal leadership at the time, and how this contributed to the disunity and confusion experienced by the Piikani (Informants 17 and 18, personal communication, August 1, 2008). Even in 1991, current Chief Leonard Bastien was taking the position that the Oldman River dam could be beneficial to the reservation, and stated that the Lonefighters fighting the dam could jeopardize these potential benefits. Another tribal member stated that at that time, “there [were] at least four different factions on the reserve trying to resolve it one way or another” (Lethbridge Herald, May 1991). These statements were made while the Piikani Nation was taking Alberta and Canada to court over the question of whether Alberta had the right to build a dam; even as the federal EPA was taking place, there was still dissent and disunity on the reserve.

The major tribal actions taken by the Piikani were judicial processes and violent or physically coercive action. They filed two lawsuits against the federal and Alberta governments, and expected their needs to be met through a positive outcome. The Lonefighter diversion was a more direct attempt to draw attention to the situation and be heard.

United Nations Declaration Indicators. The UN Declaration requires that indigenous groups give their consent to any legislation that might affect them before it is passed. There was no legislation passed surrounding the Oldman River Dam, and so informed consent did not come up. If we take the spirit of this indicator, we might say that the Piikani should have given informed consent before the dam was built because it impacted their environment, and this was not solicited.
Prompt and fair decision making is an indicator of sovereignty because it shows that outside governments and agencies are taking indigenous groups and their concerns seriously. It is also required by the UN Declaration. The Piikani suit against Alberta, filed in 1986, was still at the “discovery stage” in 1996 (Glenn, 1999). In fact, as discussed above, the cases were only resolved in 2002 when the Piikani signed a settlement with Alberta and Canada. This is not a prompt decision-making process. Also, Alberta chose to ignore the fact that various issues had not yet been resolved: in spite of the fact that the Federal Court of Appeal had quashed the approval for building the dam in 1990, the province had kept working on the dam (Glenn, 1999).

Another requirement of the UN Declaration in conflict resolution processes is that indigenous groups can understand and be understood throughout the processes. In this case, Alberta did not ensure that the Piikani understood what was happening with the dam, and nor did they help the band understand what processes were available to them to protest the dam. One informant stated that there was a great deal of confusion on the reserve about what the dispute was actually about (Informants 17 and 18, personal communication, August 1, 2008). This could either have been a result of Alberta not ensuring that the tribal council understood the dispute, or the tribal council not adequately communicating with the rest of the band. The band did appear to be fully aware of their rights as regards litigation, and exercised these rights to begin those processes.

Indicators of Sovereignty in Process Outcomes

Please see Tables 4 and 5, pg. 63 and 65, for a quick review of the d'Estree and Colby as well as the UN Declaration frameworks on the indicators of sovereignty in the outcomes of conflict resolution processes.

d’Estree and Colby Framework. For the Oldman River Dam, the outcome reached involving the dam itself was not a matter of consensus, as the dam was built over the objections of a number of groups and individuals (Glenn, 1999). Later agreements were made through negotiations with Canada, Alberta and the Piikani, including the settlement agreement of 2002, and this did involve principles of respect and negotiation (Informant 17, personal communication,
August 7, 2008). In order to forge the agreement, Canada, Alberta and the Piikani had to sign it, which implies agreement on some issues at least. I have no data as to whether consensus techniques were used. The outcomes (Alberta making the dam operational, Canada calling for Alberta to make certain changes in order to avoid decommissioning the dam, and the Settlement Agreement being signed) were publicly acknowledged and the Settlement Agreement was signed by all concerned. Further outcomes are still in the process of being reached, as new agreements are being made between Canada, Alberta and the Piikani band (Chief Crow Shoe, personal communication, July 23, 2008). As these are negotiation processes, it is to be hoped that they will be using consensus-based approaches.

The dam is not culturally sustainable nor does it support community self-determination for the Piikani. According to a 1991 “Report of the Peigan Band to the Federal Environmental Assessment Review Office of Canada”, (Small Legs, Little Wolf, Grier and Watson), “these [91] family units [residing in the Oldman River Valley] rely upon the natural flow of the Oldman” (p. 770). The Oldman River supports their subsistence through fishing, trapping and gathering natural resources, and the dam has impacted their ability to sustain themselves. There are also other cultural issues; “many of the [Piegan] religious ceremonies rely on the cottonwood in the Oldman River Valley and other forms of plants that are gathered there” (1991, p. 771). The Oldman River Dam interferes with Piikani ability to continue their religious and cultural traditions. The community was also unable to have any measure of self-determination in the question as to whether the dam would be built. The Piikani did not see the Oldman River dam as an acceptable outcome (Glenn, 1999). One informant noted that “the intent was to build the dam, not whether to build it” (Informants 17 and 18, personal communication, August 1, 2008), referring to the fact that Alberta discussed how to mitigate dam impacts with the Piikani, and did not examine other options for creating water storage. The original outcome was very clear, in that the dam was built and made operational, however later outcomes were received in different ways by the Piikani.

The Settlement Agreement was sustainable and accepted by the Piikani. According to a tribal member,
The SA was based on principles of negotiation and mediation. The parties were to discontinue litigation as to their respective rights, entitlements, or jurisdiction in relation to water from, bed and shores, the Oldman River as it passes through the Piikani Reserve. Like I mentioned, the SA resolves issues to certain litigation and specific claims. The SA did not come into effect until it was fully executed by Canada, Alberta and Piikani Nation. The Piikani members voted to accept or reject the SA...the Chief and Council did not have authority to execute the SA without the approval of the membership. (Informant 17, personal communication, August 7, 2008)

This shows that the final agreement was accepted by a majority of the Piikani nation.

The parties’ relationship to the outcome was variable; the Piikani did not see the building of the Oldman River Dam as satisfactory or fair, although other parties including the Alberta and irrigation farmers did (Glenn, 1999). The band did comply with it over time, as they had no choice in whether the dam was used, and it appears that the provincial and federal governments are also complying with the more long-term outcomes of the Settlement Agreement. Because the outcome is still evolving, it is impossible to fully answer this question.

Lastly, I do believe this outcome enhanced social capital, or parties’ ability to work together for mutually beneficial ends, in spite of the fact that collective resources were not used throughout the conflict. As discussed above, the Alberta government has instituted a consultation program which brings together Alberta and indigenous groups. This should help the relationships between Alberta and the Piikani improve and has increased their ability to resolve future disputes. It should be noted that this program came out of the Oldman River Dam conflict and others like it (Informants 17 and 18, personal communication, August 1, 2008). One tribal member referred to this consultation program as “living in the happily ever after” (Informants 17 and 18, personal communication, August 1, 2008). The Alberta government begins consultation with indigenous groups concerned at the outset of a project, and has “meaningful discussions”. While there may not always be agreement on outcomes, at least native concerns are heard and they are brought into the process.

On the other hand, I do not believe that this conflict increased social capital within the band itself. The Piikani never worked together for a single purpose, and there were many different opinions on whether a dam should be built, and how the Piikani should fight for their rights. When speaking with Chief Reg Crow Shoe (personal communication, July 23, 2008) about whether I
could come on reserve, he said that even now it would not be wise for me to come on reserve to discuss it because of the many disagreements and strong feelings about the entire issue. Even though the Piikani are being included in high level discussions about how to repair some of the harms they have sustained, they are still unable to act together as a cohesive and sovereign nation, and their internal social capital has not increased. They have not increased their own capacity to draw on their collective resources.

United Nations Declaration Framework. As discussed above, tribes have the right to their lands and resources that they have traditionally owned or used. The outcome of the Oldman River Dam conflict has changed the environment in which the Piikani live, and this may have long-term impacts on their lands and resources. Tribal elder Eddy Bad Eagle described the importance of the resources found in the Oldman River Valley that are being threatened by the dam in the Oldman River Dam Environmental Assessment Panel hearings (1991):

> These willows that you question are used in many different forms. This headdress that you see, willows are used. The pipe stem is used by these willows. We use them as bed rests and as pillows as we know. It’s used by the old people to make fences. They use them as stakes for their teepee and tents today. All wood products in this valley is used, not only by the humans, but the animals, the birds… The stones are of great importance. The birds use stones. The muskrat uses stones; the beaver, the mink. And today a lot of people are still using these products, the willows and stones… This dress you see comes from the hide of the elk, and that is used also, and the willows are used to stake to fix the dress. (1991, p. 2184-2186)

All of these resources that are used in Piikani culture are threatened by the changes in the ecosystem caused by the Oldman River Dam. The outcome thus does not respect tribal rights to their lands and resources.

Indigenous peoples may develop their lands and resources however they choose. They also have the right to strengthen their spiritual relationship these lands. The Oldman River Dam conflict outcomes did not uphold all of these rights; their land and resources were affected by Alberta’s choice to put a dam upriver without tribal consent, and this forever changed the “sacred geography” where the Piikani had many sacred and vision-quest sites (Glenn, 1999). Holy Roads Woman also spoke about the importance of the relationship between the Piikani and the land at the Oldman River Dam Environmental Assessment Panel hearings (1991); “the philosophy
surrounding is, the Creator gave to his children Mother Earth to care for, and that we establish and maintain balance with the winged ones, four-legged creatures, and water beings” (p. 2188). In order to do this, the Piikani must live in their traditional area and with the resources that they have used for generations. The existence of the Oldman River Dam makes it difficult for the Piikani to strengthen their spiritual relationship with lands that they used to occupy.

Indigenous people may only be relocated with their own consent, and the nation-state involved must enter into an agreement with the indigenous peoples in order to assure just and fair compensation. There was no question of relocation in this conflict.

The articles referring to culture state that indigenous groups have the right not to have their culture and practices destroyed or to be assimilated forcibly, and that they have the right to practice their customs and traditions, to use their religious sites in private, and to keep their sciences which would include medicinal plants and knowledge of local flora and fauna. The Piikani have made the case that the dam severely impacted their “spiritual ecosystem”, and the regulation of flow has harmed the growth of the sacred cottonwood trees that are necessary for many ceremonies (Glenn, 1999). This has been discussed further, punctuated with quotations from various tribal members, in the preceding categories. As seen in these quotations, the dam prevents tribal members from using religious sites that have been inundated by the reservoir, and also changes the ecosystem that supports their medicinal knowledge and use. The building of the Oldman River Dam has not upheld these tribal rights.

Indigenous peoples have the right to the recognition and enforcement of all treaties and agreements made with nation-states. This issue is problematic for the Piikani, who raised it when dealing with the Oldman River Dam controversy. There are many different interpretations of Treaty 7, which created the Piikani reserve in 1877; some disagree over whether the tribal chiefs who signed it understood the concept of land ownership, others argue that the chiefs believed they were signing a very different document than what they actually signed, and others interpret the treaty symbolically rather than literally (Glenn, 1999). During the Oldman River Dam conflict,
the Piikani claimed ownership of the water flowing through the reservation, and the riverbed in the reservation. Chief Leonard Bastien summarized it as follows;

The Peigan Nation maintains that it owns valuable rights, interest and title to the land and water rights in the Oldman River from time immemorial, and is protected under Treaty Number 7. The Government of Alberta, as the main proponent of the Oldman River Dam, has acted to build a dam, despite the prior and superior reserved rights of the Peigan Nation in the Oldman River. The Peigan Nation has been forced to appeal to the courts to obtain a declaration of its prior and superior reserve rights. The Province of Alberta has proceeded to construct and fill the dam and to embark on an allocation process that presumes the Peigan Band is without rights to the use of the Oldman River. (Oldman River Dam Environmental Assessment Hearings, 1991, p. 2139-2140)

This case has not yet been resolved, but if indeed Treaty 7 granted the Piikani the water and the riverbed, then the outcome of having a dam on the Oldman River does violate their treaty rights.

Finally, the nation-state is required to provide redress for any action that deprives the tribe of their cultural values or identities, disposesses them of land or resources, forces a relocation, forces assimilation or integration, or promotes discrimination against them. Redress should take the form of lands or resources equal to what has been lost, or, if the tribe agrees, monetary compensation or other items that may be appropriate. The Piikani did eventually receive redress for what they lost with the construction of the Oldman River Dam, although many in the tribe did not agree that the monetary compensation was adequate (Narine, 2002).

Degree of Tribal Sovereignty Possessed

Unfortunately, I was unable to interview many people who were involved with the Oldman River Dam conflict, but the few people I did get to talk to were very helpful. I spoke with one tribal member, a non-Native who had been involved with the Lonefighters, and three non-Natives who had been working with the government in various capacities during or after the controversy.

One informant who has been involved with the Alberta government and its consultation programs with First Nations, noted that during the Oldman River dam conflict, “the intent was to build the dam, not whether to build it, and the challenge with the First Nations was that they didn’t feel they were heard” (Informants 17 and 18, personal communication, August 1, 2008). My sole native informant emphatically stated that “the dam sure as h*** wasn’t going to benefit First Nations”, and the government had no care for the concerns of the Natives (Informants 17 and 18,
personal communication, August 1, 2008). For him, sovereignty was not respected in the conflict resolution processes. His statements about the Piikani voice not being heard were echoed by my other informants, even those who had worked towards building the Oldman River Dam, although they clarified that the Piikani were heard during the federal environmental assessment (Informant 19, personal communication, August 14, 2008; Informant 20, personal communication, October 20, 2008; Informant 21, personal communication, October 20, 2008).

As I was only able to speak with one Piikani tribal member, I do not have the same understanding of what those who were involved in the conflict felt (Informant 17, personal communication, August 7, 2008). The tribal member’s feeling was that the tribe did have some sovereignty in the outcome: the Settlement Agreement of 2002 was the end result for him. It was developed using negotiation processes, and it had to be signed by Alberta, Canada and the Piikani Nation before it could come into effect. This seemed to treat the Piikani as another government.

My Piikani informant (Informants 17 and 18, personal communication, August 1, 2008) also spoke at length about the new consultancy program with the Alberta government, as discussed in the previous section. One informant who has worked with the consultation program noted that the government starts consulting before the feasibility plans are even done, and bringing in the Native viewpoint from the start. The Piikani informant believes that if they had had these policies in place at the time of the Oldman River Dam conflict, the issues would have been resolved. He also stated that “[he does not] think that you’ll ever see another Oldman Dam again”. These statements of confidence in current consultation policies indicate that at least one Piikani tribal member is confident of long-term respect for tribal sovereignty.

The one Piikani tribal member I spoke with (Informant 17, personal communication, August 7, 2008) made the following statement about what sovereignty is:

Sovereignty to me in this situation we are in would be practical self rule or self determination (not having to rely on Govt funding). Having good Governance...stable, fair and sound government and Administration, having appropriate (laws/policies) rules of the game, a sound strategic management plan, and overall ensuring our cultural perspective is all included. I wouldn't go a far as having our own money or postal service etc...we need to be a country within a country.
Conclusions on the Oldman River Dam

It would appear that in this conflict, Piikani tribal sovereignty was not respected with regards to the building of the Oldman River dam. The Piikani chose to rely primarily on court cases to protect their rights, and did not engage with the outside community. This led the dam to be built but also led new legislation to be made that would protect their rights even more. It is difficult to draw conclusions as the conflict is still on-going, but it does appear that the outcome of this controversy, although originally it did not respect sovereignty, was a factor in creating a new program that would support indigenous sovereignty more than ever before. The conflict resolution processes and outcomes for this situation show how many different ways an outcome can be considered to be successful or not, and here it is clear that although the Piikani were originally unsuccessful in preventing the dam from being built, they were successful in gaining rights and increasing their social capital.
CHAPTER 5: RESULTS

Having summarized the cases and data gathered I am now moving on to discuss the results of the research. I will begin by discussing what conflict resolution processes were used by each tribe, and how they compare to each other. I will then move on to address sovereignty assertion in conflict resolution processes, comparing how each group was or was not able to assert their sovereignty in these situations. Next, outcomes of the processes will be compared as to whether they uphold sovereignty or not and will examine these process and outcome results in the light of the theoretical background based on Foucault and Godelier. To conclude this section, I will compare my results on to what degree both tribes had sovereignty during their respective conflicts.

Conflict Resolution Processes Used

The Orme Dam conflict involved methods of conflict resolution; discussion and problem-solving, unofficial negotiation, administrative decision, judicial decision-making, and legislative decision. The Oldman River dam conflict had three processes; negotiation, judicial decision-making, and violence. The processes were very different, with the Yavapai leaning towards alternative methods of dispute resolution, and the Piikani relying more on court cases and official negotiations. It is impossible to say what might have occurred had different processes been used by each group, but it is interesting to note that the Orme Dam conflict had a fairly direct ending point, while the Oldman River dam conflict is still going on. The court system seems to have dragged the fight on beyond where it could be useful, as it seemed to do in the one piece of litigation against the BOR’s siphon; eventually the case became moot as the siphon was built before a decision was made. In the Piikani case, the federal environmental assessment panel decided that the dam ought not to have been built but again, it only made this decision after the dam was almost operational.
This data suggests that judicial decision-making may be a useful tool in conflict resolution as long as it is used alongside other methods. When it is relied on exclusively, it may draw out the process over years and resolution may not be achieved. Because the Orme dam conflict used so many types of conflict resolution processes, it is difficult to draw conclusions as to which are most effective. It may be that using as many process types as possible makes reaching a satisfactory resolution more likely, however since this observation is based merely on one case, this question would need to be investigated further before any conclusions could be drawn.

Sovereignty Assertion in Conflict Resolution Processes

Both groups took vastly different approaches to asserting their sovereignty in their respective conflicts. The Yavapai pursued many different avenues of discussion on a tribal council level, and coalition building and awareness raising that started with a small group within the tribe but eventually became part of the tribal council’s policy. The Piikani, on the other hand, primarily pursued settlement in the courts, with some attempts at negotiation and one attempt at more direct action using a military-type group. All of these actions were designed to increase their bargaining power. Both groups were relatively small and non-threatening to the governments and agencies involved in these conflicts. The Yavapai changed this situation through creating a support base that kept their concerns before the public eye and made the government address them. The Piikani dealt with the situation through the courts, and once their claim was upheld, Alberta was forced to address the issues. The Piikani did not engage the public in their struggle, which meant that they did not increase their power in the way that the Yavapai did by attracting public interest and support.

Both Arizona and Alberta government officials and agencies tended not to deal with the tribes until they had attained a certain level of power that gave them enough authority that they had to be dealt with. Sovereignty was not respected by agencies until the tribes had sufficiently asserted it and then had to be treated as interested and important parties to the disputes. This can be seen through Godelier’s (1986) understanding of power relations only changing as a result of social relations changing. Each tribe used different methods to challenge the status quo which
kept the Arizona and Alberta governments at higher levels on the power hierarchy, and by adding to their tribal power using coalitions, court cases or other methods, the Yavapai and Piikani became entities that had to be included in decision-making processes. Before, they were not considered important enough to have input into decisions about the dam, but by the end of each conflict, their concerns were being respected and addressed.

While I am only examining two examples of state-indigenous conflict over resources, these two case studies also seem to indicate that group unity can play a large role in helping an indigenous group to assert their sovereignty. It took years for the Yavapai to be heard, and the government only really started listening to them once everyone, tribal council and smaller groups, came together to raise awareness about the problem and demand an acceptable solution. The Piikani were never able to have that kind of single purpose, which made it difficult for any government agencies to respond to them; with no official position taken outside of the court cases, it would have been very difficult to sit down and collectively find a solution to the problem. This could also confirm Godelier’s (1986) assertion that a group of people needs to choose to fight social relations in order for these relations to be transformed. The Yavapai were able to come together as a cohesive whole to fight a specific problem, and that changed their relationships with other governments and agencies. The Piikani, on the other hand, were never united, and although their court cases ensured that they were heard at the end of the conflict, they did not single-handedly change their social relations to other agencies and governments. The consultation program does indicate a change in social relations, but that did not come about solely as a result of the Oldman River dam controversy.

I used Scott (1985) to address why the two tribes were and were not able to come together as a group in collective and open action, and it appeared that the Yavapai, although faced with many reasons not to fight collectively (different levels of understanding the threat, different individuals wanting different benefits, the fear of repression if they did act openly) were able to come together around the desire to survive, and the fear of relocation and losing their land forged them into a strong group. The Piikani, on the other hand, while also faced with similar
strong reasons not to act openly and collectively, were not able to come together to avoid cultural
destruction in the same way that the Yavapai were. It is possible that relocation was a greater
threat than the environmental changes caused by the Oldman River dam, although I have no way
of comparing the two. It is also possible that the corruption in the tribal leadership and the
perception of some people being able to benefit more than others from the dam was a leading
factor in their inability to act as one strong group.

From these two case studies, it would seem that in order to be recognized as a sovereign
entity in conflict situations, a group must be cohesive and have a common purpose, and they
must work together using a variety of methods to ensure that their voice is heard. I would like to
note that I am focusing exclusively on sovereign indigenous communities, and cannot comment
on how non-indigenous groups assert or do not assert sovereignty when faced with a similar
situation. It is possible that these techniques would also be applicable to other types of groups,
but I believe that the fact that indigenous groups have some type of recognized sovereignty
through the law gives them another angle from which to approach problems.

The governments and agencies involved in these two conflicts did not respect tribal
sovereignty at the beginning, but as the conflicts continued, eventually both tribes received some
measure of respect. This implies that these agencies would have preferred not to deal with Native
concerns, but were forced to because of differing circumstances. The Yavapai forced the issue by
creating a coalition that was big enough that they could not be ignored; the Piikani, through their
court cases and their armed confrontation ensured that people knew about the conflict and the
federal government had no choice but to act.

Sovereignty in Process Outcomes

In sum, the Orme Dam conflict was fairly successful in its outcome, as was the Oldman
River Dam once the Settlement Agreement had been signed. The Orme Dam conflict had more
immediate positive consequences, while the other did eventually bring some satisfaction to the
Piikani, but only in the long term.
Although the Yavapai received immediate respect for their tribal sovereignty in the Orme Dam controversy outcomes, they have enduring fears about losing their land. I would have liked to be able to speak with more Piikani tribal members, but according to one of them, there may not be as much fear for future loss of land on the Piikani reservation as there is at Fort McDowell. This indicates that sovereignty cannot be measured in the immediate effects, but long-term feelings of security may also play in to how successful a conflict resolution outcome is in respecting tribal sovereignty.

The decision not to build the Orme Dam upheld tribal sovereignty as defined by the United Nations Declaration, and it also met many of d’Estree and Colby’s (2004) criteria for successful environmental conflict resolution. The tribal members were also satisfied, although in the long term they are concerned that a similar situation could arise.

Piikani tribal sovereignty, on the other hand, was not respected in the immediate consequences of the conflict, and the outcome does not meet the UN Declaration’s criteria of indigenous right to develop their lands as they choose, right not to have their practices be destroyed, to access their lands and religious sites in private, or the right to enforcement of all treaties and agreements. In the long term, and in d’Estree, and Colby’s framework (2004), they fared a little better. An outcome was reached, the eventual settlement agreement and further negotiations upheld community self-determination and were satisfactory to the tribal members, and the new consultation program did increase social capital.

Theoretical Analysis

In terms of process, it is important to examine how the Yavapai and Piikani experienced Foucault’s “disciplinary technologies”. As stated in the “Theoretical Background” section, disciplinary technologies are used to control human bodies using training, normalization, and organizing the spaces in which they exist. In the Orme Dam controversy, BOR attempted to train the Yavapai to see the merit in the dam through on-reserve workshops and meetings. These meetings were never designed to ask for Yavapai input or views, put rather to instill in them the importance of the Orme dam and why it was necessary that the dam be built and the Yavapai be
relocated. One informant stated that “the government was trying to tell people how they’d benefit from the dam; they weren’t listening to the people, just telling them how to do things” (Informant 3, personal communication, June 16, 2008). BOR and the other government agencies and interested individuals and organizations attempted to normalize the idea that land is worth a certain dollar amount: this is seen in the negotiations over how much the land was worth, as well as in newspaper articles and letters to the government of Arizona over the course of the conflict.

The various agencies chose only to interact with elected tribal council members; this is another way of controlling the Yavapai, especially as there were many non-elected tribal members who did not want Orme dam. By refusing the Yavapai access to and input into the decision-making process at the beginning of the conflict, BOR and the Arizona government were trying to keep the Yavapai as a docile entity that would accept the dam without demur, and without challenging the power structure that kept BOR and the government high above the Yavapai.

Eventually, as the Yavapai continued along their chosen course of action in spite of these disciplinary technologies, the various parties involved accepted the Yavapai position and their increased power base which changed the relations of power in this situation. Because of this shift, BOR and the Arizona government brought the Yavapai into the decision making process and began listening to their views and needs. The disciplinary technologies attempted here were unsuccessful, and eventually abandoned.

In the Oldman River Dam conflict, Alberta Environment and other agencies attempted to control the Piikani using the normalization of certain actions. Alberta did not attempt to train or educate the Piikani, nor did they attempt to organize Piikani space or environment. Alberta did, however, continue to normalize the idea of a group of people giving up land for the benefit of the rest of the province, and did so by refusing to listen to Piikani concerns at the outset. The Piikani did not submit to this technique, instead filing court cases, and eventually the federal government forced Alberta to face this fact and address Piikani demands.
In examining Godelier’s modes of production (1986), it is obvious that the capitalist mode of production greatly influenced the plans for the two dams. As defined above, a mode of production includes a mental organizing plan for how to use productive forces and technologies. In these two cases, the capitalist mode of production was arguing that the success of agribusiness was the most important goal, and those who subscribed to this belief pushed the plans to build the Orme and Oldman River dams. Agribusinesses benefit from large-scale water projects in that the projects irrigate larger areas, creating more irrigable land that can be used to increase profitable properties. Dams and other projects can cause great social and environmental upheaval for those living close to them, and the projects generate energy and bring water that will sustain large businesses and increase the wealth of those who own these large farms. The social value of increasing wealth and prosperity, which in both Arizona and southern Alberta heavily depends on having enough access to water, determined that regulating water would be the best way to increase said wealth. In Arizona, BOR determined that building a dam at the confluence of the Verde and Salt Rivers would be the most effective way to regulate water, and in Alberta, the Albertan government decided that on-stream storage was the best option. The agribusiness communities and the Arizonan and Albertan governments used these arguments to convince the public to accept the dams. In Alberta this argument was only seen to be incorrect after the dam was operational, and in Arizona, the coalition of Yavapai, environmentalists, tubers and other parties was successful in refuting it.

The fact that some within each indigenous group were inclined to accept money in exchange for their land is explained by Godelier’s argument that different groups can find it advantageous to remain in the low end of the social hierarchy, as we have previously discussed that indigenous nations sometimes do to preserve their cultures and traditions (1986). It would seem that some individuals among the indigenous groups prefer to join the dominant society, in a process of Foucauldian self-formation that changes their values and normalizes those of the dominant society (Rabinow, 1984).
In the case of the Yavapai, there was a very obvious split between tribal council and the small group of elders that opposed Orme dam from the very beginning. There are a number of possible reasons why the tribal chairman and council were so slow to condemn the dam. The tribal council’s reluctance to commit to a position until all studies had been done may show an approach that would be open to accepting the dominant society’s position if they felt it would be for the good of the community. Both council and the elders who opposed Orme dam were looking at survival as a people and a culture, and the council may have felt that the only way to survive as a small tribe in Arizona would be to accept the will of the dominant society and adapt. One tribal chairman, Clinton Pattea, wrote a letter to Secretary of the Interior Stewart Udall in 1968 expressing support for the CAP “because of the immense benefits it will bring to Indians and non-Indians of the area” (Pattea to Udall, 1968). When later challenged on this, Pattea stated that he personally opposed Orme Dam but that he had written the letter because the government and the Bureau of Reclamation had not asked the Fort McDowell Yavapai for their opinions on the subject (Scottsdale Progress, 1974). While the elders who were adamantly against the dam may have seen Pattea’s action as being complicit with the federal government, Pattea seems to have seen his writing that letter as a way to bring attention to the problems that also respected the importance of the CAP for the citizens of Arizona.

In the case of the Piikani, there were those who wanted the money that developing the Oldman River would bring, even if it would damage the ecosystem that they later stated they so valued and demanded reparations for. Because I do not have as much data on the Piikani as on the Yavapai, I cannot speak to how the various factions in the tribe felt about complicity. It is evident that there were many viewpoints on what was appropriate and how the dam should be fought. These two cases show that there may be many different reasons for individuals to prefer to join the dominant narrative, and these desires may change over time as was so evident with the Yavapai tribal council.

As regards outcome, as noted in the “Theoretical Background” section Godelier (1986) asserts that power relations in a society can only be changed if the social relations that create
power imbalances are done away with. In the Orme Dam conflict, it would seem that there is more respect for Yavapai sovereignty: in more recent conflicts, including a 1990 standoff over the tribal casino, one informant stated that the tribe now has a government-to-government relationship with the Governor of Arizona, and this is a new development since the Orme conflict (Informant 1, personal communication, June 10, 2008). The power relations have changed to some extent, and while part of it is probably resulting from the exchanges during the Orme Dam controversy, it is possible that the tribe’s increased revenue and spending capacity also has something to do with it.

For the Piikani, the new consultation program may well be a change in power relations, although I have no hard and fast data to support this assertion. Having been unable to speak with many tribal members, I have no information as to whether a shift in social relations and power distribution has occurred.

Degree of Tribal Sovereignty Possessed

It is difficult to compare the sovereignty possessed by each tribe as my research methods were designed to assess this using interview data. Because I was only able to interview one Piikani tribal member, I cannot do an adequate comparison. While the many Yavapai that I interviewed had views on what sovereignty is based in (identity, culture, economic and political base), they all basically agreed that sovereignty is self-determination and the ability to protect their culture. The one Piikani tribal member I interviewed also subscribed to this idea. They also specifically focused on the ways in which sovereignty could be further entrenched legally, which would assure their sovereign status. I believe that this is important to note, because although scholars may speak about sovereignty of thought and how to get beyond legal perspectives, if it is to be truly accessible, sovereignty must somehow be enshrined in the legal systems of the nation-states in which the indigenous groups reside. The indigenous peoples interviewed over the course of this study seem to feel that they require the security of legal recognition of their rights.

Insofar as whether or not the tribes had sovereignty during the various conflicts, both Yavapai and Piikani agreed that the governments and agencies involved did not respect tribal
sovereignty through the conflict resolution processes. The outcomes, on the other hand, did respect tribal sovereignty. There are differences in how the Yavapai and the Piikani feel about the future: the Yavapai still fear losing their lands, while my Piikani informant is positive that the government will not try to take their lands again. These differences may reflect that although sovereignty was respected in the short-term for both the Yavapai and the Piikani, in the long-term it is the conflict resolution processes developed out of the Oldman River Dam dispute and other disputes that will maintain and respect tribal sovereignty into the future, and the Yavapai do not have these assurances.

Godelier (1986) has discussed how social relations are transformed and lead to the transformation of power relations. This did occur with the Yavapai, but only with regards to the specific conflict over Orme dam. There has been a shift in how the Yavapai are treated by outside agencies and governments, but there is no new conflict resolution policy in place like the Alberta consultancy program. What may have impacted this is that the consultancy program was developed in response to a number of conflicts that were not effectively dealt with, and so this overarching program was created to deal with all provincial-indigenous conflicts. This means that a large group of indigenous nations objected to the way in which they were being treated, and this entire portion of society demanded a change in social and power relations. The Yavapai focused exclusively on the Orme dam conflict, and while this was effective, for there to be a real shift in social and power relations, the Yavapai and other Arizona tribes would have to work together to effect lasting change in government legislation and policy.
CHAPTER 6: SUMMARY AND DISCUSSION

This study has focused on indigenous sovereignty in conflict resolution processes and outcomes involving state-indigenous conflicts. The purpose of the study was to assess what processes help tribes to be most successful in asserting their sovereignty in conflict situations.

Summary

Research Question

The research question for this study was as follows: how did the Yavapai and Piikani, in the conflicts over the Orme and Oldman River dams, assert their sovereignty, and how successful were these two groups in doing so? These two questions lead to final conclusions about what might be considered key components for an indigenous group to assert sovereignty in a conflict situation.

Limitations

I was most limited in my research by the number of key informants available. As mentioned above, many have died since the conflicts were completed. Also, I was unable to interview more than one Piikani tribal member. I was fortunate enough to access more archival information in Alberta to supplement this deficiency, however the personal views on what sovereignty is and whether it was upheld in this conflict are lacking.

Other limitations included a lack of time and money. In the Alberta provincial archives, a number of documents relating to the Oldman River dam were restricted by law, and required a great deal of money for each document requested, and then around a month for the document to be retrieved and then edited by researchers to remove any sensitive material. This meant that while I could see from some of the document titles that they would be very useful to my analyses, I could not afford to pay for them or to wait to access them, and having that time and money would perhaps have allowed me many more insights into this material.
I believe the approach of archival and interview research was appropriate to this project, given that it revealed a great deal about all parties concerned. I did, however, focus exclusively on indigenous actions and how they asserted sovereignty; if I had had more time, I would have liked to have examined the various governments and agencies involved in order to more accurately assess how they did or did not respect tribal sovereignty. This would have enabled me to more fully understand how the actions taken by the indigenous groups were received by outside authorities.

**Comparison of Current Data to Prior Research Findings**

This research confirms Sullivan’s (2006) assertions that sovereignty must be acted upon continually. Only by perpetually reminding other agencies that indigenous governments are actually representing sovereign nations will claims be taken seriously. This seems to show that the assertion of sovereignty is itself an indicator that sovereignty is present. Again, this is seen in the fact that in both conflicts, the Native nations were only brought into the decision-making processes once they had argued publicly that they had a right to be involved, once again showing that governments and agencies can move from bio-power approaches to situations when forced to do so.

As discussed in the literature review, Ashley and Hubbard (2004) recommend trying to keep from litigating, agreeing to disagree on issues of jurisdiction, meeting face to face, focusing discussions on a narrow topic, having an overall framework for using cooperative approaches, and bringing in a third party. This study confirms their findings. The Yavapai were able to keep from using litigation, and they did not bring in complicated issues of jurisdiction. They focused exclusively on saying that the reserve was their land and they did not want a dam and reservoir to force them to relocate. The Central Arizona Water Control Study process did provide a framework for hearing from everyone involved, although it attempted to be a completely rational way to deal with the issues, and that was not an option for the Yavapai.

The Piikani, on the other hand, went the litigation route, spent a great deal of effort arguing over jurisdiction, and did not appear to focus on a specific plan of attack. They brought up
many issues and voiced many different opinions and positions over the years which made it very
difficult for governmental agencies to address any issues satisfactorily. In the years leading up to
the construction of the dam, there was no overall framework nor was there a third party to the
discussions. It would appear, based on these two case studies, that following Ashley and
Hubbard’s model of conflict resolution in situations dealing with indigenous sovereignty over
resources is more successful than attempting the litigation route without any other methods of
conflict resolution.

**Recommendations for Further Study**

In order to better understand what processes and actions are most useful to indigenous
groups attempting to assert their sovereignty, I would recommend further comparison between
more cases. Having only two case studies, while interesting, does not provide conclusive
evidence for any particular deduction or argument. These cases could be current or far in the
past: I believe it is helpful to be able to speak with tribal members who were involved, but
comparison could be done from purely archival resources.

I also believe that it is essential to do more research on how indigenous people define
sovereignty. To do this, it is necessary to conduct more interviews, and possibly do so in a more
structured way than I have chosen to do.

**Conclusions**

My examination of how the Yavapai and Piikani asserted sovereignty supports the many
differing views of sovereignty we examined in the literature review. Both groups had a set of legal,
sovereign rights, and both felt that their voice was not heard. In order to exercise their sovereign
rights, they took differing paths to make sure that the various agencies involved were reminded
that they were dealing with sovereign nations. Thus, sovereignty was both something that was
granted and something that needed to be exercised. It would appear that to my informants,
sovereignty is something that is both an interaction and an inherent right enshrined in legal
language. Many spoke about asserting sovereignty in order to keep it, and others reiterated the
need to have indigenous sovereignty supported by law. The various expressions of sovereignty
listed by my informants indicate that sovereignty is perhaps something that is always in the process of being defined by those who possess it or fight for it, and in order for this dialogue around its definition to continue, it needs to be protected legally by the nation-states in which the indigenous groups reside. Sovereignty is, then, something that must be asserted and then reflected back as it is respected by outside governments and agencies. Both groups also experienced Foucault’s disciplinary technologies in similar ways, and each continued to struggle against the government and agencies’ push to exchange land and identity for money. Eventually, the agencies were forced to acknowledge indigenous concerns and stopped attempting to normalize their Western perspective.

The conflict resolution processes, in terms of how they upheld or did not uphold tribal sovereignty, followed similar patterns. At the outset of the conflicts, neither indigenous group was taken very seriously, but as the conflict progressed, other stakeholders began recognizing the importance of bringing the Yavapai and Piikani into the discussions. Each group took sovereign action in different ways; the Yavapai created a network of supporting individuals and agencies and influenced public opinion. The Piikani, on the other hand, focused on the legal system and took their case to court. It is interesting to note the variations in group unity for both communities; after not being united during the initial stages of the conflict, the Yavapai eventually came together as a community opposing Orme Dam. The Piikani, however, only took a unified stand against the Oldman River dam as the dam was nearing completion, and this may have complicated matters with the government of Alberta.

As discussed in previous sections, there is a blurry line between an indicator of sovereignty in conflict resolution processes and a factor that will increase the likelihood that a process or outcome will respect sovereignty. The conflict resolution processes themselves could be seen in this light. The fact that negotiation processes were used in both conflicts showed respect for tribal sovereignty by bringing the indigenous groups into the discussions, but also increased the likelihood that the eventual outcome would respect tribal sovereignty. The use of problem-solving with the Yavapai in the Orme dam controversy did the same. The administrative
and legislative decision-making processes also eventually upheld tribal sovereignty, and again, increased the likelihood of an outcome that would do the same. The violence used in the Oldman River dam conflict, while it did not increase communication or understanding between the parties, did however bring attention to the problem, and it is possible that this also contributed to the Settlement Agreement eventually respecting tribal sovereignty. What can be learned from this is that many conflict management approaches can positively contribute to the indigenous groups involved receiving recognition of their tribal sovereignty. Based on these two studies alone, I do not believe it is possible to state which approaches were most successful, but rather a combination of approaches will be most effective in reaching all goals.

In asserting sovereignty, from these two case studies, it appears that an indigenous group needs to have a common purpose and use as many outlets as possible to allow their voice to be heard. Godelier’s theories also explain the reasons why various individuals within each group may have preferred to join the dominant narrative and take money in exchange for their land. By the end of each conflict, the two groups were included in decision-making processes and their voices were heard. This shows a shift from Foucault’s bio-power approach to these issues to an approach that took ethics and minority rights into account.

The outcomes of these processes were very different for both groups. In the short term, it appeared that the results of the Orme Dam controversy upheld tribal sovereignty, while those of the Oldman River Dam conflict did not. In speaking with the Yavapai of Fort McDowell about the future, however, many of them are afraid that a similar threat to their land and community may arise, while there is some feeling on the Piikani reserve that the new consultation program will prevent such a event from happening to them again. The Settlement Agreement that was signed by the Piikani, Alberta and Canada also acknowledged tribal sovereignty after the fact. While it is not clear whether the Piikani experienced a change in the social relations that inform power distribution, as per Godelier, it appears that there were some changes in how the Arizona government relates to and deals with the Yavapai, perhaps indicating that social relationships did indeed change as a result of the Orme Dam conflict. These social relationships would include
willingness on the part of non-indigenous governments and agencies to bring indigenous groups into consultation and decision-making processes from the beginning of projects that might affect them. It also includes these outside agencies seeing indigenous groups as stakeholders in projects like these who have a voice in what will eventually be decided, instead of seeing them as peripheral issues that will go along with whatever decisions are made over their heads. Treating indigenous leaders as equal partners would be a change in social relations that would impact future disputes.

From this data, I conclude that getting away from the legal paradigm can be very helpful in preventing a government or agency from taking an action that could trespass on indigenous sovereign rights. Using awareness-raising and coalition building techniques rather than focusing on a court case was very effective in keeping Orme Dam from being built. In the long run, however, the legal cases did set a precedent and helped to create a new consultation program. While the Yavapai still fear losing their land, indigenous groups in Alberta now have an assurance of being brought into new projects at the planning stages, and they know that their voices will be heard. This study leads me to believe that it is most effective to combine processes, not merely relying on the judicial decision-making process, which may eventually change the status quo, but building a power base by creating awareness about a problem and founding a coalition to support an indigenous group will help ensure that sovereignty is also respected in the short term.

I stated at the beginning of this paper that the research would be used to draw conclusions about possible components necessary for indigenous groups to assert their sovereignty in conflict resolution processes. The first is that indigenous groups need a united front with strong leadership and no corruption in their government. This came up repeatedly in a number of the interviews with tribal members as a problem that prevents indigenous groups from fully reaching their potential and standing together. This is further proven in that by taking a united front and by unequivocally stating their opposition to Orme Dam, the Yavapai were able to convince officials that the dam was unwanted. In contrast, because the Piikani never took a solid stand on the dam, Alberta officials were able to say that they could not consult with the Piikani
who could not decide on what they wanted. In Godelier’s terminology, groups and individuals do
accept lower positions in society’s hierarchy; the fact that the Yavapai chose as a group to remain
in these lower positions in order to preserve their way of life became a very effective way of
ensuring that their voices were heard and their needs were met.

I also believe that an indigenous group needs to be large enough and/or strong enough
to gain attention and assert their sovereignty. In both cases, it was only once the two indigenous
groups became vocal enough for outsiders to be aware of their views that governments began
taking them seriously, listening to their concerns. The Yavapai, who had a very small population,
formed a strong coalition through which to present their views to the general populace; this
strategy was highly effective. The Piikani did not attempt to influence public opinion in this way.
Although they eventually received redress through the court systems and negotiation, perhaps if
they had had a wider base of support they could have helped prevent the dam being built at all.
The Yavapai’s strong group was able to move the government away from its bio-power approach
to resolving conflict: eventually, the Piikani were able to do the same thing through the court
system, however by the time the government began to respect their rights the dam was already
built.

Finally, this research suggests that in order for tribal sovereignty to be respected in
conflict situations, indigenous groups must go beyond the legal paradigm and attempt a variety of
methods geared towards presenting their views to the general populace and other stakeholders.
The Yavapai did this by creating a coalition of groups and individuals who kept on hammering
home the needs of the Natives, the environmentalists and the recreational users of the Salt and
Verde Rivers. This brought their message to many different audiences with very different
concerns. The Piikani did not attempt to do so. They focused almost exclusively on the legal
paradigm, and while their armed confrontational methods did receive widespread attention, they
did not create a sense of people fighting together for common goals, and may have generated a
sense of fear and antipathy from non-Natives.
While my study has been based on only two case studies, I have also drawn on available literature about how state-indigenous conflict resolution can be improved upon traditional methods. Each of these four assertions can be supported by the literature, and is not unique to my case studies. Although these two conflicts are long over (in spite of the fact that the Piikani may still be struggling over these issues), I hope that my work here may be of use in continuing to refine conflict resolution methods in these situations. Given the delicate nature of these issues and the long history of misunderstandings and betrayals between indigenous groups and federal or provincial/state governments, these conflicts will always be difficult and involved. With a mutual understanding of all aspects of indigenous sovereignty and a concerted attempt on all sides to get beyond previous failures, perhaps it will be possible to find a new paradigm of consensus-building and consultation that will enable us to forge good, lasting and sustainable agreements.


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APPENDICES

Appendix A — Consent Form Template

LAND RIGHTS AND SOVEREIGNTY

You are invited to participate in a study that will compare the environmental conflicts surrounding the proposed Orme Dam in Arizona and the Oldman River dam in Alberta, and will investigate questions of sovereignty on the Yavapai Nation Reservation and the Piikani Blackfeet Reservation. The study is conducted by Christina Farnsworth. Results will be used to support a Master’s thesis. Christina Farnsworth can be reached at 720-935-9702/cfarnsw4@du.edu. This project is supervised by the course instructor, Dr. Richard Clemmer-Smith, Anthropology Department, University of Denver, Denver, CO 80208, 303-871-2406/rclemmer@du.edu.

Participation in this study should take about 30 minutes of your time. Participation will involve responding to approximately 20 questions about the Orme Dam conflict or the Oldman River dam conflict, and sovereignty. Participation in this project is strictly voluntary. The risks associated with this project are minimal. If, however, you experience discomfort you may discontinue the interview at any time. We respect your right to choose not to answer any questions that may make you feel uncomfortable. Refusal to participate or withdrawal from participation will involve no penalty or loss of benefits to which you are otherwise entitled.

Your responses will be identified by code number only and will be kept separate from information that could identify you. This is done to protect the confidentiality of your responses. Only the researcher will have access to your individual data and any reports generated as a result of this study will use only group averages and paraphrased wording. However, should any information contained in this study be the subject of a court order or lawful subpoena, the University of Denver might not be able to avoid compliance with the order or subpoena. Although no questions in this interview address it, we are required by law to tell you that if information is revealed concerning suicide, homicide, or child abuse and neglect, it is required by law that this be reported to the proper authorities.

If you have any concerns or complaints about how you were treated during the interview, please contact Dennis Wittmer, Chair, Institutional Review Board for the Protection of Human Subjects, at 303-871-2431, or Sylk Sotto-Santiago, Office of Sponsored Programs at 303-871-4052 or write to either at the University of Denver, Office of Sponsored Programs, 2199 S. University Blvd., Denver, CO 80208-2121.

You may keep this page for your records. Please sign the next page if you understand and agree to the above. If you do not understand any part of the above statement, please ask the researcher any questions you have.

I have read and understood the foregoing descriptions of the study called Land Rights and Sovereignty. I have asked for and received a satisfactory explanation of any language that I did not fully understand. I agree to participate in this study, and I understand that I may withdraw my consent at any time. I have received a copy of this consent form.

Signature _____________________ Date _____________________

I would like a summary of the results of this study to be mailed to me at the following postal or e-mail address:
Appendix B — Interview Questions

1. Were you a part of the Orme/Oldman River dam controversy? Do you know much about it? (if no, skip to question 16)

2. What federal and state agencies had responsibility for Orme/Oldman River dam?

3. How did the government (agencies, state senators/congressional representatives) communicate with the tribe during the controversy?
   • What methods did they use to communicate? (phone, letters)
   • How often did the government communicate with the tribe?
   • Do you think the government should have communicated better with the tribe? How?

4. Did negotiation occur between outside agencies and the tribe?
   • Did the outside agencies send negotiators who had the power to make and enforce decisions?
   • Were agreements made by negotiations honored?

5. How did the agencies keep the tribe informed?
   • When did the government inform the tribe of a possible dam? By phone, letter etc?
   • Did the government tell the tribe when significant information became available? For example, reports on water levels or possible effects.
   • How quickly did the government respond to tribal requests for information? In a month, six months, a year?
   • Do you think the government could have done a better job keeping the tribe informed? How?

6. Did the tribe take the case to court?
   • How was the court case financed?
   • Was the tribe able to go directly to the federal government? If so, how was that paid for?
   • Did people want to do more to present their case in court, but couldn’t because of financial reasons?

7. Did the tribe communicate with the media?
   • If so, did the tribe initiate contact or did the media come to the tribe?

8. Did the tribe make alliances with outside groups to fight the dam?
   • With whom? –environmentalists, local community, professionals
   • How did alliances work? Was the tribe involved in leading the alliance? Did the tribe set up the alliance?

9. Did the tribe lose or gain any legal rights as a result of the controversy?

10. Has the community been broken up as a result of the controversy?

11. Has the tribe received compensation for lands or resources lost as a result of the controversy?
    • Do you believe that the compensation is appropriate for what you lost?

12. Were any tribal members forcibly relocated?
13. Since the controversy, has there been a change in the types of jobs people do?

14. Did people leave after the controversy?

15. Do you think that outside agencies and governments respected tribal sovereignty in their dealings with the tribe?

16. Do you think that the result of the controversy (no dam/dam) recognized tribal sovereignty?

17. What does the word “sovereignty” mean to you?
   - What does it mean to have sovereignty?
   - Are there aspects of sovereignty that you feel your nation does not have?

18. How do people and organizations (including governments) respect tribal sovereignty? How do they disrespect it?

19. Could you point me to anyone else who might be willing to talk with me about Orme/Oldman River dam?
Appendix C — Orme Controversy Timeline

Taken from Schilling, 1998

-1922
-George Maxwell campaigning for scheme to bring CO River water to Maricopa and Pima Counties

-1940s
-state leaders thinking about finding state funds for project
-1943 – Bureau of Reclamation began inventory of potential sites for federal reclamation
-1947 – Bureau of Reclamation recommended a number of Arizona sites including reference to McDowell Dam and Reservoir
-late 1940s – pro-CAP legislation introduced in Congress
-anti-CAP politicians got vote through Congress postponing CAP till Arizona’s right to water officially resolved

-1950s
-1952 – Arizona brings lawsuit vs California to resolve all legal rights to Colorado River Water
-early 1950s – some record of discussions between Indians and Bureau of Reclamation, tabled till Arizona-California dispute settled

-1960s
-minimal contact bet Fort McDowell community and Bureau of Reclamation
-1961-2 – Indians asked for information on lake fluctuation levels, federal government said information would be available March 1963
-1963 – water rights case resolved in favor of Arizona, next day Arizona asked for CAP authorization
-1964 – Salt River Pima-Maricopa and Fort McDowell Indian Communities issued joint position paper on October 2nd detailing concerns
-1964 – December – Bureau of Reclamation scheduled meeting, tried to address tribes’ concerns but didn’t have all information needed
-1965 – opposition still strong from Indians, government began thinking about alternatives to Orme
-1966 – March – delegations from both reservations invited to Washington to discuss dams and ease fears
-1966 – April – Vote at Fort McDowell – 19 out of 41 against, 10 supported, rest withheld opinion wanting non-tribal economic assessment of situation
-1968, Sept 30 – President Johnson signed Colorado River Basin Project Act with CAP as central element of legislation
-1968 - independent study of Orme Dam (paid for by federal government) completed
-late 1960s – negotiations between Secretary Udall and other government agencies about exchanging Indian for forest land, Indians virtually uninformed

-1970s
-1971 – report commissioned by Fort McDowell community
-1972 – late January, early February – House held hearings again on CAP
-1972 – Dec 26th – tribal meeting, Fort McDowell residents pleading against dam, expressing opposition, Tribal Chairman Doka sent telegram to Secretary Morton on behalf of whole tribe expressing opposition
-1973 – Feb 6 – first time Bureau of Reclamation officials went to Fort McDowell to discuss Orme
-1973 – another referendum on Orme, 100 against, 1 for
-1975 – another referendum – 140 opposed, 1 in favor, 8 undecided
-1976 – April – Bureau of Reclamation returned to reserve to give 5 meetings to educate tribe about Orme
-1976 – June 25th - opponents scheduled news conference – 14 organizations against Orme
-1976 – September 25th – official referendum on Orme by Fort McDowell – 144 against, 57 in favor – tribal chairman announced that negotiations with Bureau would end
-1977 – January and February – President Carter assembling new national water policy that wouldn’t look too well on projects like CAP
-1977 – President Carter eliminated CAP from budget
-1977 – March 21st – hearings held on reinstatement of CAP
-1977 – April 15th – President Carter reinstated CAP but without Orme, Hooker and Charleston Dams
-1977 – October – Bureau of Reclamation confirmed that Carter’s order meant no dam at the confluence
-1978 – massive flooding – twice in year
-1979 – February – more flooding
-1979 – formation of Orme Alternatives Coalition – 22 organizations
-1980 – Central Arizona Water Control Study (CAWCS) commenced to be completed by October, offered 3 options, only 1 included confluence dam
-1981 – Secretary Watt supported alternative to confluence dam
Appendix D — Oldman Controversy timeline

Taken from Glenn, 1999 and de Loë, 1999

-1970s

-1975 – provincial government proposed $200 million package of measures to strengthen irrigation – included commitment to build dam on Oldman river
-1976 – June – government released detailed study about regulating Oldman River (Phase 1 study), lots of possible dam sites but recommended Three Rivers Site
-1976 – August – residents of Pincher Creek held meeting opposing dam
-1976 – late – government announced Environment Conservation Authority would hold public hearings on proposed dam before government made decision
-1976 – Water Management Services told Piikani it wanted to get some additional reserve land from them, asked for access to reserve to conduct engineering investigations – Piikani said they were willing to negotiate these things, but only if they were adequately compensated for past use of land on which existing headworks were situated, Alberta took position that matter of ownership and compensation was separate issue that had nothing to do with access and transfer of land
-1976 – WMS continued discussions with Piikani, March 1978 band gave them permission to access reserve for 3 months for investigations
-1976 – May 1978 – Piikani revoked permit because of inaction on compensation issue
-1976 – established blockade that denied Alberta Environment and LNID officials (Lethbridge Northern Irrigation District) access to diversion weir
-1976 – LNID desperate for water, got injunction from Alberta Supreme Court preventing Piikani from obstructing access
-1976 – a dam on Oldman wouldn’t be valuable without more land for headworks, so province reluctantly agreed to negotiate compensation with Piikani
-1976 – some Piikani unhappy with situation – warned if negotiations didn’t go their way they would try to divert river around LNID weir

-1977 – February – government announced Phase 2 studies into water management on Oldman River, removing immediate threat to landowners on site
-1977 – May – 30 farm families formed opposition group – Committee for the Preservation of Three Rivers
-1978 – August – Phase 2 studies released recommending Oldman River be regulated by a dam
-1978 – August – ECA report released recommending that a dam not be built and that concentrate instead on upgrading irrigation works
-1979 – August – ECA report released recommending that a dam not be built and that concentrate instead on upgrading irrigation works
-1979 – November 1978 – panel sat for 10 days, did get to hear from lots of people including Indians
-1979 – panel concluded that dam not needed, suggested that Brocket and Fort Macleod sites should be only sites considered if people went ahead with dam, said nothing about impact of dam on environment or on Piikani
-1979 – mid-August 1979 – signed understanding with Piikani that would ensure gov access to LNID weir
-1979 – negotiations between Piikani and Alberta began about LNID weir – Chief Nelson Small Legs and Alberta Environment Assistant Deputy Henry Theissen sat down to begin negotiations, lasted over 2 years
-1979 – 5 August 1979 – signed memorandum of understanding for proposed agreement – cash settlement of $2.5 million and a further $1 million to be held in trust at prime plus 1.5 percent interest, in exchange for Piikani granting Alberta irrevocable proprietary interest in 4.1 acres of riverbed and 50.8 acres of reserve land taken up by rehabilitated headworks
-1979 – January 1981 – new band council that surrendering reserve land for headworks not acceptable
-new negotiations, Alberta upped ante, negotiators reached final agreement April 30, 1981 (mediated by Chief Justice Mulvain of Alberta Supreme Court
-new agreement – Alberta agreed to make initial payment of $4 million to Piikani, annual payment of $300,000 dollars for the life of the agreement, Alberta also agreed to give technical advice and support for irrigation development on reserve as well as advice on construction of dam at Brocket site, to develop training programs for Piikani workers, to erect fences to prevent Piikani livestock from straying onto right-of-way and into canal – Piikani agreed to give Alberta unquestioned continued control of and access to headworks and right of way, use of reserve land for 4 years of headworks construction, unhindered access to headworks for all government employees, and to withdraw August 1979 statement of claim against Alberta and LNID and any previous claims

-1980s
-1980 – August – Minister of Environment announced dam was to be built, but determination of location would wait till Piikani Indian band decided whether or not it would allow a dam on its land
-consequence of 1981 agreement between Alberta and Piikani – commitment by province and federal Department of Indian Affairs to jointly fund a study, to be managed by Piikani, to assess potential impact on and benefits and costs to Piikani of a dam and reservoir on Oldman at the Brocket site
-November 1983 – Chief Yellowhorn forwarded proposal to Environment Minister Bradley with advice that band prepared to begin negotiations, proposal made it clear that province would not have sole ownership and control of dam
-1984 – eighth year of a drought that began in 1977 – worst in area since 1916 – put pressure on government to start building Oldman River dam
-1984 – August 9 – Premier announced dam would be built at Three Rivers starting in 1986, operational by early 1990s
-August 1984 – Premier Lougheed visited Lethbridge where he announced construction of a dam on Oldman River at Three Rivers would begin in 1986 – to avoid having forewarned opposition, government hadn’t given landowners at Three Rivers or Piikani advance notice of decision
-Piikani learned of decision through the media
-official notification for Piikani was letter from Bradley (environment minister) to Chief Yellowhorn, dated August 9th, same day of Lougheed’s conference
-2 days later, Yellowhorn announced that if they could get financial backing from fed gov and private sector, Piikani would build own dam at Brocket
-Yellowhorn claimed ownership of water in the Oldman and reminded government that river flowed across reserve land, observed that Piikani could apply for court injunction against development on the river or could divert flow of river around headworks
-1986 – construction on dam begins
-Friends of the Oldman River (FOR) formed – included Piikani, landowners, anglers, and coalition of environmental interests
-late in year – both Piikani and FOR launched court actions challenging provincial and federal governments on legality of project
-January 20 1986 – Piikani issued proclamation stating that they had a reserved right to all the natural flow of the Oldman and a right to compensation for any damages, indicating they might accept dam if they were well compensated, Yellowhorn invited Alberta’s new Premier Don Getty to sit down and negotiate a deal
-Premier Getty met with Yellowhorn on March 28th and agreed in principle to fund a Piikani study to determine the impacts of a dam at Three Rivers on reserve residents, Piikani submitted a proposal for $750,000 study to cabinet
-Piikani engaged Vancouver lawyer Louise Mandell and former BC Supreme Court Justice Thomas Berger to prepare a court challenge against the dam – on April 11 1986,
Piikani filed statement of claim against Alberta in Court of Queen’s bench, claiming rights to water in Oldman River, ownership of river bed as it flows through reserve, potential damage to reserve from construction and operation of dam and asking for an injunction to not allow prov to build dam

- June 1986 – Piikani filed claim in Federal Court against Canada and minister of Indian Affairs – same sorts of claims, also that Canada and the minister were obligated to protect the band’s rights and interests by preventing construction and operation
- August 1987 – Alberta Environment issued itself a license, under Water Resources Act, to construct the Oldman River Dam
- November 1987 – archaeological report prepared by Dr. Brian Reeves of Lifeways of Canada Ltd released, recommended that Three Rivers should be designated a Provincial Historical Resource, and the dam not be constructed
- 1987 – December 1 – Court of Queen’s Bench quashed government’s construction license
- 1988 – February 5 - government granted new construction license
- 1988 – February 24 – FOR launched legal challenge, lost in April
- 1988 – August – FOR launched attack against Ministry of Environment
- 1988 – Environmental groups and Piikani band asked federal government several times for an environmental impact assessment
- 1989 – more actions by FOR
- 1989 – June – protest concert near dam site – 8000 people attended

-1990s

- 1990 – March 13 – Fed court of appeal ruled that federal government had to conduct full environmental assessment of Oldman River dam
- 1990 – August – Peigan Lonefighter Society tried to divert Oldman River, failed, province got court injunction to make them stop
- 1990 – FOR unable to stop provincial government’s construction
- 1990 – provincial government unable to stop federal government’s assessment
- 1990 – province going in to fix damage from Lonefighters – entered reserve with armed RCMP and without permission or even notification
- 1991 – federal environmental assessment conducted without participation of provincial government
- 1991 – Born With A Tooth’s trial
- 1992 – January 23 – Supreme Court ruled against Alberta’s claim and said federal government had right to do environmental assessment
- 1992 – May 22 – federal assessment report released, advised to decommission dam but federal and Alberta governments rejected the recommendation
- 1992 – August 7 – Supreme Court ruled it would not hear FOR’s request to stop dam from operating
- 1992 – October 9 – Alberta gov gave itself permission to operate dam