subtle ways to identify what has and hasn't worked in language revitalization programs, and ultimately to suggest new approaches and methodologies in the field. In short, *We Are Our Language* is linguistic ethnography at its finest.

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The Work of Sovereignty: Tribal Labor Relations and Self-Determination at the Navajo Nation. By David Kamper. Santa Fe: School of Advanced Research Press, 2010. 260 pages. $34.95 paper.

In this impressive book, David Kamper explores the interrelationship between federal labor relations laws such as the National Labor Relations Act (NLRA), the Indian tribes' right to self-government and self-determination, and the tribal work force. He accomplishes this through an in-depth analysis of union organizing and labor relations issues on the Navajo reservation, focusing on how Navajo health workers organized when the Navajo Nation decided to take over heath care programs from the federal government pursuant to Public Law 638, the Indian Self-Determination Act.

Kamper's book is well worth reading on many levels. Although the book's focus is described as "tribal labor relations," and more specifically on union organizing within the Navajo Nation, more largely it is about how Indian nations are being incorporated into the United States political system, or how they should be. Although some may argue that Indian nations should not be incorporated into such a political system and remain separate sovereigns, this may no longer be a politically viable option. As legal scholar Charles Wilkinson once put it, the policy of the United States towards Indian nations is more one of "measured" separatism. As such, the question is not "whether" but "how" Indian nations fit within the United States' political system. In this view, there are three options for the incorporation of Indian nations: as economic entities such as corporations; as local units of governments such as municipalities; or as third sovereigns within our federalist system, or in other words, as governments with a certain amount of independent sovereignty.

Today, with the high visibility of tribally owned casinos in the forefront of economic development on Indian reservations, there is a danger that tribes could be viewed by many as mostly economic entities or, more likely, economic competitors to non-Indian entities in the marketplace. Acknowledging this issue, Kamper focuses instead on non-gaming-related labor relations within the Navajo Nation and shows why the third option, incorporation of tribes as sovereign entities, is the preferred solution. Incorporating Indian nations as

third sovereigns raises, however, some responsibilities among the various actors in this process. Although the book here addresses the responsibilities of the federal government, the Indian nations, and the unions, what makes this book unique is its focus on the role of the tribal workforce. The remainder of this review will address the role played by each of these four groups in turn.

1. The federal responsibility: Congress and the federal courts

Most labor laws, like the NLRA, are said to be federal laws of general applicability, meaning that they apply generally to everyone within the United States. The question that has been troubling federal courts is whether such generally applicable laws should also be applied to Indian tribes within Indian reservations when such laws never mention Indian tribes. For about the first one hundred years after the Declaration of Independence, Indian tribes were considered to be outside the political system of the United States. Tribal members were not United States citizens, many tribes were not even considered to be within the states where their reservations were located, and governance of Indian tribes was mostly done through formal treaties. In those days, federal laws were not applicable to Indian tribes unless Congress specifically said so. Although this presumption has now been reversed, one would think that the US Congress, which was given plenary power over Indian tribes by the United States Supreme Court, and also has the primary responsibility in determining the nature and extent of the trust relationship existing between the tribes and the United States, should have an obligation to specify which federal laws apply to Indian tribes and, if so, to what extent. Yet for many laws, such as the labor relations laws, Congress has remained silent. This amounts to a congressional failure to responsibly determine the terms under which Indian tribes are being incorporated into the United States' political and legal system, a failure only compounded by the refusal of the United States Supreme Court to finally decide this issue. Therefore, this duty has fallen on lower federal courts, and Kamper performs a thorough analysis on how courts have dealt with this issue when it comes to the applicability of federal labor laws such as the NLRA.

How one decides whether such generally applicable federal laws should also be applied to Indian tribes is tied to how one views the incorporation of Indian tribes within the greater federal system. At one end of the spectrum are those who might take the position that tribes are being incorporated into the US political system as economic entities. Those taking this view would also take the position that any law of general applicability should just be applicable to tribes the way they are applicable to other corporations. At the other end of the spectrum are those who take the position that tribes should not or have not been incorporated into the US political system. Those taking this position

would also argue that no federal laws should be applicable to Indian tribes unless the tribes consent to such laws. The reality, of course, lies somewhere in between these two positions.

Although the United States Supreme Court has never definitely answered this question, there is dicta in a 1960 case (*Federal Power Commission v. Tuscarora Indian Nation*, 362 U.S. 99) to the effect that "general Acts of Congress apply to Indians as well as to all others in the absence of a clear expression to the contrary." Although the case dealt with the property of individual Indians located outside Indian reservations, and did not address the applicability of such laws to Indian tribes within their reservations, lower federal courts have used this dicta to raise a presumption that such laws do apply to Indian tribes inside their reservations. Thus, most courts have adopted the position first developed in 1985 by the Ninth Circuit in *Donovan v. Coeur D'Alene Tribal Farms* (751 F.2d 1113), according to which a statute of general applicability applies to Indian tribes unless (1) the law touches exclusive rights of self-governance in purely intramural matters; (2) the application of the statute to a tribe would abrogate specific treaty rights; or (3) the tribes can point to some legislative history that Congress intended the law not to apply to tribes on their reservations.

When it comes to specific labor laws, the current majority view is perhaps reflected in the DC Circuit's 2007 decision in *San Manuel Indian Bingo v. NLRB* (475 F.3d 1306). According to this case, whether a federal law of general applicability like the NLRA should be applied to an Indian tribe depends on how serious the application of the law to the tribe would infringe on tribal sovereignty. Crucial to the court's analysis was its formulation of what I call a "spectrum" of sovereignty according to which tribal sovereignty is at its strongest when explicitly established by a treaty or when a tribal government acts within the borders of its reservation, in a matter of concern only to members of the tribe . . . conversely, when a tribal government goes beyond matters of internal self-governance and enters into off-reservation business transaction with non-Indians, its claim of sovereignty is at its weakest (475 F.3d, at 1312–13).

Although the court in *San Manuel Bingo* acknowledged that application of the NLRA may interfere with tribal sovereignty in some cases, this was not such a case since it involved organizing workers at a tribal casino, a primarily commercial activity employing mostly nontribal members serving mostly nonmember customers. Although this approach is somewhat more sophisticated than the previous one initially adopted in the *Coeur D'Alene* case, the DC Circuit's position in *San Manuel* is also problematic in that it still allows too much leeway for a court to subjectively determine what does or does not infringe on tribal sovereignty.

A position more sensitive to tribal concerns that better reflects the incorporation of tribes as third sovereigns within the US federal system was adopted

in 2002 by the tenth circuit in the *Pueblo of San Juan* case, where the court phrased the central question as "whether the Pueblo continues to exercise the same authority to enact right-to-work laws as do states and territories" (*NLRB v. Pueblo of San Juan*, 276 F.3d 1186). Incidentally, in 1993 a similar position had been previously adopted by an influential jurist, Judge Posner, in a case involving applicability of a different labor law, the Fair Labor Standards Act (FLSA), to a tribal organization, the Great Lakes Indian Fish and Wildlife Commission. Writing for the seventh circuit, after noting that Congress had included some special provisions carving out exemptions from the FLSA for state and local law enforcement, Judge Posner remarked that the case for exempting tribal policemen was stronger than the one for exempting state and local police. Judge Posner therefore concluded that the failure to exempt tribal law enforcement units must have been an oversight or a mistake by Congress and that Congress must have intended to treat such tribal departments the same way it treated state and local law enforcement (*Reich v. Great Lakes Indian Fish and Wildlife Commission*, 4 F.3d 490). It would seem that if tribes are being incorporated into the federal system under a third sphere of sovereignty, it is not too much to ask of Congress to specifically consider the special issue of Indian tribes when enacting such generally applicable federal laws. If Congress did not bother to address such issues, the default position should be that tribes should be treated the way other sovereign entities in our federalist system—the states—are treated in the legislation.

In failing to consider the applicability of such labor laws to the tribes, Congress has not only failed in its primary role to determine the terms governing the incorporation of tribes within our legal and political system but has also failed in its responsibility to Indian tribes under the federal-tribal trust relationship. While legal scholars have already amply addressed such failure, many of these scholars seem to take the simplistic position that any unconsented application of federal laws to Indian tribes is evil and therefore, since these labor laws are federal laws, their very idea must automatically be rejected by Indian tribes. The real value of Kamper's book is that it does not stop the analysis there and asks a deeper question, pointing out that the debate is not simply about whether the federal government has a right to impose such laws on the tribes; it is also about how tribal governments should handle the right of the tribal workforce to organize.

2. The responsibilities of Indian tribes

Kamper insightfully reveals the realities of what could be termed the workings of sovereignty on the ground. The issues surrounding labor organizing on Indian reservations highlights the intricacies of incorporating Indian tribes

as third sovereigns within the US political system. In other words, along with being vested with at least some aspects of sovereignty come certain responsibilities to act as a sovereign. If tribes were just being incorporated as economic entities, one could expect the somewhat knee-jerk reaction that rejects out-of-hand all laws (federal, state, or tribal) that benefit tribal workers or allow the tribal workforce to organize. Kamper does a marvelous job at showing why tribal governments should not ignore such laws. Looking after the welfare of tribal workers is or should be, a *tribal* value. It is an intrinsic part of the "work of sovereignty." Such work is more than simply rejecting federal laws; it is also about integrating concepts, and in the words of legal scholar Angela R. Riley, this equates to "good Native governance" ("Good [Native] Governance," 107 *Columbia Law Review* 1049 [2007]).

Yet Kamper acknowledges that just embracing any and all federal labor laws is not automatically a good option for Indian tribes. This would only be fitting if tribes were being incorporated as creatures of the federal government, or federal instrumentalities. Tribes do not have, however, the same relationship with the federal government as, for instance, a town or city has with the government of the state in which it is located. To this end Kamper shows how, ideally, tribal labor laws should be able to coexist alongside federal labor laws.

3. The responsibility of labor unions

The book is also about the labor unions' appropriate role and obligations when organizing workers in Indian country. Chapter 5 of the book, "The Campaign for Union Recognition," is about how this was done within the Navajo Nation for health workers. This chapter is in effect a primer or roadmap on how union organizing should be done across Indian country. One thing to keep in mind is that the unions involved here are mostly large national non-Indian organizations. As such they are initially viewed as outsiders by most Indian communities. I am not going to go into the details here about how unions should behave when attempting to persuade a tribal workforce to organize or select one union over another. Suffice it to say that Kamper's chapter on this issue should be required reading for any union leaders thinking about organizing labor on Indian reservations.

4. The role of the tribal workforce

The book puts a large emphasis on the tribal workforce. As the author points out, although most academics look at tribal sovereignty from the perspective of the tribal governments, tribal sovereignty is in fact mostly *experienced* by individuals. In this case, this means the tribal workers. This book is about experiencing tribal sovereignty from the ground up, not from the top down. It is a

refreshing approach, to say the least. Thus in the last two chapters (the last one being appropriately titled "Grassroots Expressions of Tribal Labor Relations"), Kamper examines what the tribal workers bring to the debate over tribal labor relations and, at least implicitly, what they bring to the larger debate about tribal incorporation into the United States political system. In other words, what is their part in the "work of sovereignty"? Kamper adequately shows how different the tribal workforce is from non-reservation-based workers when it comes to union organizing and other labor-related issues in Indian country. Besides the all important cultural differences implicit in each tribal context, Kamper shows how tribal workers are conscious that in organizing and deciding to join a union, they are dealing not with a regular employer, but with a tribal government or a tribally owned business located in Indian country. They therefore have to juggle their self-interest as tribal employees with their interests as members of a sovereign Indian tribe. Kamper insightfully explains what difference all these factors make in the decision-making process of the tribal workers when they decide to unionize.

In conclusion, Kamper's *Work of Sovereignty* is a work well done. It is both insightful and well researched. From the point of view of a legal scholar in academia, and perhaps one that has been there too long (in 1991 I may have been the first legal scholar to explore the issue of laws of general applicability as they relate to Indian tribes in "Applicability of Federal Laws of General Application to Indian Tribes and Reservation Indians," 25 *U.C. Davis Law Review* 85), I think the real value of Kamper's book is that it goes *beyond law* and explores the working of sovereignty from a new angle and a different perspective.

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